

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
THE OCEANAIRE TEXAS	§	Case No.: 09-34262-bjh- 11
RESTAURANT COMPANY, L.P., <i>et al.</i> , ¹	§	
	§	Jointly Administered
Debtors.	§	
	§	

**FIRST AMENDED JOINT PLAN OF REORGANIZATION PROPOSED BY THE
DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS UNDER
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

Dated: Dallas, Texas
March 16, 2010

¹ The other Debtors in these cases include The Oceanaire Restaurant Company, Inc., The Oceanaire, Inc., The Oceanaire Investment Company, Inc., The Oceanaire Minneapolis Restaurant Company, LLC, and The Oceanaire Texas Beverage Company, Inc.

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Oceanaire Texas Restaurant Company, L.P., The Oceanaire Restaurant Company, Inc., The Oceanaire, Inc., The Oceanaire Investment Company, Inc., The Oceanaire Minneapolis Restaurant Company, LLC, and The Oceanaire Texas Beverage Company, Inc. (the “Debtors”) and the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) (collectively, the “Plan Proponents”) hereby propose the following Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code (the “Plan”).

The Debtors and Creditors’ Committee are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code (as that term is defined herein). Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3019, the Plan Proponents reserve the right to alter, amend or modify this Plan, as they deem necessary, prior to its substantial consummation.

Reference is made to the Disclosure Statement accompanying this Plan, including the exhibits thereto, for a discussion of the Debtors’ history, business, properties, results of operations and risk factors, together with a summary and analysis of this Plan. All Creditors entitled to vote on this Plan are encouraged to review the Disclosure Statement and this Plan carefully before voting to accept or reject this Plan.

NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE COURT, HAVE BEEN AUTHORIZED BY THE COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN.

I.

DEFINITIONS AND CONSTRUCTION OF TERMS

A. Definitions.

Unless otherwise defined herein, or the context otherwise requires, the following terms shall have the respective meanings set forth below:

Administrative Claim

means any right to payment constituting a cost or expense of administration of these Chapter 11 Cases, other than an Ordinary Course Administrative Claim, of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under sections 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Estates, any actual and necessary costs and expenses of operating the Debtors’ business, any indebtedness or obligations incurred or assumed by the Debtors in connection with the conduct of their business, including, without limitation, for the acquisition or lease of property or an interest in property or the rendition of services, all compensation and

reimbursement of expenses to the extent awarded by the Court under sections 330, 331 or 503 of the Bankruptcy Code, and any fees or charges assessed against the Estates under section 1930 of title 28 of the United States Code and any Claim for goods delivered to the Debtors within twenty (20) days of the Petition Date and entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code.

Administrative Claims Bar Date

means the first Business Day on or after the thirtieth (30th) day after the Effective Date, unless a prior bar date has been established pursuant to the Bankruptcy Code, the Bankruptcy Rules or a prior order of the Court.

Agent

means Wells Fargo Capital Finance, Inc. (or any successor thereto), in its capacity as agent for the Lenders under the Credit Agreement.

Allowed

means, with reference to any Claim, (a) any Claim against any of the Debtors that has been listed by the Debtors in the Schedules, as such Schedules may have been amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent, and with respect to which no contrary proof of claim has been filed, (b) any Claim specifically allowed under this Plan, (c) any Claim the amount or existence of which has been determined or allowed by a Final Order, or (d) any Claim as to which a proof of claim has been timely filed before the Bar Date, provided that no objection to the allowance thereof has been filed by the Claims Objection Deadline; provided, however, that the term Allowed, with reference to any Claim, shall not include (x) any unliquidated Claim or (y) interest, penalties or attorneys' fees on or related to any Claim that accrues from and after the Petition Date unless otherwise expressly provided for in this Plan or a Final Order of the Court.

Amended and Restated By-Laws

means the Amended and Restated By-Laws of Reorganized The Oceanaire, Inc., which shall be in substantially the form contained in the Plan Supplement.

Amended and Restated Certificate of Incorporation

means the Amended and Restated Certificate of Incorporation of Reorganized The Oceanaire, Inc.,

which shall be in substantially the form contained in the Plan Supplement.

Assumed Store Location Leases and Contracts

means the non-residential real property leases and related contracts, as amended, which are included in the Plan Supplement.

Auction

means the court-approved auction to be conducted by the Plan Proponents for the sale of the New Equity pursuant to the terms and conditions of the Bid Procedures Order.

Avoidance Actions

means those actions arising under sections 544, 545, 547, 548, 549, 550 and 551 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

Ballots

means the ballots distributed with the Disclosure Statement to Creditors entitled to vote on this Plan, and on which Creditors shall indicate, among other things, acceptance or rejection of this Plan with respect to the particular Debtor against whom that Creditor has a Claim.

Bankruptcy Code

means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date or as otherwise applicable to these Chapter 11 Cases.

Bankruptcy Rules

means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, and local rules of the Court, as the context may require, as in effect on the Petition Date or as otherwise applicable to these Chapter 11 Cases.

Bar Date Order

means the Court's Order Pursuant To 28 U.S.C. § 156(c) (I) Approving Employment of the Garden City Group, Inc. As Claims, Noticing, And Balloting Agent; (II) Authorizing Claims, Noticing, And Balloting Agent To Send Initial Notices And All Other Notices Directly; (III) Authorizing The Debtors To File A Consolidated List of Creditors And Other Parties In Interest In Accordance With Exhibit "G" To The General Order Regarding Procedures For Complex Chapter 11 Cases; (IV) Limiting And Defining The Service List In These Cases; and (V) Approving Proof Of Claim Form And

Consolidated Notice Of Case Commencement Bar Date And First Meeting Of Creditors [Docket No. 60].

Bid Procedures Order

means the order entered by the Court governing the terms, conditions and procedures for the Auction and the rights and protections of the Stalking Horse.

Business Day

means any day not designated as a legal holiday by Bankruptcy Rule 9006(a) and any day on which commercial banks are open for business, and not authorized, by law or executive order, to close, in the City of Dallas, Texas.

Cash

means cash and cash equivalents denominated in legal tender of the United States of America.

Causes of Action

means any and all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, now owned or hereafter acquired by the Debtors, and the Cash and non-Cash proceeds thereof, whether arising under the Bankruptcy Code or other federal, state or foreign law, equity or otherwise, including, without limitation, any Avoidance Actions and any other causes of action arising under the Bankruptcy Code. As part of the Plan Supplement, the Creditors' Committee will set forth a schedule of potential Causes of Action, if any, they intend to preserve for the benefit of the Estates and designate those that will be contributed to the Creditor Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, to pursue for the benefit of the Estates.

Chapter 11 Cases

means the Chapter 11 cases commenced by the Debtors on July 5, 2009.

Claim

means any claim, as such term is defined in section 101(5) of the Bankruptcy Code, against any Debtor, whether or not asserted by the holder thereof.

Claims Objection Deadline

means, except with respect to Fee Claims, the last day

for filing objections to Claims and Administrative Claims, which day shall be one hundred-twenty (120) days after the Effective Date or such later date as the Court may order.

Class means each category or group of Claims or Equity Interests as classified or designated in Section II.A and Article IV of this Plan in accordance with section 1123(a)(1) of the Bankruptcy Code.

Class 4 Claims Reserve has the meaning set forth in Section VII.C.1 of this Plan.

Collateral means any property or interest in property of the Estates subject to a Lien to secure the payment or performance of a Claim, which Lien has not been avoided or is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

Commodore Plan means The Oceanaire Restaurant Company, Inc. Commodore Plan, an annual bonus and deferred compensation plan available to the Debtors' general managers and executive chefs, which includes the Plan as well as individual contracts by and between The Oceanaire Restaurant Company, Inc. and each participant.

Confirmation Date means the date on which the Confirmation Order is entered on the Court's docket.

Confirmation Hearing means the hearing to consider confirmation of this Plan pursuant to section 1128 of the Bankruptcy Code, as it may be adjourned or continued from time to time.

Confirmation Order means the order entered by the Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

Court means the United States Bankruptcy Court for the Northern District of Texas having jurisdiction over these Chapter 11 Cases, or any other court having jurisdiction over these Chapter 11 Cases.

Credit Agreement means that certain Credit Agreement dated as of January 26, 2007 by and among The Oceanaire, Inc., The Oceanaire Restaurant Company, Inc., The Oceanaire Texas Restaurant Company, L.P. and The Oceanaire

Minneapolis Restaurant Company, LLC, as borrowers; the Oceanaire Investment Company, Inc. and The Oceanaire Texas Beverage Company, Inc., as guarantors; Guggenheim Corporate Funding, LLC, as Term Loan Representative; the Agent; and the Lenders, as such Credit Agreement may have been amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date.

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

Creditor Trust means the Creditor Trust established pursuant to the Creditor Trust Agreement to hold the distribution to holders of Allowed Class 4 Claims.

Creditor Trust Agreement means the Creditor Trust Agreement substantially in the form to be filed in the Plan Supplement by the Creditors’ Committee with the consent of the Equity Sponsor, such consent (which may be given subsequent to filing) not to be unreasonably withheld.

Creditor Trustee means the person designated by the Creditors’ Committee and approved by the Court to administer the Creditor Trust pursuant to the Creditor Trust Agreement.

Creditors’ Committee means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases on July 21, 2009, by the United States Trustee for the Northern District of Texas, pursuant to section 1102(a) of the Bankruptcy Code, as constituted from time to time.

Debtors has the meaning set forth in the introductory paragraph of this Plan.

Disclosure Statement means the Disclosure Statement for the First Amended Joint Plan of Reorganization Proposed by the Debtors and the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code and all schedules and exhibits attached thereto, as approved by the Court pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, as such disclosure statement may be amended, supplemented or otherwise modified from time to time.

Disputed Claim means in reference to any Claim or Administrative

Claim, any portion of a Claim or Administrative Claim that is not an Allowed Claim.

Distributions

means the Cash and other distributions to be made pursuant to, and in accordance with, this Plan.

Effective Date

means the first Business Day on which all of the conditions specified in Section XIV.B of this Plan have been satisfied or waived in accordance with Section XIV.C of this Plan; provided, however, that if a stay of the Confirmation Order is in effect on such date, the Effective Date will be the first Business Day after such stay is no longer in effect.

Equity Infusion

means an equity infusion equal to the sum of (i) the principal amount of the Allowed Class 2 Lenders' Secured Claims, which is estimated to be approximately \$16.8 million as of the Effective Date; plus (ii) \$6.6 million, to be paid by the Equity Sponsor in exchange for the New Equity. The Equity Infusion will be in Cash.

