

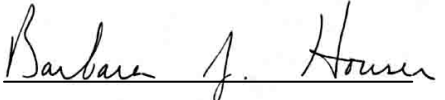


**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 29, 2010

  
United States Bankruptcy Judge

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

In re:

THE OCEANAIRE TEXAS RESTAURANT  
COMPANY, L.P., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 09-34262-bjh-11

Jointly Administered

**ORDER CONFIRMING DEBTORS' AND OFFICIAL UNSECURED CREDITORS'  
COMMITTEE'S FIRST AMENDED JOINT PLAN OF REORGANIZATION**

On April 26, 2010, the Court conducted a hearing (the "Confirmation Hearing") on confirmation of the *Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code* [Docket No. 540] (the "Joint Plan").<sup>2</sup> Having considered the Joint Plan, all timely-filed objections to confirmation of the Joint Plan, the evidence presented, and arguments of counsel, and having

<sup>1</sup> 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.

<sup>2</sup> Unless separately defined, all capitalized terms herein shall have the meanings ascribed to such terms in the Joint Plan.

taken judicial notice of the pleadings and evidence presented in this case, the Court has separately entered its *Findings of Fact and Conclusions of Law With Respect to Confirmation of Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Reorganization* (the "Findings and Conclusions"). Based upon such Findings and Conclusions, which are incorporated herein by reference and made a part hereof, and pursuant to 11 U.S.C. §§ 105, 363, 365, 502-503, 506-507, 524, 541, 552-553, 1106-1107, 1121-1129, 1141-1143, and 1146 and Fed. R. Bankr. P. 2002, 3016, 3018-3021, 6004, 6006, 6009, 9014 and 9019, it is hereby:

**Objections to Confirmation and Agreements in Resolution Thereof**

ORDERED that the resolution of pending objections to the Joint Plan are evidenced by the terms set forth hereinbelow as supplemented by the statements and representations on the record at the Confirmation Hearing and such agreements are approved in all respects and the Joint Plan is hereby modified to incorporate the provisions thereof, it is further

ORDERED that the Objection of Dallas County and Harris County to the Joint Plan [Docket No. 619] is resolved and withdrawn pursuant to the modified treatment of the Texas Tax Claims (defined hereinbelow) on the following terms:

(a) Notwithstanding anything in the Joint Plan, this Order or any other document concerning the Joint Plan to the contrary, the 2009 ad valorem business personal property tax claims of Dallas County and Harris County (collectively, the "Texas Tax Authorities") in the aggregate amount of \$32,557.53 (the "Texas Tax Authority 2009 Claims") are Allowed Class 3 Other Secured Claims. The Texas Tax Authority 2009 Claims shall be paid by the Debtors from the Equity Infusion on the Effective Date with interest that has accrued on the Texas Tax Authority 2009 Claims at the Texas state statutory rate of 1% per month from the Petition Date

through the Effective Date of the Joint Plan and at the statutory rate of 12% per annum from the Effective Date through the date of payment of such claims. If the Texas Tax Authorities do not receive payment of their Texas Tax Authority 2009 Claims they may send notice to JLL Consultants, LLC, as Creditor Trustee, via U.S. Mail with a copy to the Reorganized Debtors, c/o Andrews Kurth LLP, 600 Travis, Suite 4200, Houston, Texas 77002 (Attention: Mark Arnold). If the Texas Tax Authorities do not receive payment within 20 days of the date of such notice, they may pursue enforcement of their liens pursuant to Texas Law;

(b) The Texas Tax Authorities shall retain all statutory liens that secure the Texas Tax Authority 2009 Claims and the Texas Tax Authority 2010 Claims (as defined herein)(collectively, the "Texas Tax Claims") until such claims are paid in full, including any applicable penalties and interest that may accrue. Nothing in the Joint Plan, this Order or otherwise acknowledges the existence of or grants liens that prime the valid and properly perfected ad valorem property tax liens of the Texas Tax Authorities securing the Texas Tax Claims; and

(c) The Texas Tax Authorities shall not be required to file administrative expense claims for year 2010 ad valorem business personal property taxes incurred after the Petition Date and prior to the Effective Date of the Joint Plan (the "Texas Tax Authority 2010 Claims"). The Texas Tax Authority 2010 Claims shall be paid in the ordinary course of business by the Reorganized Debtors. The Texas Tax Authorities retain all of their state law rights with regard to the Texas Tax Authority 2010 Claims; it is further

