

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

IN RE:

BREEZY POINT, LLC,

Debtor.

Chapter 11

Case No. 03-45440

**AMENDED LIQUIDATING PLAN OF REORGANIZATION
FOR BREEZY POINT, LLC
DATED AS OF AUGUST 19, 2004**

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TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS.....	4
II. PAYMENT OF ADMINISTRATIVE AND UNCLASSIFIED PRIORITY CLAIMS 8	
A. GENERAL ADMINISTRATIVE AND UNCLASSIFIED PRIORITY CLAIMS	8
B. UNITED STATES TRUSTEE FEES.....	8
III. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS	8
1. CLASS 1 – OTHER PRIORITY CLAIMS	8
2. CLASS 2 – SECURED CLAIM OF CROW WING COUNTY, MINNESOTA	8
3. CLASS 3 – SECURED AND DEFICIENCY CLAIM OF ASSOCIATED BANK.....	9
4. CLASS 4 –CLAIM OF CARLTON FINANCIAL.....	10
5. CLASS 5 – GENERAL UNSECURED CLAIMS	10
6. CLASS 6 – EQUITY INTERESTS	11
IV. IDENTIFICATION OF IMPAIRED CLASSES	11
A. UNIMPAIRED CLASSES	11
B. IMPAIRED CLASSES ENTITLED TO VOTE	11
C. IMPAIRED CLASSES NOT ENTITLED TO VOTE	11
V. CONDITIONS PRECEDENT TO CONSUMMATION OF PLAN	12
VI. IMPLEMENTATION OF PLAN	12
A. SALE OF DEBTOR’S ASSETS	12
B. FUNDING OF THE PLAN FUND	12
C. DISPUTED CLAIMS.....	12
D. UNCLAIMED CASH DISTRIBUTIONS	13
E. DISSOLUTION OF THE DEBTOR.....	13
F. RELEASE OF CLAIMS.....	13
G. ROUNDING	14

VII.	EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....	14
VIII.	TERMINATION OF PROFESSIONALS	14
IX.	RETENTION OF ACTIONS.....	14
X.	RETENTION OF JURISDICTION	14
	A. SCOPE OF JURISDICTION.....	14
	B. CONCURRENT WITH OTHER COURTS.....	15
XI.	MISCELLANEOUS PROVISIONS	15
	A. WITHHOLDING TAXES.....	15
	B. AMENDMENTS AND MODIFICATIONS.....	16
	C. NOTICES	16
	D. HEADINGS.....	16
	E. EXHIBITS	16
	F. TIME PERIODS.....	16
	G. GOVERNING LAW	16
	H. SEVERABILITY.....	16
	I. SUCCESSORS AND ASSIGNS.....	17
EXHIBIT 1	18
	WHITEBIRCH PURCHASE AGREEMENT	18

I. DEFINITIONS.

Except as otherwise defined below, all terms used in this Plan and defined under section 101 of the Bankruptcy Code shall have the meaning set forth in section 101 of the Bankruptcy Code. Unless the context otherwise requires, all capitalized terms in this Plan shall have the respective meanings specified below, and such meanings shall be equally applicable to the singular and plural forms of the terms defined.

“Actions” mean all rights, claims, and actions of the Debtor, as debtor and debtor in possession, including, without limitation, all Bankruptcy Actions, other than those dismissed, released, settled, or compromised under this Plan.

“Administrative Claim” means a Claim or entitlement to treatment as an administrative expense allowance under section 503(b) of the Bankruptcy Code.

“Allowed” or “Allowed Claim” means any Claim against the Debtor: (a) with respect to which a proof of claim has been timely filed with the Bankruptcy Court; or (b) which is (i) listed in the schedules of creditors that the Debtor prepared and filed with the Bankruptcy Court pursuant to Bankruptcy Rule 1007(b), as amended up to the Confirmation Date, and (ii) not listed as disputed, contingent, or unliquidated; or (c) a Tardily Filed Claim which qualifies under section 726(a)(2)(C)(i) and (ii) of the Bankruptcy Code; or (d) which is designated as an Allowed Claim in this Plan. In the case of (a), (b), and (c), a Claim is an Allowed Claim only if no objection to the allowance of the Claim has been raised within any applicable period for raising such an objection, or the Bankruptcy Court enters a Final Order allowing the Claim. Unless otherwise specified in this Plan, the term “Allowed Claim” shall not include interest on such Claim for any period from and after the Petition Date, except in situations where sufficient funds are available for payment of interest in the priority specified under section 726 of the Bankruptcy Code.