Equity Interest

means any equity security issued and outstanding immediately prior to the Effective Date, within the meaning of section 101(16) of the Bankruptcy Code, or any other instrument evidencing an ownership interest in any of the Debtors whether or not transferable, and any right to acquire any such equity security or instrument, including any option, warrant or other right, contractual or otherwise, to acquire, sell or subscribe for any such equity security or instrument. For the avoidance of doubt, Equity Interest includes all preferred stock issued by any of the Debtors.

Equity Sponsor

means the Stalking Horse or such other bidder selected at the Auction, which will receive the New Equity pursuant to the Plan in exchange for contributing the Equity Infusion. The right of the Stalking Horse to be the Equity Sponsor is subject to the Bid Procedures Order and the outcome of the Auction.

Estates

means the estates of the Debtors, individually or collectively, as is appropriate in the context, created in these Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code.

Existing Equity Interest

means any Equity Interest in the Debtors other than any Intercompany Equity Interests.

Excess Cash

means, after the Debtors' receipt of the Equity Infusion and immediately prior to any payments or distributions being made pursuant to this Plan, all Cash on hand held by the Debtors on the Effective Date in excess of (i) \$600,000.00; plus (ii) an amount equal to the allowed Claim of the Class 2 Lenders' Secured Claim; plus (iii) an amount equal to the aggregate total of all claims for "cure amounts" for all executory contracts and unexpired leases assumed under the Plan, other than those executory contracts listed on Exhibit "D" to the SPA, using for each such asserted claim for a cure amount a value equal to the lesser of (a) the cure amount asserted in a Notice of Cure Amount, or (b) the amount approved by an order of the Bankruptcy Court with respect to such cure claim.

Fee Claims

means an Administrative Claim under sections 330(a), 331 or 503 of the Bankruptcy Code for compensation of a Professional or other Person for services rendered or expenses incurred in these Chapter 11 Cases on or prior to the Confirmation Date, including the reasonable non-legal expenses of the individual members of the Creditors' Committee incurred in the discharge of their duties as members of the Creditors' Committee.

Final Order

means an order or judgment of the Court, or other court of competent jurisdiction, as entered on the docket of such court, the operation or effect of which has not been stayed, reversed, vacated, modified or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal, petition for certiorari, or seek review or rehearing has expired and as to which no appeal, petition for certiorari, or petition for review or rehearing was filed or, if filed, remains pending; provided, however, that the possibility that a motion may be filed, pursuant to Rules 9023 or 9024 of the Bankruptcy Rules or Rules 59 or 60(b) of the Federal Rules of Civil Procedure or other applicable law, shall not mean that an order or judgment is not a Final Order.

General Unsecured Claim

means an Unsecured Claim against any of the Debtors that is not an Administrative Claim, Fee Claim, Priority

Tax Claim, Other Priority Claim, Indemnification Claim or Intercompany Claim.

Gift Card Obligation

means an obligation of the Debtors as of the Effective Date of the Plan under the Debtors' gift card program, as governed by the terms of the gift card program, which may be altered or amended at any time by the Debtors or the Reorganized Debtors.

Impaired

means "impaired" as defined in section 1124 of the Bankruptcy Code.

Indemnification Claim

has the meaning set forth in Section IX.K of this Plan.

Initial Distribution Date

means, for purposes of Distributions to be made to holders of Allowed Claims in Classes 1, 2, 3 and 5, the Effective Date or as soon thereafter as is practicable; for purposes of Distributions to be made to holders of Allowed Claims in Class 4, the first date selected for making a Distribution by the Creditor Trustee pursuant to the Creditor Trust Agreement.

Intercompany Claims

means any Claim held by one Debtor (or a non-debtor that is a direct or indirect subsidiary of a Debtor) against any other Debtor(s), including, without limitation, (a) any account reflecting intercompany book entries by such Debtor (or a non-debtor that is a direct or indirect subsidiary of a Debtor) against any other Debtor(s), (b) any Claim not reflected in book entries that is held by such Debtor (or a non-debtor that is a direct or indirect subsidiary of a Debtor) against any other Debtor(s), and (c) any derivative Claim asserted or assertable by or on behalf of such Debtor (or a non-debtor that is a direct or indirect subsidiary of a Debtor) against any other Debtor(s).

Intercompany Equity Interest

means an Equity Interest in a Debtor held by another Debtor.

Lenders

means the lenders from time to time party to the Credit Agreement.

Lenders' Secured Claims

means the Secured Claims of the Agent, the Term Loan Representative, and the Lenders pursuant to the Credit Agreement.

- Lien*** means “lien” as defined in section 101(37) of the Bankruptcy Code.
- New Equity*** means the shares of common stock of the Reorganized The Oceanaire, Inc. issued pursuant to this Plan and with the rights and obligations as set forth in the applicable Plan Supplement Documents.
- Notice of Cure Amount*** means the notice of “cure amount” required by section 365 of the Bankruptcy Code, to be delivered in accordance with the provisions of Section XII.B of this Plan.
- Ordinary Course Administrative Claims*** means Administrative Claims (other than Fee Claims) against the Debtors that represent liabilities (a) to a seller of goods or services on account of such seller’s postpetition provision of goods and/or services and (b) that were otherwise incurred in the ordinary course of business by the Debtors, as well as administrative expenses under section 503(b)(1) of the Bankruptcy Code.
- Other Amended and Restated Governing Documents*** means with respect to each of the Reorganized Debtors (other than Reorganized The Oceanaire, Inc.) such Reorganized Debtor’s amended and restated certificate of incorporation, operating agreement or limited partnership agreement, as the case may be, each of which will be in effect on the Effective Date, and shall be in substantially the form contained in the Plan Supplement.
- Other Priority Claim*** means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code (other than Administrative Claims and Priority Tax Claims).
- Other Secured Claim*** means any Secured Claim, other than the Lenders’ Secured Claims.
- Person*** means any individual, corporation, partnership, limited liability company, association, indenture trustee, organization, joint stock company, joint venture, estate, trust, governmental unit or any political subdivision thereof, or any other Entity (as defined in section 101(15) of the Bankruptcy Code).

Petition Date means July 5, 2009, the date on which the Debtors filed their voluntary petitions for relief commencing these Chapter 11 Cases.

Plan means this First Amended Joint Plan of Reorganization Proposed by the Debtors and Official Committee of Unsecured Creditors Under Chapter 11 Of The Bankruptcy Code, as it may be amended, supplemented or otherwise modified (with the consent of the Equity Sponsor and the Agent in accordance with the terms hereof, such consent not to be unreasonably withheld) from time to time, together with addenda, exhibits, schedules or other attachments hereto.

Plan Proponents means the Debtors and the Creditors' Committee as joint proponents of the Plan.

Plan Supplement means the documents or forms of documents specified in this Plan, including, but not limited to, those identified in Section XI.J of this Plan each in form and substance acceptable to Agent and the Equity Sponsor, to be included in the Plan Supplement, all of which are incorporated herein by reference.

Plan Supplement Documents means the documents to be included in the Plan Supplement, including those identified in Section XI.J of this Plan.

Priority Tax Claim means any Claim that is entitled to priority in right of payment under sections 502(i) or 507(a)(8) of the Bankruptcy Code.

Pro Rata means, with respect to any Claim, at any time, the proportion that the amount of an Allowed Claim in a particular Class bears to the aggregate amount of all Claims (including Disputed Claims, but not including Claims that have been disallowed) in such Class, unless in each case this Plan provides otherwise.

Professional means (i) any professional employed in these Chapter 11 Cases pursuant to sections 327 or 328 of the Bankruptcy Code or otherwise and (ii) any professional or other Person seeking compensation or reimbursement of expenses in connection with these Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

- Released Parties*** has the meaning ascribed to it in Section IX.G of this Plan.
- Reorganized Debtors*** means the Debtors, or any successors thereto by merger, consolidation, or otherwise, on and after the Effective Date.
- Reorganized The Oceanaire, Inc.*** means The Oceanaire, Inc., or any successor thereto by merger, consolidation, or otherwise, on and after the Effective Date.
- Schedules*** means the schedules of assets and liabilities, statements of financial affairs, and lists of holders of Claims and Equity Interests filed with the Court by the Debtors pursuant to section 521 of the Bankruptcy Code, including any amendments, modifications or supplements thereto.
- Secured Claim*** means a Claim that is secured by a Lien on Collateral, to the extent of the value (as of the Effective Date or such other date as may be established by the Court) of such Collateral determined by a Final Order pursuant to section 506(a) of the Bankruptcy Code or as otherwise set forth in this Plan or agreed upon in writing by the Plan Proponents and the holder of such Claim.
- SPA*** means the Stock Purchase Agreement in the form attached to the Bid Procedures Order and pursuant to which the New Equity will be purchased
- Stalking Horse*** means Landry's Restaurants, Inc., and its wholly-owned subsidiary LSRI Holdings, Inc.
- Stalking Horse Bid*** means the amount bid by the Stalking Horse in the amount of the Lenders' Secured Claims, plus \$6.6 million, plus the other terms and conditions for the acquisition of the New Equity pursuant to the terms of the SPA and the Plan.
- Term Loan Representative*** means Guggenheim Corporate Funding, LLC (or any successor thereto), in its capacity as Term Loan Representative under the Credit Agreement.
- Trust Assets*** means the Excess Cash and those Causes of Action designated by the Creditors' Committee (with the consent of the Agent and the Equity Sponsor, such

consent not to be unreasonably withheld) that are transferred to the Creditor Trust pursuant to the terms of this Plan and the Creditor Trust Agreement. Any Excess Cash not required to be used to pay (i) Allowed Claims of Trust Holders pursuant to the Plan, or (ii) fees and expenses of the Creditor Trust (up to \$150,000) shall revert to the Equity Sponsor, except as set forth in Section V.A.6 of this Plan. The Creditors' Committee does not anticipate the retention of Causes of Action; however, to the extent that any Causes of Action are identified and expressly preserved through the Plan Supplement Documents, such Causes of Action will be transferred to the Creditor Trust.

Trust Holders has the meaning set forth in Section V.A.1 of this Plan.

Unsecured Claim means any Claim that is not a Secured Claim.

B. Interpretation, Application of Definitions and Rules of Construction.

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and plural, and pronouns stated in the masculine, feminine or neuter shall include the masculine, feminine and neuter, such meanings to be applicable to both the singular and plural forms of the terms defined. Capitalized terms in this Plan that are not defined herein shall have the same meanings assigned to such terms by the Bankruptcy Code or Bankruptcy Rules, as the case may be. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Plan as a whole and not to any particular section or subsection in this Plan unless expressly provided otherwise. The words "includes" and "including" are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included. Captions and headings to articles, sections and exhibits are inserted for convenience of reference only, are not a part of this Plan, and shall not be used to interpret this Plan. The rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Plan. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

II.

CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

A. Introduction.

In accordance with section 1123(a)(1) of the Bankruptcy Code, all Claims and Equity Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below.

The Equity Infusion will be made by the Equity Sponsor to The Oceanaire, Inc., which is the direct or indirect parent company of each of the Debtors. The Equity Sponsor will be the party submitting the highest and best offer for the New Equity at the conclusion of the Auction pursuant to the Bid Procedures Order. The Oceanaire, Inc. will transfer the Trust Assets, including the Excess Cash, to the Creditor Trust. Because the Trust Assets will not consist of property belonging to any Debtor other than The Oceanaire, Inc., no Creditor of any Debtor has any greater or lesser claim to the Trust Assets than any other Creditor of any Debtor. Consequently, for purposes of Distribution of Trust Assets, all Allowed Class 4 General Unsecured Claims will be treated equally and will receive ratable Distributions.

A Claim or Equity Interest is placed in a particular Class only to the extent that such Claim or Equity Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of such Claim or Equity Interest falls within the description of such other Classes. A Claim or Equity Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Equity Interest in that Class and such Claim or Equity Interest has not been paid, released, or otherwise satisfied prior to the Effective Date.

1. **Unclassified Claims (not entitled to vote on this Plan).**

- (a) Administrative Claims.
- (b) Priority Tax Claims.

2. **Unimpaired Classes of Claims and Equity Interests (conclusively presumed to have accepted this Plan and, therefore, not entitled to vote on this Plan).**

- (a) Class 1: Other Priority Claims.
Class 1 consists of all Other Priority Claims.
- (b) Class 3: Other Secured Claims.
Class 3 consists of all Other Secured Claims.
- (c) Class 5: Intercompany Claims.
Class 5 consists of all Intercompany Claims.
- (d) Class 6: Intercompany Equity Interests.
Class 6 consists of all Intercompany Equity Interests.

3. **Impaired Classes of Claims and Equity Interests (entitled to vote on this Plan).**

(a) Class 2: Lenders' Secured Claims.

Class 2 consists of all Lenders' Secured Claims.

(b) Class 4: General Unsecured Claims.

Class 4 consists of all General Unsecured Claims.

4. **Impaired Classes of Claims and Equity Interests (deemed to have rejected this Plan and, therefore, not entitled to vote on this Plan).**

(a) Class 7: Existing Equity Interests.

Class 7 consists of all Existing Equity Interests.

B. Acceptance.

Consistent with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, a Class of Creditors shall have accepted this Plan if it is accepted by at least two-thirds in dollar amount and more than one-half in number of the holders of Allowed Claims of such Class that have timely voted to accept or reject this Plan. Because the Class 2 Lenders' Secured Claims have been filed against each Debtor, the Ballot for Class 2 will apply to all Debtors unless a holder of those Claims otherwise specifies. Ballots for Class 4 General Unsecured Creditors will specify the particular Debtor(s) applicable to that Creditor. Ballots will be tabulated separately for each Debtor and the voting results will be reported to the Bankruptcy Court.

C. Cram Down.

The Plan Proponents request that, in the event only one of Classes 2 or 4 votes to accept this Plan for any Debtor, the Court confirm this Plan in accordance with the provisions of section 1129(b) of the Bankruptcy Code as to any Class that votes (or that is deemed) to reject this Plan. The Plan Proponents reserve the right to modify this Plan (with the consent of the Agent and the Equity Sponsor, such consent not to be unreasonably withheld) to the extent, if any, that confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

III.

TREATMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

A. Administrative Claims.

1. Distribution.

Except with respect to Administrative Claims that are Indemnification Claims, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Claims, (a) Cash in the amount of such Allowed Administrative Claim on the later of the Initial Distribution Date or the date such Administrative Claim becomes an Allowed Administrative Claim or within five (5) Business Days thereafter, or (b) such other treatment as the Creditor Trustee and such holder shall have agreed upon; provided, however, that Allowed Ordinary Course Administrative Claims shall be paid in full by the Reorganized Debtors in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such Allowed Ordinary Course Administrative Claims. All Allowed Administrative Claims (other than Ordinary Course Administrative Claims) shall be paid from the assets of the Creditor Trust.

2. Bar Date for Administrative Claims.

Unless a prior date has been established pursuant to the Bankruptcy Code, the Bankruptcy Rules or a prior order of the Court, the Confirmation Order will establish a bar date for filing applications for allowance of Administrative Claims (except for Fee Claims and Ordinary Course Administrative Claims), which date will be the first Business Day on or after the thirtieth (30th) day after the Effective Date. Holders of Administrative Claims (except for Fee Claims and Ordinary Course Administrative Claims) not paid prior to the Effective Date, shall submit requests for payment on or before the Administrative Claims Bar Date or forever be barred from doing so. The notice of confirmation of this Plan, to be delivered pursuant to Bankruptcy Rules 3020(c) and 2002(f), will set forth the Administrative Claims Bar Date. The Reorganized Debtor and Creditor Trustee shall have forty-five (45) days (or such longer period as may be allowed by order of the Court) following the Administrative Claims Bar Date to review and object to any then unpaid Administrative Claims. To the extent that a portion of any Administrative Claim is Disputed, then the undisputed portion of such Administrative Claim shall be paid in accordance with Section III.A.1 of this Plan.

3. Fee Claims.

All requests for compensation or reimbursement of Fee Claims pursuant to sections 327, 328, 330, 331, 503, or 1103 of the Bankruptcy Code for services rendered prior to the Effective Date shall be filed and served on the Reorganized Debtors and their counsel, the United States Trustee, counsel to the Creditor Trust, and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order, or any other order(s) of the Court, no later than sixty (60) days after the Effective Date. Holders of Fee Claims that are required to file and serve applications for final allowance of their Fee Claims and that do not file and serve such

applications by the required deadline shall be forever barred from asserting such Fee Claims against the Debtors, the Reorganized Debtors or their respective properties, and such Fee Claims shall be deemed discharged *nunc pro tunc* as of the Effective Date. Objections to any Fee Claims must be filed and served on the Reorganized Debtors and their counsel, counsel for the Creditor Trust, and the requesting party no later than thirty (30) days (or such longer period as may be allowed by order of the Court) after the date on which an application for final allowance of such Fee Claims was filed and served. A Fee Claim shall constitute an Allowed Administrative Claim upon entry of a Final Order approving such Fee Claim.

B. Priority Tax Claims.

Except to the extent that a holder of an Allowed Priority Tax Claim and the Plan Proponents agree to a different treatment, each holder of an Allowed Priority Tax Claim shall be paid, in full satisfaction, settlement, release, and discharge of and in exchange for such Claim, in full in Cash on, or as soon as practicable thereafter, the later of the Effective Date or the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim. Allowed Priority Tax Claims shall be paid from the assets of the Creditor Trust.

IV.

TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Class 1 - Other Priority Claims.

1. Distributions.

Except to the extent that a holder of an Allowed Class 1 Other Priority Claim and the Plan Proponents agree to a different treatment, each holder of an Allowed Class 1 Other Priority Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Claims from the assets of the Creditor Trust, payment in full in Cash in an amount equal to such Allowed Class 1 Other Priority Claim on or as soon as practicable after the later of the Initial Distribution Date or the date when such Class 1 Other Priority Claim becomes an Allowed Class 1 Other Priority Claim.

2. Impairment and Voting.

Class 1 is unimpaired under this Plan. The holders of Class 1 Other Priority Claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan.

B. Class 2 - Lenders' Secured Claims.

1. Allowance of Lenders' Secured Claims and Distribution.

The Class 2 Lenders' Secured Claims shall be deemed fully secured and Allowed in the aggregate amount of \$16,811,095.00 plus accrued interest, fees and expenses and other obligations owed to the Agent and Lenders for all purposes under this Plan. As provided in Section XIV.B of this Plan, it is a condition of the effectiveness of the Plan that the Debtors have

paid in full in Cash to the Agent and the Lenders, pursuant to the terms of the Final Cash Collateral Order, all interest, fees and expenses then due and owing to the Agent and the Lenders as of the Effective Date. The Debtors shall pay to the Agent and the Lenders an amount sufficient to reduce the then outstanding amount of the Allowed Class 2 Lenders' Secured Claims to \$16,811,095.00 prior to the Effective Date, in satisfaction of the condition in Section XIV.B of this Plan. On the Effective Date, the holders of the Allowed Class 2 Lenders' Secured Claims shall receive Cash in an amount equal to the then outstanding amount of such Allowed Class 2 Lenders' Secured Claims. Notwithstanding the foregoing, the reasonableness and payment of fees and expenses under this Section IV.B shall be without prejudice to the Lenders' and Committee's rights under the Final Cash Collateral Order, including decretal paragraph 5(d)(i) of the Final Cash Collateral Order.

2. Impairment and Voting.

Class 2 is Impaired under this Plan. Each holder of a Class 2 Lenders' Secured Claims is entitled to vote to accept or reject this Plan.

C. Class 3 - Other Secured Claims.

Each holder of a Class 3 Other Secured Claim shall be treated as a separate class for all purposes under this Plan, and each holder of an Allowed Class 3 Other Secured Claim shall receive the treatment set forth below. To the extent, if any, that the value of the Collateral securing a Class 3 Other Secured Claim is less than the total amount of such Claim, the difference shall be treated as a Class 4 General Unsecured Claim. The Reorganized Debtors and/or the Plan Proponents specifically reserve all rights to challenge the validity, nature, and perfection of, and to avoid pursuant to the provisions of the Bankruptcy Code and other applicable law, any purported Liens and security interests securing any Class 3 Other Secured Claim.

1. Distributions.

Except to the extent that a holder of an Allowed Class 3 Other Secured Claim and the Equity Sponsor and the Plan Proponents agree to a different treatment, in full satisfaction, settlement, release, and discharge of and in exchange for such Claim, at the sole option of the Equity Sponsor, (i) each Allowed Class 3 Other Secured Claim shall be reinstated and rendered unimpaired in accordance with section 1124(2) of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of an Allowed Class 3 Other Secured Claim to demand or to receive payment of such Allowed Class 3 Other Secured Claim prior to the stated maturity of such Allowed Class 3 Other Secured Claim from and after the occurrence of a default, (ii) each holder of an Allowed Class 3 Other Secured Claim shall receive Cash in an amount equal to such Allowed Class 3 Other Secured Claim on the later of the Initial Distribution Date or the date such Class 3 Other Secured Claim becomes an Allowed Class 3 Other Secured Claim, or as soon thereafter as is practicable, or (iii) each holder of an Allowed Class 3 Other Secured Claim shall receive the Collateral securing its Allowed Class 3 Other Secured Claim on the later of the Initial Distribution Date or the date such Class 3 Other Secured Claim becomes an Allowed Class 3 Other Secured Claim, or as soon thereafter as practicable.