ORDERED that the Limited Objection to Confirmation and Notice of Cure Amounts filed on behalf of Gaslamp Retail Phase One, Ltd. [Docket No. 629] is hereby resolved and

withdrawn pursuant to the agreements among the parties as reflected herein below on pages 13 through 15 of this Order as supplemented by the parties' statements on the record; it is further

ORDERED that the Objection of V.K.O. Enterprises, Inc. ("VKO") to the Joint Plan [Docket No. 617] has been resolved and withdrawn with respect to all issues raised pursuant to the modifications to the Joint Plan as provided herein and in the Creditor Trust Agreement as such agreement has been modified as authorized and/or ordered by the Court at the Confirmation Hearing and filed of record in connection with the entry of this Order (the "Creditor Trust Agreement"); it is further

ORDERED that the Limited Objection to 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 [Docket No. 618] filed by Clarion Capital Partners LP, Clarion Operating LLC, Trumpet SBIC, Trumpet Investors LP, Eric Kogan, Jonathan Haas, and Marques Torbert (the "Clarion Parties") has been sustained in part and resolved and withdrawn in part pursuant to the modifications to the Joint Plan as reflected in this Order and the Creditor Trust Agreement; it is further

ORDERED that all other objections to confirmation of the Joint Plan, including all reservations of rights contained therein, are hereby overruled; it is further

#### **Confirmation of Plan and Its Binding Effect**

ORDERED that the Joint Plan, as modified by this Order, is confirmed and approved in its entirety and in all respects; it is further

ORDERED that entry of this Order conclusively establishes that all of the conditions precedent to confirmation of the Joint Plan set forth in Section XIV(A) of the Joint Plan have been satisfied by performance, occurrence or waiver thereof; it is further

ORDERED that the Joint Plan and each of its provisions shall be binding on the Debtors, the Committee, the Reorganized Debtors, the Creditor Trust, the Creditor Trustee, the Equity Sponsor<sup>3</sup>, all Creditors, all Equity Interest holders, and all Persons acquiring property under the Joint Plan, whether or not they voted to accept the Joint Plan, whether or not they had a right to vote on the Joint Plan, whether or not any Claim or Equity Interest held by any of them is impaired under the Joint Plan, whether or not any Claim or Equity Interest held by any of them is Allowed in full, only in part, or disallowed in full, and whether or not a distribution is made to any of them under the Joint Plan; it is further

**The Creditor Trust, Vesting of Assets, and Transfer of Claims**

ORDERED that the Creditor Trust Agreement is approved as to form and substance for use in establishing the Creditor Trust under the terms of the Joint Plan; it is further

ORDERED that as of the Effective Date of the Joint Plan, the Debtors, the Creditor Trustee, the Equity Sponsor, and all Creditors shall be deemed to have adopted and approved the Creditor Trust Agreement; it is further

ORDERED that JLL Consultants, Inc. is hereby appointed, as of the Effective Date of the Joint Plan, to serve as the initial Trustee of the Creditor Trust; it is further

ORDERED that on the Effective Date of the Joint Plan, the Debtors, the Creditor Trustee, the Reorganized Debtors and the Equity Sponsor shall execute the Creditor Trust Agreement to establish the Creditor Trust; it is further

ORDERED that on the Effective Date, the Debtors shall cause the Trust Assets to be delivered to the Creditor Trust pursuant to the instructions of the Creditor Trustee; it is further

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<sup>3</sup> Landry's Restaurants, Inc. ("Landry's") is the Equity Sponsor under the Joint Plan.

ORDERED, that on the Effective Date of the Joint Plan, the Reorganized Debtors shall transfer to the Creditor Trust the reserve contemplated by item (iii) in the definition of "Excess Cash" in the Joint Plan remaining, if any, after taking into account all distributions on account of Allowed cure claims of assumed executory contracts and unexpired leases made on the Effective Date; it is further

ORDERED that, in accordance with Section IX(D) of the Joint Plan, on and after the Effective Date of the Joint Plan, subject to prior receipt by the Agent of payment in full of all amounts payable to the Agent and Lenders under the Joint Plan, and except as otherwise expressly provided in the Joint Plan or this Order (i.e., assumption of the Gift Card Obligations, assumption of Ordinary Course Administrative Claims, and assumption of obligations relating to assumed executory contracts and unexpired leases in accordance with the terms as set forth herein), all debts of, Claims against and Liens on the Debtors, their respective assets and properties, existing or arising at any time before the Effective Date, shall be discharged, released and extinguished and neither the Debtors nor the Reorganized Debtors shall have any obligations with respect thereto; it is further