“Allowed Administrative Claim” means an Administrative Claim with respect to which (a) the Debtor has determined should be paid as an expense of administration under section 503(b) of the Bankruptcy Code, or (b) the Bankruptcy Court has entered a Final Order allowing such Administrative Claim, but only to the extent Allowed pursuant to the Final Order.

“Associated Bank” means Associated Bank Minnesota, National Association.

“Bankruptcy Actions” mean any and all rights of action of the Debtor under sections 544, 545, 546, 547, 548, 549, and 550 of the Bankruptcy Code, or similar state laws, other than those dismissed, released, settled, or compromised under this Plan.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Minnesota, including any reviewing or appellate court that may have jurisdiction over this Case.

“Bankruptcy Rules” mean the Federal Rules of Bankruptcy Procedure, as amended from time to time.

“Bid Procedures” means the bidding procedures set forth in Exhibit 2 hereto.

“Business Day” means any day that is not a Saturday, Sunday, or legal holiday as defined in Rule 9006(a) of the Bankruptcy Rules.

“Carlton Equipment” means the equipment leased to the Debtor pursuant to the Carlton Financial Lease.

“Carlton Financial” means Carlton Financial Corporation.

“Carlton Financial Lease” means the Master Equipment Lease Agreement, by and between the Debtor, as lessee, and Carlton Financial, as lessor, dated February 17, 2000, together with all schedules thereto.

“Carlton Financial Purchase Agreement” means an agreement between Carlton Financial and the Purchaser whereby the Purchaser will purchase all of Carlton Financial's interest in the Carlton Equipment for an amount not less than \$337,500 on the terms and conditions set forth in such agreement

“Case” means the chapter 11 case of the Debtor administered under case number 03-45440, pending before the United States Bankruptcy Court for the District of Minnesota.

“Cash” means any cash or cash equivalents, including, but not limited to, bank deposits, checks, and other similar negotiable instruments.

“Cash Collateral” shall have the meaning ascribed in the Cash Collateral Stipulation.

“Cash Collateral Account” means the account maintained by the Debtor with Associated Bank into which all Cash Collateral is deposited.

“Cash Collateral Stipulation” shall mean the Stipulation for Use of Cash Collateral and Adequate Protection dated as of September 11, 2003, as amended by the First Amendment to Stipulation for Use of Cash Collateral and Adequate Protection dated as of December 1, 2003, filed in the Case.

“Claim” has the meaning set forth in section 101(5) of the Bankruptcy Code.

“Confirmation Date” means the date that the Confirmation Order is entered.

“Confirmation Hearing” means the hearing on confirmation of the Plan.

“Confirmation Order” means the order of the Bankruptcy Court confirming this Plan and approving the transactions proposed in this Plan.

“Conveyed Property” means the assets to be sold to the Purchaser under the Purchase Agreement.

“Creditor” means any individual or entity that has a Claim against the Debtor.

“Crow Wing Power” means Crow Wing Power, successor in interest to Great River Energy.

“Debtor” means Breezy Point, LLC.

“Deficiency Claim” means any Claim of a Creditor against the Debtor equal to the amount by which the aggregate Claims of such Creditor against a Debtor exceed the sum of: (a) any setoff rights of the Creditor against any such Debtor plus (b) the proceeds realized from the disposition of any property of the Debtor securing such Claim or, if such property is not liquidated to cash, the value of the interest of such Creditor in the property securing such Claim. However, if the class to which such Claim belongs makes an election under section 1111(b) of the Bankruptcy Code, there shall be no Deficiency Claim in respect of such Claim.

“Disputed Claim” means any Claim which is not an Allowed Claim.

“Disputed Claim Reserve” means the reserve accounts established under Article VI, Section D of this Plan to hold Cash or other property distributable under this Plan pending the determination of Disputed Claims.

“Effective Date” means the date on which the sale of the Conveyed Property under the Purchase Agreement closes. In no event shall the Effective Date be fewer than the eleventh calendar day after the Confirmation Date or more than forty-five (45) days after the Confirmation Date.

“Equity Interest” means any issued and outstanding membership interest or other equity interest, including any option, warrant or right to purchase any membership or other equity interest, in the Debtor on the Confirmation Date.