2. Impairment and Voting.

Class 3 is unimpaired under this Plan. The holders of Class 3 Other Secured Claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan.

D. Class 4 - General Unsecured Claims.

1. Distributions.

On the later of the Initial Distribution Date or the date on which a specific Class 4 General Unsecured Claim becomes an Allowed Class 4 General Unsecured Claim, or as soon thereafter as is practical, and from time to time thereafter, a holder of an Allowed Class 4 General Unsecured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Claim, its Pro Rata share of the assets of the Creditor Trust that remain after payment of Administrative Claims (other than Ordinary Course Administrative Claims), Priority Tax Claims, and the fees and expenses of the Creditor Trust; provided however that any Allowed Indemnification Claims shall be subordinated to all obligations of the Creditor Trust, including, without limitation, the distribution rights of beneficiaries thereunder holding Allowed Class 4 General Unsecured Claims with interest on the unpaid amount thereof from the Petition Date to the date of payment at 0.48% *per annum*.

2. Impairment and Voting.

Class 4 is Impaired under this Plan. Each holder of a Class 4 General Unsecured Claim is entitled to vote to accept or reject this Plan.

E. Class 5 - Intercompany Claims.

1. Distributions.

All Class 5 Intercompany Claims will remain outstanding and shall not be discharged by this Plan or the Confirmation Order, but shall instead be liquidated, determined, and satisfied in accordance, and in a manner consistent, with the Debtors' historical practices as if these Chapter 11 Cases had not been commenced.

2. Impairment and Voting.

Class 5 is unimpaired under this Plan. Holders of Class 5 Intercompany Claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan.

F. Class 6 - Intercompany Equity Interests.

1. Distributions.

All Class 6 Intercompany Equity Interests shall be reinstated, and holders thereof shall retain their Intercompany Equity Interests.

2. Impairment and Voting.

Class 6 is unimpaired under this Plan. The holders of Class 6 Intercompany Equity Interests are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan.

G. Class 7 - Existing Equity Interests.

1. Subclassification.

In the event that a Distribution is available to holders of Allowed Class 7 Existing Equity Interests, Class 7 Existing Equity Interests shall be deemed to be divided into subclasses reflecting their order of liquidation preference under applicable non-bankruptcy law.

2. Distributions.

If the Stalking Horse Bid, or such other bid that does not result in payment in full of the Allowed Class 4 General Unsecured Claims, is approved by the Court as the highest and best bid at the Auction, then holders of Class 7 Existing Equity Interests shall receive no distributions on account of such Existing Equity Interests.

If a bid other than the Stalking Horse Bid is approved by the Court as the highest and best bid at the Auction, then, provided that Administrative Claims (other than Ordinary Course Administrative Claims), Priority Tax Claims, Fee Claims, the fees and expenses of the Creditor Trust, Allowed Class 4 General Unsecured Claims with interest on the unpaid amount thereof from the Petition Date to the date of payment at 0.48% *per annum*, and the Allowed Amount, if any, of the subordinated Indemnification Claims, are all paid in full, any assets of the Creditor Trust that remain shall be distributed to each subclass of Allowed Class 7 Existing Equity Interests until the liquidation preference of such subclass, as established under applicable non-bankruptcy law, is satisfied, and then to the next most senior subclass of Allowed Class 7 Existing Equity Interests, in full satisfaction, settlement, release and discharge of and in exchange for such Existing Equity Interests.

All Class 7 Existing Equity Interests and all instruments evidencing them shall be cancelled and deemed worthless as of the Effective Date except for the limited purpose of determining any distribution rights to the Class 7 Equity Interests pursuant to the terms of the Plan.

3. Impairment and Voting.

Class 7 is Impaired. The holders of Class 7 Existing Equity Interests are deemed to have rejected this Plan and shall not be entitled to vote to accept or reject this Plan.

4. Reconciliation with Bid Procedures.

Notwithstanding the foregoing, to the extent that the conditions in the Bid Procedures Order providing Debtors the right to select the Equity Sponsor have been satisfied,

such Equity Sponsor may elect, and the Plan may provide, for retention of a particular subclass of Class 7 in Existing Equity Interests in accordance their priority.

V.

THE CREDITOR TRUST AND THE CREDITOR TRUSTEE

A. The Creditor Trust.

1. Establishment of the Trust.

On the Effective Date, the Debtors, on their own behalf and on behalf of holders of Allowed Claims to be paid from the Creditor Trust (hereinafter collectively referred to as the "Trust Holders"), and the Creditor Trustee shall execute the Creditor Trust Agreement and shall take all other steps necessary to establish the Creditor Trust. The Creditor Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, but not limited to, any and all provisions necessary to ensure the treatment of the Creditor Trust as a liquidating trust for United States federal income tax purposes. The final form of the Creditor Trust Agreement shall be determined by the Creditors' Committee and provided to the Debtors and included in the Plan Supplement.

2. Transfer of the Trust Assets.

Subject to the Creditor Trust Agreement, on the Effective Date, the Debtors, the Reorganized Debtors or such other Persons that may have possession or control of any other Trust Assets shall transfer all of their right, title, and interest in and to such Trust Assets to the Creditor Trust free and clear of any Lien, Claim, or Equity Interest, except as otherwise provided for in this Plan or the Creditor Trust Agreement, in the manner described in Section V.A.3 of this Plan and shall execute any and all documents or instruments necessary to effectuate such transfers.

3. Transfer for the Benefit of Trust Holders.

The transfer of the Trust Assets to the Creditor Trust shall be made for the benefit of the Trust Holders, whether the Claims of Trust Holders are allowed on or after the Effective Date of the Plan. Upon the transfer of the Trust Assets, the Creditor Trustee shall succeed to all of the Debtors' rights, title, and interest in the Trust Assets and neither the Debtors nor their Estates will have any further interest in or with respect to the Trust Assets of the Creditor Trust. For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the Creditor Trustee, and the Trust Holders) shall treat the transfer of the Trust Assets to the Creditor Trust described in the Creditor Trust Agreement and herein (and any subsequent transfer of Assets) as a transfer to the Trust Holders followed by a transfer by such Trust Holders to the Creditor Trust, and the beneficiaries of the Creditor Trust shall be treated as the grantors and owners thereof.

4. Purpose of the Creditor Trust.

The Creditor Trust shall be established for the sole purpose of liquidating and distributing the Trust Assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. Subject to definitive guidance from the Internal Revenue Service, all parties shall treat the Creditor Trust as a liquidating trust for United States federal income tax purposes.

5. Valuation of the Assets.

From time to time as necessary, the Creditor Trustee shall, in his sole discretion, determine the fair market value of the Trust Assets and any other assets transferred to the Creditor Trust and, thereafter, apprise the Trust Holders in writing regarding such valuation. Any such valuation shall be conclusive and used consistently by all parties (including, without limitation, the Debtors, the Creditor Trustee, and the Trust Holders) for all purposes, including United States federal income tax purposes.

6. Termination.

The Creditor Trust will terminate thirty (30) days after the full and final Distribution of the Trust Assets or proceeds thereof in accordance with the terms of the Creditor Trust Agreement and this Plan; provided, however, that upon a motion by the Creditor Trustee or any party in interest, the Court may extend the term of the Creditor Trust if it is necessary for the liquidation of the Trust Assets. The aggregate of all such extensions shall not exceed three (3) years, unless the Creditor Trustee receives a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Creditor Trust as a liquidating trust within the meaning of Treasury Regulation § 301.7701-4(d) for federal income tax purposes. Notwithstanding the foregoing, the Creditor Trustee shall not unduly prolong the duration of all property and Claims that constitute the Trust Assets and shall effect the full and final Distribution of the Trust Assets to the Trust Holders in accordance with the terms hereof and the Creditor Trust Agreement and thereafter terminate the Creditor Trust as soon as possible.

If the Stalking Horse Bid is approved by the Court as the highest and best bid at the Auction, then the next \$150,000 of Trust Assets remaining after payment in full of the Allowed Class 4 General Unsecured Claims shall be retained by the Creditor Trust to pay the expenses of the Creditor Trust and statutory fees of the U.S. Trustee, and any Trust Assets that remain shall be returned to the Equity Sponsor.

If a bid other than the Stalking Horse Bid is approved by the Court as the highest and best bid at the Auction, then, provided that Administrative Claims (other than Ordinary Course Administrative Claims), Priority Tax Claims, Fee Claims, the fees and expenses of the Creditor Trust, Allowed Class 4 General Unsecured Claims with interest on the unpaid amount thereof from the Petition Date to the date of payment at 0.48% *per annum*, and the Allowed Amount, if any, of the subordinated Indemnification Claims, are all paid in full, any assets of the Creditor Trust that remain after the Termination of the Creditor Trust as provided herein shall be distributed to each subclass of Allowed Class 7 Existing Equity Interests until the liquidation

preference of such subclass, as established under applicable non-bankruptcy law, is satisfied, and then to the next most senior subclass of Allowed Class 7 Existing Equity Interests.

B. Creditor Trustee.

1. Appointment.

The Creditors' Committee shall name the Creditor Trustee as part of the Plan Supplement. The Creditor Trustee shall be appointed as of the Effective Date and shall hold such position until his removal, resignation, or death.

2. Powers of the Creditor Trustee.

The Creditor Trustee shall be empowered to: (i) commence litigation and pursue claims against third parties; (ii) conduct Rule 2004 examinations against third parties; (iii) effect all actions and execute all agreements, instruments, and other documents necessary to perform his duties under the Plan including, without limitation, the Creditor Trust Agreement, any releases, settlement documents, notices of dismissal, and/or stipulations of dismissal; (iv) make all Distributions contemplated by the Creditor Trust Agreement, subject to the provisions of this section of this Plan; (v) employ counsel, accountants, experts, and other professionals and/or agents to represent him with respect to his responsibilities and to pay from the Trust Assets any and all such persons on such terms as the Creditor Trustee determines, in his sole discretion, to be reasonable; (vi) commence such actions and exercise such other powers as may be vested in the Creditor Trustee by order of the Court, pursuant to the Plan, or as deemed by the Creditor Trustee to be necessary and proper to implement the provisions hereof; and (vii) perform such other acts and take any and all action which the Creditor Trustee, in his sole discretion, deems necessary or appropriate to effectuate the acts and provisions of this Plan and/or the Creditor Trust Agreement, whether expressly provided for or appropriate under the doctrine of *cy pres*. The Creditor Trustee may exercise and perform any and all of the aforesaid powers and acts without any Order or approval from the Court.