ORDERED that, in accordance with Sections V(A)(2) and (3) of the Joint Plan, on the Effective Date of the Joint Plan, subject to prior receipt by the Agent of payment in full of all amounts payable to the Agent and Lenders under the Joint Plan, all rights, title and interest in and to the Trust Assets shall be transferred to the Creditor Trust for the benefit of the Trust Holders and such transfer shall be free and clear of all Liens, Claims, Equity Interests and encumbrances, of any nature whatsoever except as provided in the Joint Plan and the Creditor Trust Agreement and the Debtors and Reorganized Debtors shall execute any and all documents necessary to effectuate such transfers; it is further

ORDERED that, notwithstanding the above, all recoveries from Causes of Action retained by the Creditor Trust shall inure to the Creditor Trust for the benefit of the Trust Holders until all Allowed Class 4 Claims are paid in full, with interest, after which any remaining recoveries will be distributed to Existing Equity Interests pursuant to their priority and distribution rights under applicable non-bankruptcy law. In accordance with the Joint Plan and Creditor Trust Agreement, following the Effective Date of the Joint Plan, and without the necessity of notice and Court approval, the Creditor Trustee shall have the authority to resolve any of the retained Causes of Action; provided, however, that if the resolution involves a claimed right of recovery in the face amount of at least \$100,000, then the Creditor Trustee shall provide reasonable notice of such settlement to the Class 7 Existing Equity Interests and an opportunity to object. The Creditor Trustee shall have the authority under the Creditor Trust Agreement to make distributions to the Class 7 Existing Equity Interests, if recoveries are available, pursuant to the rights and priorities of distribution under applicable law (or as such rights may be determined by final order if an action contesting priority is commenced). The treatment of the Class 7 Equity Interests under the Joint Plan is hereby modified to incorporate this provision;

ORDERED that, in accordance with Section IX(C) of the Joint Plan, on the Effective Date of the Joint Plan, subject to prior receipt by the Agent of payment in full of all amounts payable to the Agent and Lenders under the Joint Plan, all Assets of the Estates other than the Trust Assets shall re-vest in the respective Reorganized Debtors free and clear of all Liens, Claims, encumbrances, charges and other interests of holders of Claims and Equity Interests of any nature whatsoever except as specifically provided in the Joint Plan; it is further

ORDERED that, in accordance with Section IX(C) of the Joint Plan, on the Effective Date of the Joint Plan, subject to prior receipt by the Agent of payment in full of all amounts

payable to the Agent and Lenders under the Joint Plan, and except as otherwise expressly provided in the Joint Plan, all Causes of Action designated in Exhibit “D” to the Plan Supplement shall be preserved and transferred to the Creditor Trust, and on and after the Effective Date, the Creditor Trustee shall have standing to pursue such Causes of Action, and is hereby appointed as of the Effective Date, and in accordance with Section 1123(b)(3) of the Bankruptcy Code, as the representative of the Estates for the purpose of enforcing, prosecuting and settling such designated Causes of Action; it is further

ORDERED that, in accordance with Section XI(F) of the Joint Plan and Section 1146 of the Bankruptcy Code, the making and/or delivery of any transfer under, or pursuant to the terms of, the Joint Plan shall not be taxed under any law imposing a document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or similar tax or assessment; it is further

ORDERED that on the Effective Date of the Joint Plan, subject to prior receipt by the Agent of payment in full of all amounts payable to the Agent and Lenders under the Joint Plan, (a) all Claims against the Debtors and the Estates arising prior to the Effective Date (except the Gift Card Obligations and Ordinary Course Administrative Claims), and all distribution rights conferred by the Joint Plan on account thereof, shall be transferred to the Creditor Trust, and (b) all objections, counterclaims, rights of setoff, rights of recoupment, and any and all other defenses held by the Debtors or the Estates as of the Effective Date, in relation to (i) such Claims, (ii) such distribution rights, and (iii) the holders of such Claims and distribution rights, shall be preserved and transferred to the Creditor Trust, and the Creditor Trustee, on and after the Effective Date, shall have standing to assert, prosecute and settle such Claims, subject only to any limitations set forth in the Joint Plan or the Creditor Trust Agreement; it is further

ORDERED that following the Effective Date of the Joint Plan, Claims which are or become Allowed Claims (other than Gift Card Obligations and Ordinary Course Administrative Claims) shall be satisfied solely and exclusively from the Creditor Trust in accordance with the provisions of the Joint Plan and this Order, and the Reorganized Debtors shall have no liability on any Claims (other than Gift Card Obligations and Ordinary Course Administrative Claims) except as provided in the Joint Plan and this Order; it is further