“Final Order” means an order or judgment which has not been reversed, stayed, modified or amended and (a) as to which (i) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending, or (ii) if appeal, review, reargument or certiorari of the order has been sought, the order has been affirmed or the request for review, reargument or certiorari has been denied and the time to seek a further appeal, review, reargument or certiorari has expired, and (b) as a result of which such order shall have become final and nonappealable in accordance with applicable law.

“Insurance Policy” means the Debtor’s property and general liability insurance policy with EMC Insurance Companies.

“Local Rules” mean the Local Rules of the United States Bankruptcy Court for the District of Minnesota, as amended from time to time.

“Management Agreement” means the Hotel Management Agreement dated as of October 1, 1999, between the Debtor and Whitebirch.

“Other Priority Claim” means any Priority Claim other than a Priority Claim allowed under sections 507(a)(1), 507(a)(2) or 507(a)(8) of the Bankruptcy Code.

“Petition Date” means August 1, 2003.

“Plan” means this plan of reorganization, including all attached exhibits and schedules, as it may be modified or amended from time to time pursuant to section 1127 of the Bankruptcy Code.

“Plan Fund” means the sum of \$200,000 to be deposited with or retained by the Debtor from the Cash Collateral, less any Cash Collateral used by the Debtor after July 1, 2004.

“Priority Claim” means any Claim entitled to priority treatment under section 507 of the Bankruptcy Code.

“Professional” means any professional employed by the Debtor in this Case.

“Proponent” means the Debtor.

“Purchase Agreement” means the Whitebirch Purchase Agreement. In the event that the Conveyed Property is sold to a person other than Whitebirch pursuant to the procedures set forth in this Plan, the term “Purchase Agreement” shall refer to the purchase agreement executed by such person and the Debtor.

“Purchaser” means Whitebirch or any other person providing a higher and better offer for the Conveyed Property prior to the Confirmation Hearing pursuant to the Bid Procedures, identified by the Debtor at or prior to the Confirmation Hearing, and approved by the Bankruptcy Court as the purchaser of the Conveyed Property.

“Secured Claim” means any Allowed Claim of a Creditor that is determined to be secured pursuant to section 506 of the Bankruptcy Code or is deemed an “Allowed Secured Claim” pursuant to this Plan.

“Tardily Filed Claims” mean any Claim that would be an Allowed Claim but for the fact that proof of such Claim was required to be filed and was not filed or deemed to be filed within applicable time periods for filing such Claims.

“Unclassified Priority Claims” means Priority Claims arising under sections 507(a)(2) or 507(a)(8) of the Bankruptcy Code.

“United States Trustee” means the United States Trustee for the District of Minnesota.

“Unsecured Claim” means any Claim, including any Deficiency Claim, that is not an Administrative Claim, a Priority Claim, or a Secured Claim.

“Unsecured Creditor” means a Creditor holding an Allowed Unsecured Claim.

“Whitebirch” means Whitebirch, Inc., a Minnesota corporation.

“Whitebirch Purchase Agreement” means the Purchase Agreement, as amended by Amendment No. 1 to Purchase Agreement, between the Debtor and Whitebirch in substantially the form attached hereto as Exhibit 1.

II. PAYMENT OF ADMINISTRATIVE AND UNCLASSIFIED PRIORITY CLAIMS

A. GENERAL ADMINISTRATIVE AND UNCLASSIFIED PRIORITY CLAIMS

Unless the Debtor and the holder of such Claim agree otherwise, all Allowed Administrative Claims and Unclassified Priority Claims against the Debtor shall be paid in full, in Cash, on or as soon as practicable after the later of: (a) the Effective Date; or (b) the date that any such Administrative Claim or Unclassified Priority Claim becomes an Allowed Administrative Claim or Unclassified Priority Claim. Payment of Allowed Administrative Claims and Unclassified Priority Claims will be made from the Plan Fund.

B. UNITED STATES TRUSTEE FEES

All fees payable to the United States Trustee under 28 U.S.C. § 1930 shall be paid in full on or before the Effective Date from the Plan Fund.

III. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

1. CLASS 1 – OTHER PRIORITY CLAIMS

(a) Classification.

Class 1 shall consist of all Allowed Other Priority Claims against the Debtor.