C. Expenses of the Creditor Trustee Incurred On Or After The Effective Date.

Except as otherwise ordered by the Court, the amount of any reasonable fees and expenses incurred by the Creditor Trustee on or after the Effective Date and any reasonable compensation and expense reimbursement claims made by the Creditor Trustee may be paid in Cash from the Creditor Trust without Court approval. Unless otherwise agreed to in writing by the Reorganized Debtors and the Creditors' Committee, the Creditor Trustee shall serve without bond and shall receive compensation to be paid from the Trust Assets. The fees for the Creditor Trustee and staff shall be submitted with the Plan Supplement.

D. Allocation of Tax Items.

Unless otherwise required by applicable tax law, items of income, gain, loss, and deduction recognized or incurred by the Creditor Trust and the proceeds of liquidation of Trust Assets received by the Creditor Trust shall be allocated ratably among the Trust Holders, provided, however, that where more than one Class of Trust Holders actually receives a Distribution in a tax year, such items of income, gain, loss, and deduction, and proceeds of

liquidation of Trust Assets received by the Creditor Trust, shall be allocated ratably based upon the amount of each Distribution made to such Class of Trust Holders.

VI.

PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to be Distributed.

Unless otherwise provided in this Plan, on the Initial Distribution 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 such a Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each holder of an Allowed Claim shall receive the full amount of the Distributions that this Plan provides for Allowed Claims in the applicable Class at that time. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. 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 of this Plan. 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.

B. Distributions Under Plan.

Except as provided herein, all Distributions under this Plan shall be made as indicated in the Plan by either the Reorganized Debtors or by the Creditor Trustee. The Reorganized Debtors and the Creditor Trustee shall not be required to give any bond or surety or other security for the performance of their duties unless otherwise ordered by the Court.

C. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Delivery of Distributions in General.

The Equity Infusion will be made by the Equity Sponsor to The Oceanaire, Inc., which is the direct or indirect parent company of each of the Debtors. The Oceanaire, Inc. will transfer the Trust Assets, including the Excess Cash, to the Creditor Trust. Because the Trust Assets will not consist of property belonging to any Debtor other than The Oceanaire, Inc., no Creditor of any Debtor has any greater or lesser claim to the Trust Assets than any other Creditor of any Debtor. Consequently, for purposes of Distribution of Trust Assets, all Allowed Class 4 General Unsecured Claims will be treated equally and will receive ratable Distributions.

Except as otherwise provided herein, the Reorganized Debtors and/or the Creditor Trustee shall make Distributions to holders of Allowed Claims at the address for each such holder as indicated on the Reorganized Debtors' records as of the date of any such Distribution; provided, however, that the manner of such Distributions shall be determined at the discretion of the Reorganized Debtors and/or the Creditor Trustee as appropriate; and provided further, that the address for each holder of an Allowed Claim shall be deemed to be the address set forth in

any proof of claim filed by that holder unless a package is returned by the United States Post Office with a forwarding address for such claimant, in which case the Reorganized Debtors and/or the Creditor Trustee shall forward the Distribution to the forwarding address provided for such claimant and amend its Distribution schedule accordingly.

2. Undeliverable Distributions and Unclaimed Property.

In the event that any Distribution to any holder is returned as undeliverable, no Distribution to such holder shall be made unless and until the Reorganized Debtors and/or the Creditor Trustee has determined the then current address of such holder, at which time such Distribution shall be made to such holder without additional interest on account of such delay in delivery; provided, however, such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one (1) year from the date of Distribution. Notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary, all unclaimed property or interests in property unclaimed for the one (1) year period shall revert to the Reorganized Debtors and/or the Creditor Trust as appropriate, and the Claim of any holder to such Distribution shall be discharged and forever barred; provided further, however, that to the extent that such unclaimed property or interests in property is on account of a Distribution made from the Creditor Trust, such unclaimed property or interests in property shall revert for the benefit of holders of Allowed Class 4 General Unsecured Claims and shall be placed in the Class 4 Claims Reserve pending subsequent distribution by the Creditor Trustee.

D. Compliance with Tax Requirements/Allocations.

In connection with this Plan, to the extent applicable, the Reorganized Debtors and the Creditor Trustee shall comply with all tax withholding and reporting requirements imposed on them by any governmental authority, and all Distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in this Plan to the contrary, the Reorganized Debtors and the Creditor Trustee shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the Distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding Distributions pending receipt of information necessary to facilitate such Distributions, or establishing any other mechanisms they believe are reasonable and appropriate.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of such Claims, to any portion of such Claims for accrued but unpaid prepetition or postpetition interest.

E. Setoffs.

The Reorganized Debtors and the Creditor Trustee may withhold (but not set off except as set forth below) from Distributions under this Plan on account of any Allowed Claim an amount equal to any claims or Causes of Action of any nature that the Debtors or the Reorganized Debtors may hold against the holder of any such Allowed Claim. In the event that

any such claims or Causes of Action of any nature that the Debtors or Reorganized Debtors may hold against the holder of any such Allowed Claim are adjudicated by Final Order or otherwise resolved, the Debtors may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any such Allowed Claim and any Distributions to be made pursuant hereto on account of such Allowed Claim (before any Distribution is made on account of such Allowed Claim) the amount of any adjudicated or resolved claims or Causes of Action of any nature that the Debtors or the Reorganized Debtors may hold against the holder of any such Allowed Claim, but only to the extent of such adjudicated or resolved amount. Neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any such claims or Causes of Action that the Debtors or the Reorganized Debtors may possess against any such holder.

F. Accrual of Postpetition Interest.

In accordance with section 502(b)(2) of the Bankruptcy Code, the amount of all Claims against all Debtors shall be calculated as of the Petition Date. Except as otherwise provided elsewhere in this Plan or in an order of the Court, no holder of an Allowed Claim shall be entitled to the accrual of postpetition interest or the payment by the Debtors or the Reorganized Debtors of postpetition interest on account of such Claim for any purpose; provided, however, that holders of Allowed Lenders' Secured Claims shall be entitled to postpetition interest in accordance with the Credit Agreement or as otherwise permitted by applicable non-bankruptcy law and, under the circumstances described in this Plan, holders of Allowed Class 4 General Unsecured Claims shall be entitled to postpetition interest at the rate of 0.48% *per annum* on the unpaid amount thereof from the Petition Date through the date(s) of payment thereof.

G. Fractional Dollars; De Minimis Distributions.

Any other provision of this Plan notwithstanding, payments of fractions of dollars shall not be made. Whenever any payment of a fraction of a dollar under this Plan would otherwise be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. The Reorganized Debtors or the Creditor Trustee, as the case may be, shall not make any payment of less than \$25.00 with respect to any Claim unless a request therefor is made in writing to the Reorganized Debtors or Creditor Trustee, as the case may be.

H. Record Date for Holders of Claims.

Except as otherwise provided in a Final Order of the Court, the transferees of Claims that are transferred pursuant to Rule 3001 of the Bankruptcy Rules on or prior to the Initial Distribution Date shall be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Rule 3001 of the Bankruptcy Rules for objecting to such transfer has not expired by the Initial Distribution Date.

VII.

PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, OR DISPUTED CLAIMS

A. Limitation of Applicability.

The resolution of all contingent, unliquidated, or Disputed Claims is governed exclusively by this Article VII.

B. Objections to and Resolution of Claims.

The Reorganized Debtors shall have standing after the Effective Date to make and to file objections to, or otherwise contest the allowance of, all Ordinary Course Administrative Claims. The Creditor Trustee shall have standing after the Effective Date to make and to file objections to, or otherwise contest the allowance of, Administrative Claims (other than Ordinary Course Administrative Claims) and General Unsecured Claims. Unless otherwise ordered by the Court, objections to, or other proceedings concerning the allowance of, Administrative Claims and General Unsecured Claims shall be filed and served upon the holders of the Administrative Claims or General Unsecured Claims as to which the objection is made or otherwise commenced as the case may be, as soon as practicable, but in no event later than the Claims Objection Deadline.

Objections to, or other proceedings contesting the allowance of, Administrative Claims (except Ordinary Course Administrative Claims) and General Unsecured Claims may be litigated to judgment, settled or withdrawn, in the sole discretion of the Creditor Trustee. The Creditor Trustee may settle any such objections or proceedings without Court approval or may seek Court approval.

C. Reserve for Disputed Class 4 Claims.

1. Establishment of Class 4 Claims Reserve.

On the Initial Distribution Date, the Creditor Trustee shall place a portion of the Excess Cash contributed to the Creditor Trust into a reserve account established for Disputed Class 4 Claims in an amount sufficient to satisfy, on a Pro Rata basis, such Disputed Class 4 Claims in the event that such Disputed Class 4 Claims become Allowed Class 4 General Unsecured Claims (the "Class 4 Claims Reserve"). In the event that all or a portion of such Disputed Class 4 Claims become expunged by order of the Court, any reserve established for such Disputed Class 4 Claim (or portion thereof) shall be released to the Creditor Trustee to distribute in accordance with Section IV.D of this Plan.

2. Net Recoveries of Avoidance Actions Held in Class 4 Claims Reserve.

Causes of Action will not be preserved by the Estates under the Plan unless expressly set forth in the Plan Supplement Documents. To the extent that the Bankruptcy Court approves or requires the retention of any Causes of Action, any net recoveries shall be held in the Class 4 Claims Reserve by the Creditor Trust in trust for the benefit of holders of Allowed Class

4 General Unsecured Claims. Those net recoveries shall not constitute property of the Reorganized Debtors. Any recoveries held in the Class 4 Claims Reserve shall either be distributed by the Creditor Trustee in a supplemental Distribution, Pro Rata, to the holders of Allowed Class 4 General Unsecured Claims in accordance with Section IV.D of this Plan or remain in the Class 4 Claims Reserve for holders of Disputed Class 4 Claims until such Disputed Class 4 Claims either become Allowed Class 4 General Unsecured Claims or are expunged by order of the Court. In the event that all or a portion of any such Disputed Class 4 Claim becomes expunged by order of the Court, any reserve established for such Disputed Class 4 Claim (or portion thereof) shall be released to the Creditor Trust to be distributed in accordance with Section IV.D.1 of this Plan.

D. No Full Distributions Pending Allowance.

Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no Distribution provided under this Plan shall be made on account of the Disputed portion of such Claim unless and until the Disputed portion of such Claim becomes an Allowed Claim. However, to the extent a portion of the Claim is undisputed, a Distribution shall be made on account of the undisputed portion of such Claim.