ORDERED that the provisions for compensation and the reimbursement of out-of-pocket expenses of the Creditor Trustee and any professionals and other Persons employed by the Creditor Trustee to assist in the administration of the Creditor Trust referenced in Section V(B)(2) of the Joint Plan, subject to the modifications ordered by the Court at the Confirmation Hearing, and as set forth herein and in Sections 3.8 and 3.9 of the Creditor Trust Agreement, are hereby approved as reasonable; it is further

ORDERED that within fifteen (15) days of the end of each quarterly period during the term of the Trust beginning with the quarter ending June 30, 2010, the Creditor Trustee shall file a report (the "Quarterly Report") summarizing the Trust activities with respect to claims objections, settlements, distributions and incurred fees and expenses of the Trust. Trust Holders having any objection to the final allowance of fees and expenses incurred by the Trust during such quarterly period shall have ten (10) days from the date of filing of the Quarterly Report to file an objection with the Bankruptcy Court. Any such objection must state the basis for the objection and extent of the contested fees and expenses and be served on the Creditor Trustee and the affected professionals. In the event an objection is filed, then the Court will determine the approved compensation upon notice and hearing; it is further

### **Management of the Debtor**

ORDERED that, in accordance with Sections IV(G)(2) of the Joint Plan, on the Effective Date of the Joint Plan, all Existing Equity Interests shall be canceled, extinguished and otherwise rendered null, void and of no further force or effect; provided, however, that the foregoing shall not impair such holders' right to potential future recoveries under the Creditor Trust Agreement as specifically provided therein; it is further

ORDERED that, in accordance with Section IX of the Joint Plan, on the Effective Date of the Joint Plan, the Reorganized Debtors shall exist with all corporate powers under applicable law. The Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws as contained in the Plan Supplement are hereby approved without further action required by the Debtors, the Reorganized Debtors or Landry's and 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 the Joint Plan and Plan Supplement and this Order; it is further

ORDERED that the Debtors shall cause to be executed and delivered on the Effective Date stock certificates representing all of the New Equity of the Reorganized The Oceanaire, Inc. endorsed in blank or accompanied by duly executed assignment documents; it is further

ORDERED that upon the occurrence of the Effective Date and without any further required action by the Debtors, the Reorganized Debtors or Landry's, the directors of the Debtors as of the Effective Date are deemed to have resigned and the directors listed on Exhibit "D" of the Plan Supplement are the directors of the Reorganized Debtors and the officers of the Debtors as of the Effective Date shall continue to be the officers of the Reorganized Debtors as of the Effective Date; it is further

### **Provisions Relating to Claims Administration**

ORDERED that, subject to prior receipt by the Agent of payment in full of all amounts payable to the Agent and Lenders under the Joint Plan, in accordance with Section VI(H) of the Joint Plan, all distributions under the Joint Plan on account of Allowed Claims shall be made to (or in the case of Disputed Claims reserved on behalf of) the holders of such Claims determined as of the Initial Distribution Date under the Joint Plan; it is further

ORDERED that following the Effective Date of the Joint Plan, and except as otherwise expressly contemplated by the Joint Plan, no original proof of claim shall be filed in the Bankruptcy Case to assert a Claim without prior authorization of the Court, and any such proof of claim which is filed without such authorization shall be deemed null, void and no force or effect; it is further

ORDERED that, in accordance with Section VII(B) of the Joint Plan, the deadline for the filing of objections to Claims is hereby fixed as the Claim Objection Deadline under the Joint Plan (120 days after the Effective Date of the Joint Plan unless hereafter extended by the Court, for cause shown, upon motion filed with the Court on or prior to such date), and any Claim (other than Claims scheduled as unliquidated, contingent or disputed), which is not already deemed an Allowed Claim in accordance with the Joint Plan, and as to which an objection is not filed on or before the Claim Objection Deadline, shall be deemed to constitute an Allowed Claim under the Joint Plan following the Claim Objection Deadline; it is further

ORDERED that the deadline for the filing and service of applications for the allowance of Administrative Claims (other than Fee Claims) and notices related thereto is hereby fixed as the Administrative Claims Bar Date under the Joint Plan (the first Business Day on or after the 30th day after the Effective Date of the Joint Plan), and the failure of a holder of an