(b) Treatment

Unless the Debtor and the holder of such Claim agree otherwise, all Allowed Other Priority Claims shall be paid in full, in Cash, from the Plan Fund on or as soon as practicable after the later of: (a) the Effective Date; and (b) the date that any such Other Priority Claim becomes an Allowed Other Priority Claim.

2. CLASS 2 – SECURED CLAIM OF CROW WING COUNTY, MINNESOTA

(a) Classification

Class 2 shall consist of the Allowed Secured Claims of Crow Wing County, Minnesota against the Debtor. As of July 31, 2004, Crow Wing County will have an Allowed Secured Claim of \$457,749.84, including accrued and unpaid interest and penalties for unpaid real estate taxes. Interest and penalties will continue to accrue through the Effective Date. Crow Wing County holds a valid real estate tax lien on the Debtor's real property.

(b) Treatment

In full satisfaction of its Allowed Secured Claim, the Purchaser will pay in full on the Effective Date all amounts owed to Crow Wing County as of the Effective Date.

3. CLASS 3 – SECURED AND DEFICIENCY CLAIM OF ASSOCIATED BANK

(a) Classification

Class 3 shall consist of the Allowed Secured and Deficiency Claims of Associated Bank against the Debtor. As of the Petition Date, Associated Bank had an Allowed Claim of \$4,767,951.10 in principal, plus accrued and unpaid interest in the amount of \$167,295.19, plus late fees and out-of-pocket costs and expenses, including attorneys' fees, in the amount of \$64,155.44, for a total Allowed Claim of \$4,999,401.73. Pursuant to the Cash Collateral Stipulation, Associated Bank applied \$83,690.11 of Cash Collateral to its Allowed Claim after the Petition Date. Accordingly, as of the date of this Plan, Associated Bank has an Allowed Claim of \$4,915,711.62. Associated Bank holds valid and perfected liens and security interests in substantially all of the Debtor's real and personal property. Associated Bank's Allowed Claim is an Allowed Secured Claim to the extent of the value of the collateral securing payment of the Claim and is an Allowed Deficiency Claim to the extent the amount of the Claim exceeds the value of the collateral securing the Claim.

(b) Treatment

In full satisfaction of its Allowed Secured Claim (as calculated pursuant to section 506 of the Bankruptcy Code), Associated Bank shall receive or retain: (a) all cash proceeds from the sale of the Conveyed Property pursuant to the Purchase Agreement, which amount shall be not less than \$3,400,000; (b) all Cash Collateral held or received by the Debtor as of the Effective Date, less any cash necessary to fund the Plan Fund; (c) fifty percent (50%) of the "Gross Revenues" as defined in the Management Agreement, which are earned but not yet deposited in the Cash Collateral Account on the Effective Date; and (d) any excess unearned premium received by the Debtor upon cancellation of the Insurance Policy. Any cash payable under part (a) or (b) of the preceding sentence on account of Associated Bank's Allowed Secured Claim shall be paid in full, in Cash, on the Effective Date. In no event shall the amounts to be received by Associated Bank exceed its Allowed Claim. In consideration of the treatment provided herein and the release granted in Article VI, Section F, Associated Bank has agreed to fund the Plan

Fund from its Cash Collateral and waive any right to receive a distribution under this Plan on account of any Deficiency Claim it may have on the Effective Date; provided, however, such waiver shall not affect its right to pursue any claims it may have against any person other than the Debtor. The Debtor will cancel the Insurance Policy effective as of the Effective Date.

4. CLASS 4 – CLAIM OF CARLTON FINANCIAL

(a) Classification

Class 4 shall consist of the Claims of Carlton Financial against the Debtor. As of July 14, 2004, Carlton Financial asserts it has a Claim in the amount of \$479,862.51. Carlton Financial has leased the Carlton Equipment to the Debtor pursuant to the terms of the Carlton Financial Lease. In the event that that Carlton Financial Lease is recharacterized as a secured financing, Carlton Financial asserts that the debt owing under the Carlton Financial Lease is secured by a valid security interest in the Carlton Equipment. The Debtor neither disputes nor agrees with the assertion that Carlton Financial has a Secured Claim. The Carlton Equipment and the Conveyed Property represent all or substantially all of the property necessary to operate the Debtor's business. Regardless of whether the Carlton Financial Lease is a true lease or a secured financing, Carlton Financial's interest in the Carlton Equipment is senior to all other interests in such equipment.