E. Distributions Following Allowance.

Notwithstanding anything to the contrary set forth herein or in the Confirmation Order, each holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Initial Distribution Date shall receive the Distribution to which such holder of an Allowed Claim is entitled at such time that the Creditor Trustee determines, in his discretion, to make subsequent Distributions to holders of other Claims which are Allowed following the Initial Distribution Date, provided that the Creditor Trustee shall make such Distributions at least semi-annually. Nothing set forth herein is intended to, nor shall it, prohibit the Creditor Trustee, in his discretion, from making a Distribution on account of any Claim at any time after such Claim becomes an Allowed Claim.

F. Estimation.

The Reorganized Debtors or the Creditor Trustee may, at any time, request that the Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors, the Reorganized Debtors, or the Creditor Trustee have previously objected to such Disputed Claim. The Court will retain jurisdiction to estimate any Disputed Claim at any time, including during proceedings concerning any objection to such Disputed Claim. In the event that the Court estimates any Disputed Claim, such estimated amount may constitute either (a) the Allowed amount of such Disputed Claim, (b) the amount on which a reserve is to be calculated for purposes of any reserve requirement in this Plan, or (c) a maximum limitation on such Disputed Claim, as determined by the Court. If the estimated amount constitutes a maximum limitation on such Disputed Claim, the Debtors, Reorganized Debtors, or the Creditor Trustee, as the case may be, may elect to object to ultimate payment of the Disputed Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and not necessarily exclusive of one another.

VIII.

PROVISIONS REGARDING IMPLEMENTATION OF PLAN

A. Auction for New Equity.

The Plan Proponents will promptly seek entry of the Bid Procedures Order which will provide for an Auction of the New Equity prior to the Confirmation Hearing. At the conclusion of the Auction, the highest and best offer for the New Equity, determined in accordance with the Bid Procedures Order, shall be designated as the Equity Sponsor under the Plan and shall be subject to all terms and conditions of the Plan and the form of the SPA agreed to by the Equity Sponsor and the Plan Proponents.

B. Delivery of Trust Assets.

On the Effective Date, the Debtors, the Reorganized Debtors, or such other Persons that may have possession or control of any other Trust Assets shall transfer all of their right, title, and interest in and to such Trust Assets to the Creditor Trust free and clear of any Lien, Claim, or Equity Interest, except as otherwise provided for in this Plan or the Creditor Trust Agreement, in the manner described in Section V.A.3 of this Plan and shall execute any and all documents or instruments necessary to effectuate such transfers.

C. New Equity.

On or prior to the Effective Date, the Reorganized Debtors will have taken all steps necessary to authorize and issue the New Equity to the Equity Sponsor pursuant to this Plan.

D. Regulation D Exemption.

Debtors are relying on Regulation D under the Securities Act of 1933 regarding the registration requirements of Section 5 of the Securities Act of 1933 for the offering and sale of the New Equity pursuant to the Plan.

E. Corporate Governance and Management of the Reorganized Debtors.

1. The Initial Boards of Directors.

Matters related to the corporate governance of the Reorganized Debtors and the initial board of directors of Reorganized The Oceanaire, Inc. shall be disclosed at the Confirmation Hearing to the extent required by the Court. The Equity Sponsor shall have the right in its capacity as holder of New Equity, to nominate all members of Reorganized The Oceanaire, Inc.'s board of directors.

The members of the initial boards of directors or equivalent governing bodies of the Reorganized Debtors other than Reorganized The Oceanaire, Inc. shall be selected by the initial board of directors of Reorganized The Oceanaire, Inc and shall consist, at least in part, of officers and directors of Reorganized The Oceanaire, Inc. The directors of each Debtor on the day immediately preceding the Effective Date who are not otherwise appointed as members of

the initial board of directors or the equivalent governing body for the corresponding Reorganized Debtor shall be deemed to have resigned from the board of directors of such Reorganized Debtor as of the Effective Date.

2. Management of Reorganized Debtors.

The officers of the Reorganized Debtors shall be disclosed at or prior to the Confirmation Hearing by the Equity Sponsor. The Reorganized Debtors' officers shall serve in accordance with any employment agreement with the Reorganized Debtors and applicable nonbankruptcy law, as the case may be.

3. Amended and Restated Certificate of Incorporation, Amended and Restated By-Laws and Other Amended and Restated Governing Documents.

The adoption of the Amended and Restated Certificate of Incorporation, Amended and Restated By-Laws and Other Amended and Restated Governing Documents shall be deemed to have occurred and be effective as of the Effective Date without any further action by the directors, stockholders, partners or members (as the case may be) of the Debtors or the Reorganized Debtors. The Amended and Restated Certificate of Incorporation will, among other things, contain appropriate provisions (x) governing the authorization of the shares of New Equity to be issued and outstanding on the Effective Date and (y) prohibiting the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. Each of the Other Amended and Restated Governing Documents shall, among other things, contain appropriate provisions prohibiting the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. On or prior to the Effective Date, the Debtors will, if required by applicable state law, file with the Secretary of State of the appropriate jurisdiction the Amended and Restated Certificate of Incorporation and Other Amended and Restated Governing Documents.

4. Powers of Officers.

The officers of the Reorganized Debtors shall have the power to enter into and to execute any Plan Supplement Document to which the Reorganized Debtors are to be a party and to take such other or further action as they deem reasonable and appropriate to effectuate the terms of this Plan.

5. Corporate Structure.

Except as otherwise set forth herein or as modified by appropriate corporate action after the Effective Date, the corporate structure and equity ownership of the Debtors shall be unchanged.

IX.

EFFECT OF CONFIRMATION OF THIS PLAN

A. Continued Corporate Existence.

Except as otherwise expressly provided for in Section VIII.E of this Plan, the Debtors, as Reorganized Debtors, shall continue to exist after the Effective Date with all of the powers of a corporation, partnership, or limited liability company, as the case may be, under the laws of their respective jurisdiction of organization, and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under such applicable state law, except as such rights may be limited and conditioned by this Plan and the documents and instruments executed and delivered in connection herewith. In addition, the Reorganized Debtors may operate their business free of any restrictions imposed by the Bankruptcy Code, the Bankruptcy Rules or by the Court, subject only to the terms and conditions of this Plan as well as the documents and instruments executed and delivered in connection herewith, including without limitation, the Plan Supplement Documents.

B. Dissolution of Creditors' Committee.

The Creditors' Committee shall continue in existence until the Effective Date and shall continue to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Court prior to the Effective Date. On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of all of their duties, responsibilities and obligations in connection with these Chapter 11 Cases or this Plan and its implementation, and the retention of the Creditors' Committee's attorneys and financial advisors shall terminate, except that the Creditors' Committee shall continue to have standing and a right to be heard with respect to (i) all Fee Claims, (ii) any appeals of the Confirmation Order, (iii) any adversary proceedings pending as of the Effective Date to which it may be a party, (iv) post-Effective Date modifications to this Plan, as well as monitoring any Distributions to be made to holders of Allowed Class 4 General Unsecured Claims, and (v) applications for payment of fees and reimbursement of expenses related to the foregoing. The costs of such post-Effective Date activities are to be paid solely from the assets of the Creditor Trust by the Creditor Trustee. After the Effective Date, any application for payment of fees and reimbursement for a professional employed by the Creditors' Committee shall first be submitted to the Creditor Trustee for review. The Creditor Trustee shall have twenty (20) days within which to review and provide his comment(s), if any, to such application. In the event the Creditor Trustee has no objection or does not respond within this twenty (20) day timeframe, the application shall be deemed approved and any and all fees and/or reimbursement of expenses set forth in the application shall be paid, in full, by the Creditor Trustee. In the event the Creditor Trustee has an objection to all or a portion of such application, the application (along with any objection thereto) will be filed of record with the Court and the parties will adjudicate the application and objection. To the extent the Creditor Trustee objects to only a portion of the application, then such undisputed portion of the application will be paid by the Creditor Trustee with the remainder to be held in escrow pending the entry of an order of the Court either granting the application or sustaining the objection thereto.

C. Vesting of Property and Retention of Causes of Action.

Except as otherwise expressly provided in this Plan, on the Effective Date, or as soon as practicable thereafter, the Reorganized Debtors shall be vested: (i) with all of the property of their respective Estates free and clear of all Claims, Liens, encumbrances, charges, and other interests of holders of Claims and Equity Interests, except those specifically arising pursuant to, or in connection with, this Plan; and (ii) with all of the rights available under section 1123(b)(3)(B) of the Bankruptcy Code, including, without limitation, the right to enforce, sue on, settle, or compromise all claims that the Debtors or their Estates may hold against any Person. As provided in Section V.A.2 of this Plan, the Trust Assets, including Causes of Action to the extent retained, will be contributed to the Creditor Trust.

D. Discharge of the Debtors.

Except as otherwise expressly provided in this Plan, the Confirmation Order, the Plan Supplement Documents or a separate order of the Court, the rights afforded herein and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any kind or nature whatsoever (other than Gift Card Obligations), including, but not limited to, any interest accrued on such Claims from and after the Petition Date that is not otherwise expressly required under the Plan, against the Debtors, their respective Estates or any of their respective assets or properties, arising prior to the Effective Date. Except as otherwise expressly specified in this Plan and with the exception of Gift Card Obligations, as of the Effective Date, the Confirmation Order shall discharge all debts of, Claims against, Liens on, and Equity Interests in the Debtors, their respective assets and properties, arising at any time before the Effective Date, regardless of whether a proof of Claim or Equity Interest with respect thereto was filed, whether the Claim or Equity Interest is Allowed, or whether the holder thereof votes to accept this Plan or is entitled to receive a Distribution hereunder. Except as otherwise expressly provided in this Plan, after the Effective Date, any holder of such discharged Claim or Equity Interest shall be precluded from asserting any other or further Claim against, or Equity Interest in, the Debtors, the Reorganized Debtors, or any of their respective assets or properties, based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the Effective Date.

E. Injunction.

Except as otherwise expressly provided in this Plan, the Confirmation Order, the Plan Supplement Documents, or a separate order of the Court, all Persons who have held, hold, or may hold Claims against, or Equity Interests in, the Debtors that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors or the Reorganized Debtors with respect to any such Claim or Equity Interest, (b) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtors or the Reorganized Debtors on account of any such Claim or Equity Interest, (c) creating, perfecting, or enforcing any Lien or other encumbrance of any kind against the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors or the Reorganized Debtors on account of any such Claim or Equity

Interest, and (d) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors or the Reorganized Debtors on account of any such Claim or Equity Interest. Such injunction shall extend to successors of the Debtors (including, without limitation, the Reorganized Debtors) and their respective properties and interests in property.

F. Preservation of Causes of Action.

With respect to any Causes of Action expressly preserved in the Plan, the Confirmation Order, the Plan Supplement Documents, or separate order of the Court, the Creditor Trust shall succeed to the interest of the Debtors, and shall be appointed representative of the Estates under section 1123(b)(3)(B) of the Bankruptcy Code.