Administrative Claim (other than Fee Claims) to file and serve such an application and notice by the Administrative Claims Bar Date shall result in such Administrative Claim (other than Fee Claims) being forever barred and discharged; it is further

ORDERED that the qualification to the distribution of Administrative Claims in Paragraph III(A)(1) of the Joint Plan stating “[e]xcept with respect to Administrative Claims that are indemnification Claims,” is hereby deleted and the Joint Plan is hereby modified in that respect; it is further

ORDERED that, in accordance with the Joint Plan and Creditor Trust Agreement, following the Effective Date of the Joint Plan, and without the necessity of notice and Court approval, the Creditor Trustee shall have the authority to resolve any Disputed Claim seeking recovery from the Creditor Trust which is the subject of a timely-filed objection; provided, however, that if the resolution involves a Claim in the face amount of at least \$100,000, then the Creditor Trustee shall provide reasonable notice of such settlement to the Reorganized Debtors and Class 7 Existing Equity Interests and an opportunity to object; it is further

ORDERED that Section IX(K) of the Joint Plan is hereby modified to strike the provision for subordination of the Indemnification Claims of directors of the Debtors to the Allowed Class 4 General Unsecured Claims. Any director of the Debtors asserting indemnification claims shall be required to file a timely proof of claim or otherwise satisfy the requirements for preserving claims under the Joint Plan and this Order and all rights with respect to their allowance, disallowance, priority and distribution are preserved by all parties having standing to assert such rights, including, without limitation, the Creditors Trust; it is further

ORDERED that with respect to the claims reserve requirements set forth in the Creditor Trust Agreement, the Creditor Trustee shall not be required to separately reserve for disputed

indemnification claims by directors of the Debtors to the extent that insurance coverage is provided by the Debtors' applicable insurers. Any disputes between the Creditor Trust and the Clarion Parties regarding the reserve requirements for director indemnification claims shall be resolved by the Court; it is further

### **Executory Contracts and Unexpired Leases**

ORDERED that, in accordance with Article XII of the Joint Plan, each and every contract and lease of the Debtors which, as of the Effective Date of the Joint Plan, (i) constitutes an executory contract or unexpired lease under the provisions of Section 365 of the Bankruptcy Code, and (ii)(a) has not previously been assumed or rejected by the Debtors, (b) has not been identified in the List of Executory Contracts to be Assumed under Exhibit "C" of the Plan Supplement (as same has been amended with the consent of the Plan Proponents and the Equity Sponsor); (c) is listed on Exhibit "C" to the SPA; or (d) has not been made the subject of a timely filed motion to assume (such executory contracts and unexpired leases collectively referred to herein as the "Rejected Contracts/Leases"), shall be deemed rejected as of the Effective Date of the Joint Plan under the provisions of Section 365 of the Bankruptcy Code; it is further

ORDERED that, in accordance with Section 8.2 of the Joint Plan, any Claim arising from the rejection of the Rejected Contracts/Leases (an "Rejection Damage Claim") must be evidenced by a proof of claim filed with the Court and served on the Creditor Trustee by no later than thirty (30) days following the Effective Date of the Joint Plan, and any holder of such a Rejection Damage Claim who fails to file and serve such a proof of claim on or before said deadline shall be deemed to have waived such Claim in full, and such Claim shall be deemed Disallowed and discharged; it is further

ORDERED that pursuant to sections 105(a), 1123(b)(2) and 365 of the Bankruptcy Code, all executory contracts and leases identified on Exhibit “C” of the Plan Supplement (the “Assumed Contracts and Leases”) shall be and hereby are assumed by the Debtors as of the entry of this Order, the requirements of section 365(b)(1) of the Bankruptcy Code with respect to the Assumed Contracts and Leases are deemed satisfied, and the Assumed Contracts and Leases shall continue in full force and effect with the Reorganized Debtors following the Effective Date; it is further

ORDERED that any provisions in any Assumed Contract and Leases that prohibit or condition the assumption of such Assumed Contract and Lease or allow the non-Debtor party to such Assumed Contract or Lease to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assumption of such Assumed Contract and Lease or the change of control resulting from the sale of the New Equity to Landry’s, constitute unenforceable anti-assignment provisions which are void and of no force and effect. Notwithstanding anything herein to the contrary, all personal services contracts on Exhibit “C” are assumed and/or assigned and unaffected by this paragraph; it is further