(b) Treatment

Whitebirch and Carlton Financial will enter into the Carlton Financial Purchase Agreement. In consideration of the Carlton Financial Purchase Agreement, Carlton Financial shall be deemed to consent to the following treatment:

- (i) The Debtor will reject the Carlton Financial Lease effective as of the Effective Date.
- (ii) Carlton Financial shall waive any Allowed Administrative Claim it holds in excess of \$18,297.19; and
- (iii) Based on the rejection of the Carlton Financial Lease, Carlton Financial shall be allowed to assert a Deficiency Claim in the amount of its Allowed Claim less any amount it receives under the Carlton Financial Purchase Agreement less \$18,297.19.

In the event that the Conveyed Property is sold to any person other than Whitebirch, Carlton Financial has agreed that it will sell its interest in the Carlton Equipment to such person on the same or substantially similar terms, provided the purchase price is at least \$337,500.

5. CLASS 5 – GENERAL UNSECURED CLAIMS

(a) Classification

Class 5 shall consist of all Unsecured Claims against the Debtor, including any Deficiency Claim, not otherwise classified in this Plan.

(b) Treatment

Class 5 Unsecured Creditors, in full satisfaction of their Allowed Unsecured Claims, shall receive pro rata distributions of any funds available for distribution from the Plan Fund or the liquidation of any assets of the Debtor other than the Conveyed Property, after payment of all Allowed Administrative Claims, Unclassified Priority Claims, Other Priority Claims, U.S. Trustee fees and post-confirmation costs and expenses incurred by the Debtor as a result of administering the terms and provisions of this Plan.

6. CLASS 6 – EQUITY INTERESTS

(a) Classification

Class 6 shall consist of all Equity Interests in the Debtor.

(b) Treatment.

On the Effective Date, all outstanding Equity Interests of the Debtor will be canceled, annulled, and extinguished, and the holders of the Equity Interests shall receive nothing on account of such Equity Interests.

IV. IDENTIFICATION OF IMPAIRED CLASSES

A. UNIMPAIRED CLASSES

Classes 1 and 2 are unimpaired and shall be deemed to have accepted the Plan.

B. IMPAIRED CLASSES ENTITLED TO VOTE

Classes 3, 4 and 5 are impaired under this Plan, and all holders of Allowed Claims in such classes may vote to accept or reject this Plan. A class of Claims shall have accepted this Plan if at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of holders in such class who have voted on this Plan, have voted to accept this Plan.

C. IMPAIRED CLASSES NOT ENTITLED TO VOTE

Class 6 will receive nothing under this Plan on account of any Equity Interest. Pursuant to section 1126(g) of the Bankruptcy Code, Equity Interest holders shall be deemed to reject this Plan. Accordingly, holders of Equity Interests in Class 6 shall not be entitled to vote to accept or reject this Plan.

V. CONDITIONS PRECEDENT TO CONSUMMATION OF PLAN

Unless the Proponent elects to waive such condition, the following shall be conditions precedent to consummation of this Plan:

1. The Bankruptcy Court shall have entered a Final Order confirming this Plan in a form acceptable to the Proponent;
2. The Purchaser shall purchase the Conveyed Property in accordance with the terms of the Purchase Agreement; and
3. The Purchaser and Carlton Financial shall have entered into the Carlton Financial Purchase Agreement on or before the Effective Date of the Plan

VI. IMPLEMENTATION OF PLAN

A. SALE OF DEBTOR'S ASSETS

The Plan will be implemented through a sale of the Conveyed Property in accordance with the Purchase Agreement and a sale of the Carlton Equipment in accordance with the Carlton Financial Purchase Agreement. Nothing in this Plan shall prohibit any entity from making a higher and better offer for the Conveyed Property prior to the Confirmation Hearing on terms similar to those set forth in the Whitebirch Purchase Agreement. Any competing offer must be made according to the Bid Procedures set forth in Exhibit 2 hereto. In the event that the Debtor receives a competing bid, the Debtor shall file the results of the Bid Procedures with the Bankruptcy Court not later than 24 hours before the Confirmation Hearing and request that the Bankruptcy Court approve the winning bidder as the Purchaser under this Plan.