G. Releases by the Debtors and Estates.

Except as otherwise expressly provided in this Plan, the Confirmation Order, the Plan Supplement Documents, or a separate order of the Court, on the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their respective Estates, release unconditionally and irrevocably, and are hereby deemed to and hereby unconditionally and irrevocably release, each and all of (a) the Debtors, and their respective officers (but not in their capacity as a director), employees and attorneys (b) the Equity Sponsor, (c) the Creditors' Committee and the members of the Creditors' Committee, (d) the Agent, the Term Loan Representative and the Lenders, and (e) all of the respective officers, directors, shareholders, employees, partners, advisors, attorneys, financial advisors, accountants and other professionals of each of the foregoing described in clauses (b), (c) and (d), in each case, in their respective capacities as such, collectively clauses (a) through (e) being the "Released Parties" and each a "Released Party") from any and all claims, obligations, suits, judgments, damages, rights, Causes of Action, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon actions taken in their respective capacities described above or any omission, transaction, event, or other occurrence taking place from the beginning of time through the Effective Date in any way relating to the Debtors, these Chapter 11 Cases, or this Plan, except that the foregoing release shall not apply to any express contractual or financial obligations owed to the Debtors or Reorganized Debtors by any Released Party or any obligation arising under this Plan or an agreement entered into pursuant to, in connection with, or contemplated by this Plan.

H. Exculpation and Limitations of Liability.

The Debtors, the Reorganized Debtors, and the other Released Parties (i) shall have no liability whatsoever to any holder or purported holder of an Administrative Claim, Claim, or Equity Interest for any act or omission after the Petition Date in connection with, or arising out of, these Chapter 11 Cases, this Plan, the Disclosure Statement, the negotiation of this Plan, the negotiation of the Plan Supplement Documents, the pursuit of approval of the Disclosure Statement or the solicitation of votes to accept or reject this Plan, the consummation of this Plan, the administration of this Plan or the property to be distributed under this Plan, or any transaction contemplated by this Plan or in furtherance hereof except

for any act or omission that constitutes gross negligence, fraud, or willful misconduct as determined by a Final Order, and (ii) in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting any of the Debtors, Reorganized Debtors, or Released Parties from liability.

I. Term of Bankruptcy Injunction or Stays.

All injunctions or stays provided for in these Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

J. Reinstatement and Continuation of Insurance Policies.

Unless otherwise assumed during the pendency of these Chapter 11 Cases, from and after the Effective Date, each of the Debtors' insurance policies in existence on and as of the Confirmation Date shall be reinstated and continued in accordance with its terms and, to the extent applicable, shall be deemed assumed by the applicable Reorganized Debtor pursuant to section 365 of the Bankruptcy Code.

The Debtors' discharge and release from all Claims and Equity Interests, to the extent provided herein, shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtors, the Reorganized Debtors (including, without limitation, its officers and directors), or any other Person. Notwithstanding any other provision of this Plan or the Confirmation Order, nothing in this Plan shall impair the rights of any insurer under and in accordance with the terms of any such insurance policy.

K. Officers' and Directors' Indemnification Rights.

Notwithstanding any other provision of this Plan, the obligation of the Debtors (but not the Reorganized Debtors) to indemnify all of their officers, directors and employees against obligations, liabilities, costs or expenses pursuant to the articles of incorporation, by-laws, partnership agreements, or limited liability company operating agreements of the Debtors, as the case may be, applicable state law, specific agreement, or any combination of the foregoing, shall survive as of the Effective Date. Any claim for indemnification asserted by any of the directors of the Debtors (but not the Reorganized Debtors) arising out of any pre-confirmation obligations, liabilities, costs or expenses (the "Indemnification Claims") to the extent Allowed shall be expressly subordinated to the distribution rights of holders of Allowed Class 4 General Unsecured Claims and no distributions may be made on account of any Indemnification Claims, unless and until all Allowed Class 4 General Unsecured Claims are paid in full with interest on the unpaid amount thereof from the Petition Date to the date of payment at 0.48% *per annum*. For the avoidance of doubt, Indemnification Claims may only be asserted against the Debtors and the Creditor Trust as provided in this Section IX.K, and neither the Reorganized Debtors nor the Equity Sponsor shall have any obligation for any Indemnification Claims under this Plan, the Amended and Restated By-Laws, the Amended and Restated Certificate of Incorporation, any of the Plan Supplement Documents, or applicable non-bankruptcy law unless the bid of the Equity

Sponsor explicitly so provides, it being acknowledged that the Stalking Horse Bid does not so provide.

X.

RETENTION OF JURISDICTION

The Court shall have exclusive jurisdiction over all matters arising out of and related to these Chapter 11 Cases and this Plan pursuant to, and for the purposes of, section 105(a) and section 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (a) to hear and determine applications for the assumption or rejection of executory contracts or unexpired leases pending on the Confirmation Date, and the allowance of Claims resulting therefrom;
- (b) to determine any other applications, adversary proceedings, and contested matters pending on the Effective Date;
- (c) to ensure that Distributions to holders of Allowed Claims are accomplished as provided herein;
- (d) to resolve disputes as to the ownership of any Claim;
- (e) to hear and determine timely objections to Administrative Claims and Claims;
- (f) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (g) to issue such orders in aid of execution of this Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
- (h) to consider any modifications of this Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Court, including, without limitation, the Confirmation Order;
- (i) to hear and determine all applications for Allowance of any Fee Claims;
- (j) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan;
- (k) to hear and determine any issue for which this Plan requires a Final Order of the Court;
- (l) to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (m) to hear and determine any Causes of Action (including, without limitation, Avoidance Actions) preserved under this Plan;

- (n) to hear and determine any matter regarding the existence, nature, and scope of the Debtors' discharge;
- (o) to hear and determine any matter regarding the existence, nature, and scope of the injunction provided for in this Plan;
- (p) to hear and determine any matter regarding the existence, nature, and scope of the releases and exculpation provided in this Plan;
- (q) to hear and determine any dispute and/or enforce any agreement entered into on or prior to the Confirmation Date by any of the Debtors and any third party for the provision of trade credit terms or any dispute involving the foregoing;
- (r) to enforce the Confirmation Order and all orders previously entered by the Court; and
- (s) to enter a final decree closing these Chapter 11 Cases.

XI.

MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees.

All fees payable on or before the Effective Date pursuant to section 1930 of title 28 of the United States Code shall be paid by the Debtors on or before the Effective Date and all such fees payable after the Effective Date shall be paid by the Creditor Trust as and when such fees become due. After the Effective Date, the Creditor Trustee shall be responsible for filing all quarterly reports required to be filed with the United States Trustee's office.

B. Modification of this Plan.

1. Pre-Confirmation Modifications.

The Plan Proponents may alter, amend, or modify this Plan (with the consent of the Agent and the Equity Sponsor, which consent shall not be unreasonably withheld) before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

2. Post-Confirmation Immaterial Modifications.

After the Confirmation Date, the Plan Proponents may, with the consent of the Agent and the Equity Sponsor, which shall not be unreasonably withheld, and the approval of the Court, without notice to all holders of Claims or Equity Interests, insofar as it does not materially and adversely affect the holders of Claims or Equity Interests, correct any defect, omission or inconsistency in this Plan as may be necessary to carry out the purposes and effects of the Plan.

3. Post-Confirmation Material Modifications.

After the Effective Date, the Reorganized Debtors may (with the consent of the Agent, the Creditors' Committee and the Equity Sponsor, which shall not be unreasonably withheld) alter or amend this Plan in a manner which, as determined by the Court, materially and adversely affects holders of Claims or Equity Interests, provided that such alteration or modification is made after a hearing as provided in section 1127 of the Bankruptcy Code.

C. Governing Law.

Unless a rule of law or procedure is supplied by Federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of Minnesota (without reference to the conflicts of laws provisions thereof) shall govern the construction and implementation of this Plan and any agreements, documents, and instruments executed in connection with this Plan, unless otherwise specified.

D. Filing or Execution of Additional Documents.

On or before the Effective Date, the Plan Proponents shall file with the Court or execute, as appropriate, such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

E. Withholding and Reporting Requirements.

In connection with this Plan and all instruments issued in connection herewith and Distributions hereunder, the Reorganized Debtors and the Creditor Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements.

F. Exemption From Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, (a) the issuance, transfer and exchange under this Plan of New Equity, (b) the transfer of the Trust Assets to the Creditor Trust, (c) the making or assignment of any lease or sublease, or (d) the making or delivery of any other instrument whatsoever, in furtherance of or in connection with this Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

G. Non-Waiver of Bankruptcy Rule 3020(e) and Federal Rule of Civil Procedure 62(a).

The Plan Proponents may request that the Confirmation Order include (a) a finding that Bankruptcy Rule 3020(e) and Federal Rule of Civil Procedure 62(a) shall not apply to the

Confirmation Order and (b) authorization for the Plan Proponents to consummate this Plan immediately after entry of the Confirmation Order.

H. Exhibits/Schedules.

All exhibits and schedules to this Plan and the Plan Supplement are incorporated into and constitute a part of this Plan as if fully set forth herein.

I. Notices.

All notices, requests, and demands hereunder to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

To the Debtors:

Duane Morris LLP
190 South LaSalle Street
Suite 3700
Chicago, Illinois 60603
Attention: John Robert Weiss
Telephone: (312) 499-6700
Facsimile: (312) 499-6701

and

Bracewell & Giuliani LLP
1445 Ross Avenue
Suite 3800
Dallas, TX 75202-2711
Attention: Samuel M. Stricklin
Telephone: (214) 758-1095
Facsimile: (214) 758-8395

To the Creditors' Committee:

Munsch Hardt Kopf & Harr, P.C.
3800 Lincoln Plaza
500 N. Akard Street
Dallas, TX 75201-6659
Attention: Joe E. Marshall
Telephone: (214) 855-7573
Facsimile: (214) 978-4365

To the Office of the United States Trustee:

Office of the United States Trustee
1100 Commerce Street
Room 976
Dallas, Texas 75242
Attention: George F. McElreath
Telephone: (214) 767-8967
Facsimile: (214) 767-8971

To the Stalking Horse:

Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002
Attention: Jeffrey E. Spiers
Telephone: (713) 220-4103
Facsimile: (713) 238-7108

J. The Plan Supplement.

Forms of the documents including and relating to the Amended and Restated Certificate of Incorporation, the Amended and Restated By-Laws, the Other Amended and Restated Governing Documents, the Creditor Trust Agreement, and such other documents and information as the Plan Proponents and Equity Sponsor determine to be necessary or appropriate to the implementation and/or confirmation of this Plan shall be contained in the Plan Supplement, which will be filed with the Clerk of the Court no later than two (2) days after the conclusion of the Auction; provided, however, that the Plan Proponents and Equity Sponsor may amend any of the Plan Supplement Documents through and including the Effective Date in a manner consistent with this Plan and the consent of any other non-Debtor third parties to the relevant document (which consent shall not be unreasonably withheld). The Plan Supplement may be inspected in the office of the Clerk of the Court during normal court hours and will be available (i) for those with a PACER account, at <http://ecf.txnb.uscourts.gov>; and (ii) at <http://www.oceanairereorg.com>. Holders of Claims or Equity Interests may also obtain a copy of the Plan Supplement upon written request to the Creditors' Committee at the contact information listed hereinabove.