ORDERED that the proposed cure amounts (the “Cure Amounts”) listed on Exhibit “C” of the Plan Supplement (unless an objection is filed or an agreement is entered into among the Reorganized Debtors, the counterparty to the contract or lease and the Creditors’ Committee or Creditor Trustee) shall be approved as Allowed Administrative Claims and paid on the Effective Date as a requirement to the assumption of such contract or lease. If a party files a timely objection to the Cure Amounts of any executory contract, then (i) the Court shall determine the amount of the cure claim, (ii) the Reorganized Debtors shall have ten (10) days from the date of entry of such order to then determine whether to assume or reject such executory contract (but

not non-residential leases), and (iii) the Creditors Trustee shall pay the Allowed amount of such cure claim for the executory contract from the Claims Reserve established under the Creditor Trust Agreement; it is further

ORDERED, that with respect to the The Oceanaire Restaurant Company, Inc.'s San Diego lease, (i) all rights of the parties with respect to their relative positions related to the alleged default by tenant in using and maintaining its grease waste piping and assertions of responsibility for the tenant to pay for any required remediation or repair of the site's grease interceptor, pumps, vents and related systems and equipment (including but not limited to the alleged defaults set out in the Notice to Cure or Quit dated March 10, 2010) are reserved for subsequent determination by this Court in the absence of consensual resolution thereof; (ii) to the extent that there is a determination by the Court (or an agreement is reached) that the Debtors bear responsibility and the San Diego landlord performs the repair, then the cost of such remediation or repair so determined or agreed to shall be a cure cost allowed as an Administrative Claim. The Reorganized Debtors agree to reimburse the Creditor Trust for 50% (such reimbursement amount not to exceed \$100,000) of any allowed cure cost borne by the Creditor Trust with respect to this issue; and (iii) the San Diego's landlord's rights with respect to this issue related only to conditions which exist as of the Confirmation Date shall be limited to its ability to pursue and, if successful, to recover from the Creditor Trust such remediation or repair costs as an allowed cure cost, and the landlord shall not be entitled to assert a default or take any other action against the Reorganized Debtors under the lease with respect to this issue, related only to conditions which exist as of the Confirmation Date. Absent an agreement among the landlord, the Reorganized Debtors and the Creditor Trust to the contrary, if it is determined or agreed that the San Diego landlord is responsible for the repair and maintenance of the grease

interceptor the landlord will perform the remediation and repair. This decretal paragraph shall apply only to the alleged default and conditions claimed by the San Diego landlord in its Limited Objection to Confirmation as such conditions exist as of the date of this Order, and not to any future defaults; it is further

ORDERED that notwithstanding any provision of this Order or the Joint Plan to the contrary, Debtors' and Reorganized Debtors' liability for accrued but unbilled items with respect to 2009 and 2010 under their non-residential real property leases (such as, but not limited to, year end adjustments to common area maintenance charges and real estate taxes) are not discharged or waived, whether or not same are classified as Claims, nor is the responsibility for payment of same transferred to the Creditor Trust, and the Reorganized Debtors shall remain liable for the payment of such charges when same become due in accordance with the terms of said leases (with all rights reserved to the Reorganized Debtors to challenge said charges as set forth in the respective leases); and

**Provisions Regarding Auction and Sale to Landry's and Closing of the SPA Transaction**

ORDERED that Landry's is hereby approved as a Qualified Bidder under the Bid Procedure Order [Docket No. 516], the winning bidder at the Auction and the Equity Sponsor under the Joint Plan, it is further

ORDERED that Landry's shall deliver to the Debtors or their designated agent (as approved by the Creditor Trustee), in cash or cash equivalent, the Equity Infusion (less the \$1.5 million deposit plus interest currently held on behalf of the Estates) on the Effective Date and shall otherwise be bound by all applicable terms and conditions of the Joint Plan, Plan Supplement, SPA and this Order; it is further

ORDERED that pursuant to sections 105, 1123, 1129, and 365 of the Bankruptcy Code, the Debtors are directed and authorized to perform their obligations under, and comply with the terms of, the SPA and consummate the sale to Landry's pursuant to, and in accordance with, the terms and conditions of the SPA, the Joint Plan, the Plan Supplement, and this Order (the "SPA Transaction"). The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the SPA, together with all additional instruments and documents that Landry's or the Reorganized Debtors deem necessary or appropriate to implement the SPA and effectuate the sale of the New Equity to Landry's, and to take all further actions as may reasonably be required by Landry's or the Reorganized Debtors for the purpose of assigning, transferring, granting, conveying, and conferring to Landry's or the Reorganized Debtors reducing to possession the New Equity and assuming the Assumed Contracts and Leases or as may be necessary or appropriate to the performance of the obligations as contemplated by the SPA; it is further