K. Conflict.

The terms of this Plan shall govern in the event of any inconsistency with the summary of this Plan set forth in the Disclosure Statement. The terms of the Confirmation Order shall govern in the event of any inconsistency with this Plan or the summary of this Plan set forth in the Disclosure Statement.

L. Severability Of Plan Provisions.

If, prior to entry of the Confirmation Order, any term or provision of this Plan is held by the Court to be invalid, void, or unenforceable, the Court, at the request of the Plan Proponents,

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

M. Successors And Assigns.

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

XII.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases.

The Debtors shall (with the consent of the Equity Sponsor, which shall not be unreasonably withheld) assume all of the Assumed Store Location Leases and Contracts and all other executory contracts and unexpired leases as are listed in the Plan Supplement. All other executory contracts and unexpired leases of the Debtors shall be deemed rejected as of the Confirmation Date, unless an earlier date is specified in an order of the Court.

B. Cure.

Except as otherwise agreed to by the Equity Sponsor and the other party to an executory contract or lease, on the Initial Distribution Date, the Reorganized Debtors shall cure any and all undisputed defaults under any executory contract or unexpired lease that is assumed pursuant to this Plan in accordance with section 365 of the Bankruptcy Code. To the extent the Equity Sponsor and the other party thereto are unable to agree to the specified cure amount, the Reorganized Debtors shall file a Notice of Cure Amount with the Court. In the event the counterparty does not object to this Notice of Cure Amount within ten (10) calendar days following the filing of such notice, the amount set forth in the Notice will be deemed the "cure amount" required by section 365 of the Bankruptcy Code and the Reorganized Debtors shall be authorized and directed to pay such cure amounts to the counterparty following the expiration of this ten (10) day notice period. In the event the counterparty objects to the Notice of Cure Amount, the Court shall determine the cure amount before the Debtors or the Reorganized Debtors shall be deemed to have assumed the executory contract or unexpired lease. For all executory contracts and leases other than the Assumed Store Location Leases, the Debtors and the Reorganized Debtors shall have ten (10) calendar days to determine whether to assume or reject such executory contract or unexpired lease in light of the cure amount determined by the

Court. Unless the Reorganized Debtors and the other party to the executory contract or unexpired lease agree otherwise, all disputed defaults that are required to be cured shall be cured by the later to occur of (i) ten (10) days after the entry of a Final Order determining the amount, if any, of the Debtors' or the Reorganized Debtors' liability with respect thereto and (ii) the Initial Distribution Date.

C. Rejection Damage Claims.

All Claims for damages arising from the rejection of executory contracts or unexpired leases must be filed with the Court in accordance with the terms of the order authorizing such rejection. Claims arising from rejection under this Plan and the Confirmation Order must be filed within thirty (30) days of the Effective Date. Any Claims not filed within such time shall be forever barred from assertion against the Debtors, their respective Estates and the Reorganized Debtors, and the Creditor Trust. All Allowed Claims arising from the rejection of executory contracts or unexpired leases shall be treated as General Unsecured Claims.

XIII.

BENEFIT PLANS

As, and subject to the occurrence of, the Effective Date, any employee compensation and benefit plans, policies and programs of the Debtors applicable generally to their employees, as in effect on the Effective Date, including, without limitation, the Commodore Plan and all employment contracts, all savings plans, retirement plans, health care plans, disability plans, severance benefit plans, incentive plans, and life, accidental death, and dismemberment insurance plans and workers' compensation programs, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed under this Plan, and the Debtors' obligations under such agreements and programs shall survive the Effective Date of this Plan, without prejudice to the Reorganized Debtors' rights under applicable non-bankruptcy law to modify, amend or terminate the foregoing arrangements, except for (i) such executory contracts or plans specifically rejected pursuant to this Plan and (ii) such executory contracts or plans that have previously been terminated or rejected, pursuant to a Final Order, or specifically waived by the beneficiaries of such plans, contracts or programs.

XIV.

CONFIRMATION AND EFFECTIVENESS OF THE PLAN

A. Conditions Precedent to Confirmation.

The following are conditions precedent to confirmation of this Plan that must be satisfied or waived in accordance with Section XIV.C of this Plan:

- 1) The Court shall have entered an order, in form and substance reasonably acceptable to the Agent, the Plan Proponents and the Equity Sponsor, approving the Disclosure Statement with respect to this Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

- 2) The proposed Confirmation Order shall be in form and substance reasonably acceptable to the Agent, the Plan Proponents and the Equity Sponsor.

B. Conditions Precedent to the Effective Date.

This Plan shall not become effective unless and until it has been confirmed and the following conditions have been satisfied in full or waived pursuant to Section XIV.C of this Plan:

- 1) The Confirmation Order shall have been entered and shall have become a Final Order.
- 2) All statutory fees then due and payable to the United States Trustee shall have been paid in full.
- 3) All documents to be executed, delivered or filed pursuant to this Plan, including the Assumed Store Location Leases and Contracts, the Creditor Trust Agreement, and all Plan Supplement Documents, shall be executed, delivered or filed, as the case may be.
- 4) All actions, authorizations, filings, consents and regulatory approvals required (if any) shall have been obtained, effected or executed in a manner acceptable to the Equity Sponsor and shall remain in full force and effect.
- 5) The Debtors shall have received the Equity Infusion.
- 6) The Debtors shall have delivered the Trust Assets to the Creditor Trust.
- 7) The Debtors have paid in full in Cash to the Agent and Lenders, pursuant to the terms of the Final Cash Collateral Order, all interest, fees, expenses, and other obligations then due and owing to the Agent and the Lenders as of the Effective Date, in an amount sufficient to reduce the then outstanding amount of the Allowed Class 2 Lenders' Secured Claims to \$16,811,095.00; it being the intention that the Committee preserves its rights under decretal paragraph 5(d)(i) of the Final Cash Collateral Order.

C. Waiver of Conditions.

The Plan Proponents and Equity Sponsor may waive any or all of the conditions set forth in Section XIV.B (other than Section XIV.B.1) at any time without leave or order of the Court and without any formal action.

D. Vacatur of Confirmation Order.

If a Final Order denying confirmation of this Plan is entered, or if the Confirmation Order is vacated, then this Plan shall be null and void in all respects, and nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims against, or Equity Interests in, the Debtors; (b) prejudice in any manner the rights of the holder of any Claim against, or Equity Interest in,

the Debtors; (c) prejudice in any manner any right remedy or claim of the Debtors, the Creditors' Committee, the Agent, the Term Loan Representative, the Lenders or the Equity Sponsor; or (d) be deemed an admission against interest by the Debtors, the Creditors' Committee, the Agent, the Term Loan Representative, the Lenders or the Equity Sponsor.

E. Revocation, Withdrawal or Non-Consummation.

1. Right to Revoke or Withdraw.

Each of the Creditors' Committee and the Debtors reserves the right to withdraw as a Plan Proponent at any time prior to the Effective Date. The Plan Proponents, acting jointly, reserve the right to revoke or withdraw this Plan at any time prior to the Effective Date.


2. Effect of Withdrawal, Revocation, or Non-Consummation.

If the Plan is revoked or withdrawn prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, this Plan, any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests), the assumption or rejection of executory contracts, unexpired leases, insurance policies or benefit plans effected by this Plan, any release, exculpation or indemnification provided for in this Plan, and any document or agreement executed pursuant to this Plan shall be null and void. In such event, nothing contained herein, and no acts taken in preparation for consummation of this Plan, shall be deemed to constitute a waiver or release of any Claims by or against, or Equity Interests in, the Debtors or any other Person, to prejudice in any manner the rights of the Debtors, Creditors' Committee or any Person in any further proceedings involving the Debtors and Creditors' Committee, or to constitute an admission of any sort by the Debtors, Creditors' Committee or any other Person.


[Signature Pages to Follow]

Dated: March 16, 2010

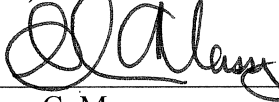
**THE OCEANAIRE TEXAS RESTAURANT
COMPANY, L.P.**

By: 
Name: Glenn C. Massey
Title: Chief Financial Officer, Secretary and
Treasurer of The Oceanaire Restaurant
Company, Inc., the General Partner of The
Oceanaire Texas Restaurant Company, L.P.

THE OCEANAIRE, INC.

By: 
Name: Glenn C. Massey
Title: Chief Financial Officer, Secretary and
Treasurer

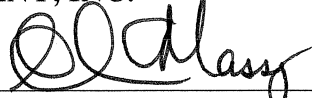
**THE OCEANAIRE RESTAURANT
COMPANY, INC.**

By: 
Name: Glenn C. Massey
Title: Chief Financial Officer, Secretary and
Treasurer

**THE OCEANAIRE MINNEAPOLIS
RESTAURANT COMPANY, LLC**

By: 
Name: Glenn C. Massey
Title: President and Chief Executive Officer

**THE OCEANAIRE INVESTMENT
COMPANY, INC.**

By: 
Name: Glenn C. Massey
Title: Chief Financial Officer, Secretary and
Treasurer

**THE OCEANAIRE TEXAS BEVERAGE
COMPANY, INC.**

By: _____



Name: Glenn C. Massey

Title: Director

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

By: _____

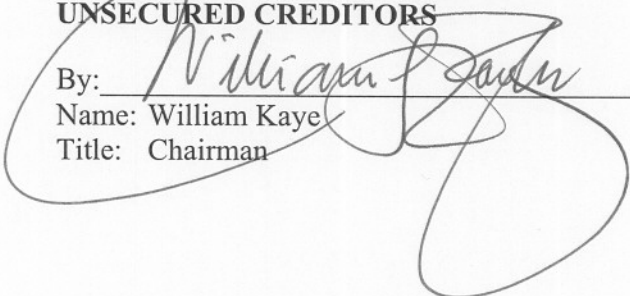
Name: William Kaye

Title: Chairman

**THE OCEANAIRE TEXAS BEVERAGE
COMPANY, INC.**

By: _____
Name: Glenn C. Massey
Title: Director

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

By:  _____
Name: William Kaye
Title: Chairman