ORDERED that this Order and the SPA shall be binding in all respects upon all known and unknown creditors of, and equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, all non-Debtor parties to the Assumed Contracts and Leases, all successors and assigns of Landry's, each Debtor, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the SPA. The failure to specifically include any particular provisions of the SPA in this Order shall not diminish or

impair the effectiveness of such provision, it being the intent of the Court that the SPA be authorized and approved in its entirety; it is further

ORDERED that the transfer of the New Equity to Landry's (as distinguished from the Reorganized Debtors) pursuant to the SPA constitutes a legal, valid, and effective transfer of the New Equity and shall vest Landry's or its assigns with all right, title, and interest of the Debtors in and to the New Equity free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability. As distinguished from the Reorganized Debtors, Landry's is not assuming nor shall it in any way whatsoever be liable or responsible, as a successor, transferee or otherwise, for any debts, liabilities, obligations, commitments or responsibilities of the Debtors or any debts, liabilities, obligations, commitments or responsibilities in any way whatsoever relating to or arising from the New Equity, or the Debtors' operations or use or ownership of any of its assets. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Reorganized Debtors of the sale of the New Equity to Landry's on account of the filing or pendency of these chapter 11 cases or the consummation of the SPA Transaction; it is further

ORDERED that the SPA Transaction and the negotiations related thereto were undertaken by Landry's without collusion and in good faith, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the SPA Transaction shall not affect the validity of the SPA Transactions (including the assumption of any of the Assumed Contracts and Leases), unless such authorization is duly stayed pending such appeal. Landry's is a purchaser in good faith of the New Equity. The consideration provided by

Landry's for the New Equity under the SPA shall be deemed to constitute reasonably equivalent value and fair consideration; it is further

ORDERED that upon the occurrence of the Effective Date, Landry's and/or a wholly owned affiliate thereof, shall be the owner, directly or indirectly, of all New Equity in the Reorganized The Oceanaire, Inc. and the Assumed Store Location Leases and Contracts shall be in full force and effect and binding upon the Reorganized Debtors and the counterparties thereto subject only to the payment of all required Cure Amounts pursuant to the terms of the Joint Plan and Plan Supplement; it is further

ORDERED that the closing of the transactions contemplated to occur under the Joint Plan and the SPA on the Effective Date shall occur on April 30, 2010 or such other day as the Equity Sponsor shall select, provided however, that in order for such closing to occur, the amount of Cash on hand (less the Equity Infusion) held by the Debtors as of the Effective Date and transferred to the Creditor Trust shall be an amount equal to the greater of (1) actual Cash on hand (less the Equity Infusion) as of the close of business the day prior to the closing minus the sum of all checks issued by the Debtors as of such date that have not cleared the Debtors' accounts plus the sum of all restaurant receipts that have not cleared the Debtors' accounts as of such date, or (2) \$2.2 million; it is further

ORDERED that on the Effective Date of the Joint Plan, the Reorganized Debtors shall transfer to the Creditor Trust the reserve contemplated by item (iii) in the definition of "Excess Cash" in the Joint Plan remaining, if any, after taking into account all distributions on account of cure claims of assumed executory contracts and unexpired leases made on the Effective Date; it is further

ORDERED that the closing date of the SPA Transaction shall be the Effective Date of the Joint Plan for all purposes; it is further

**Provisions Regarding Satisfaction of Lenders' Claims**

ORDERED that the Lenders' Secured Claims shall be Allowed Claims in the amount of \$16,811,095.00, plus interest, fees and expenses for all purposes under the Joint Plan, subject to objections preserved and maintained by the Creditors' Committee and/or Creditor Trustee to certain fees and expenses of the Lenders under the Final Cash Collateral Order; it is further

ORDERED that pursuant to Section XIV.B of the Joint Plan, as a condition to the Effective Date of the Joint Plan, the Debtors shall pay 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. Notwithstanding the foregoing, the Lenders' fees and expenses shall be subject to objections preserved and maintained by the Creditors' Committee under the Final Cash collateral Order, which objections, if any, shall be filed with the Court not later than ten (10) days after the Effective Date; it is further

ORDERED that, unless otherwise resolved by the parties, that Bankruptcy Court shall determine the Allowed amount of the Lenders' fees and expenses which are the subject of the objections, if any, of the Creditors' Committee; it is further

ORDERED that, on the Effective Date, the Debtors shall pay from the Equity Infusion and other Cash sources of the Debtors the Lenders' Secured Claims in the amount of \$16,811,095.00, plus accrued interest, fees and expenses in full satisfaction of the Lenders' Secured Claims. The allowance and payment of the Lenders' Secured Claims hereunder shall

not impair or give rise to a waiver of the objections preserved and maintained by the Creditors' Committee under the Final Cash collateral Order; it is further

**General Provisions**

ORDERED that Paragraph IX (H) of the Joint Plan, shall be, and hereby is, modified to expressly exclude the Equity Sponsor and the Agent, the Term Loan Representative and the Lenders from the exculpation and limitations of liability for all purposes therein; provided, however, that any other rights, releases and protections provided to such excluded parties in the Joint Plan, the Findings and Conclusions, any order of this Court or as otherwise available under applicable law shall not be limited, abridged, modified, impaired or waived by this modification; it is further

ORDERED that, in accordance with Sections IX(G) and (H) of the Joint Plan, as modified hereby, all releases and exculpations set forth in Article IX of the Joint Plan are hereby approved; it is further

ORDERED that the Plan Proponents, the Reorganized Debtors, the Equity Sponsor, the Agent, the Lenders and the Creditor Trustee shall be, and are hereby, authorized and directed to take any and all necessary steps, and to perform any and all necessary acts, to consummate the Joint Plan in accordance with its terms and conditions and this Order; it is further

ORDERED that, in accordance with Section IX(B) of the Joint Plan, following the Effective Date of the Joint Plan and once all applications for the allowance of Administrative Claims filed by professionals retained by the Debtors and the Creditors' Committee have been determined by Final Order, the Creditors' Committee shall be dissolved and, upon such dissolution, the Creditors' Committee, members of the Creditors' Committee, and the Creditors' Committee's professionals shall be released and discharged from any further duty or obligation

arising under, arising in, or related to the Bankruptcy Case provided, however, that the Creditors' Committee shall have limited standing for the purposes set forth in the Joint Plan, including participation in proceedings for the determination of fees and expenses; it is further

ORDERED that the injunction provisions under Section IX(E) of the Joint Plan are hereby approved and shall be enforceable pursuant to the terms as set forth therein; it is further

ORDERED that, notwithstanding the entry of this Order, the automatic stay provided by Section 362(a) of the Bankruptcy Code shall continue to be effective and enforceable until the Effective Date of the Joint Plan; it is further

ORDERED that, notwithstanding the entry of this Order and the occurrence of the Effective Date of the Joint Plan, the Court shall retain jurisdiction, to the fullest extent legally permitted, over the Bankruptcy Case, all proceedings arising under, arising in, or related to the Bankruptcy Case, the Joint Plan, this Order, and administration of the Creditor Trust, including, without limitation, the matters set forth in Article X of the Joint Plan; it is further

ORDERED that, upon the Effective Date of the Joint Plan, the Creditor Trustee shall promptly file a notice with the Court indicating that the Joint Plan has become effective, specifying the date of the Effective Date and the date of each of the deadlines established by this Order in reference to the Effective Date, and shall further serve a copy of such notice on each of the parties listed on the then-current Official Service List and on all other known parties who are affected by the deadlines established by this Order in reference to the Effective Date of the Joint Plan; it is further

ORDERED that the fourteen-day stay of this Order otherwise imposed by Bankruptcy Rule 3020(e) and, to the extent applicable, the stay imposed by Bankruptcy Rule 6004(h) are waived. The Debtors and all other parties are authorized and directed to consummate the Joint

Plan and the SPA Transaction immediately upon entry of this Order and the terms of Article IX of the Joint Plan are amended to permit same upon entry of this Order. Notwithstanding any otherwise applicable law, immediately upon the entry of this Order, the terms of the Joint Plan, the Plan Supplement, the SPA and this Order are deemed binding upon the Debtors, any and all holders of Claims or Equity Interests (irrespective of whether such Claims or Equity Interests are allowed, disallowed, subordinated, contingent or impaired under the Plan, or whether the holders of such Claims or Equity Interests accepted, rejected, or are deemed to have accepted or rejected the Plan), and any and all entities who are parties to or are subject to the settlements, compromises, releases, discharges, assumptions and injunctions described hereunder and the respective heirs, executors, administrators, successors or assigns, if any, of any of the foregoing; it is further

ORDERED that to the extent of any inconsistencies between and among the Joint Plan, SPA and the terms of this Order, the terms of the Order shall control.

### END OF ORDER ###

**Approved as to Form and Content By:**

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