Pursuant to Section 1123(a)(5) of the Bankruptcy Code, the Purchaser shall acquire the Conveyed Property free and clear of all liens, Claims, or encumbrances held by Associated Bank, Carlton Financial, Crow Wing Power, Brian Tollefson (d/b/a Pro Scape), Eric Binstock (d/b/a Siteworks Unlimited), or Jim's Electric Company, Inc. The Purchaser shall acquire the Conveyed Property subject to the recorded interests of Robert Bruns, Linda Hallman, Jean Osmund and Jonathan Schluck.

B. FUNDING OF THE PLAN FUND

On the Effective Date, Associated Bank shall release sufficient money from the Cash Collateral Account to the Debtor for purposes of funding the Plan Fund.

C. DISPUTED CLAIMS

Prior to making any distributions under this Plan, the Debtor shall establish a reserve account for Disputed Claims (the "Disputed Claims Reserve"). The Debtor shall distribute to and maintain in the Disputed Claims Reserve all Cash that would otherwise

be distributable to holders of Disputed Claims, assuming such Disputed Claims would be Allowed in the amount claimed. In calculating the amount of the reserve, the Debtor shall use one of the following as the amount of the Disputed Claim: (a) the amount such Creditor alleges is due and owing; (b) the amount ordered by the Bankruptcy Court for purposes of establishing a reserve; or (c) the amount that the Debtor and any such Creditor may mutually agree to reserve. The Cash reserved for the holder of a Disputed Claim shall be distributed to such holder only to the extent such Disputed Claim shall become an Allowed Claim. Any earnings on Cash held in the reserve account shall be allocated to the account of the holder of Disputed Claims for which such Cash is held, and distributed to such holders based on the amount of their respective Allowed Claims.

D. UNCLAIMED CASH DISTRIBUTIONS

If any check paid on account of a distribution from the Plan Fund shall not be presented for payment within the earlier of (i) ninety (90) days of the date it is mailed to a Creditor or (ii) one hundred twenty days (120) after the Effective Date of the Plan, and the check has not been returned to the Debtor by the United States Postal Service, the check shall be voided. In such an event, and if the Creditor fails to contact the Debtor within one hundred fifty (150) days after the Effective Date, the distribution will be deemed to be waived or abandoned and the funds payable to such Creditor will be turned over to Associated Bank.

In the event that a check is returned by the United States Postal Service on account of an incorrect or insufficient address, the Debtor will use reasonable means, in view of the amount of the dividend, to determine the correct address and remail the check. If the correct address cannot be determined or if the second mailing of a check is returned, then the Creditor will be deemed to have waived or abandoned its Claim and the funds payable to such Creditor will be turned over to Associated Bank.

E. DISSOLUTION OF THE DEBTOR

The Debtor's corporate existence shall be deemed terminated one hundred eighty (180) after the Effective Date of the Plan, unless such date is extended by order of the Bankruptcy Court.

F. RELEASE OF CLAIMS

In consideration for Associated Bank's deposit of funds in the Plan Fund, the Debtor shall, upon the Effective Date of the Plan, be deemed to absolutely and unconditionally release and forever discharge Associated Bank, and any and all participants, predecessors, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns, as well as all of the present and former directors, officers, agents and employees of any of the foregoing, from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which it has had, now has or may have against any such person for or by reason of any act, omission,

matter, cause or thing whatsoever arising from the beginning of time, to and including the Effective Date, whether such claims, demands and causes of action are matured or unmatured or known or unknown.

G. ROUNDING

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent. To the extent Cash remains undistributed as a result of the rounding down of such fraction to the nearest whole cent, such Cash shall be treated as unclaimed property and returned to Associated Bank.

VII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Except as expressly assumed or rejected prior to the Confirmation Date pursuant to an order of the Bankruptcy Court, all executory contracts and unexpired leases of the Debtor shall be deemed rejected on the Effective Date. A Claim for rejection damages must be filed no later than thirty (30) days after the Effective Date of this Plan.

VIII. TERMINATION OF PROFESSIONALS

Except as otherwise expressly provided in this Plan, all Professionals shall be terminated as of the Effective Date and such Professionals shall not be entitled to compensation or reimbursement of expenses for any services rendered after the Effective Date, other than services rendered in and expenses incurred in connection with any applications for allowance of compensation and reimbursement of expenses relating to their retention in this Case.

IX. RETENTION OF ACTIONS

On the Effective Date, except as otherwise provided in this Plan, all of the Debtor's rights, title, and interests in and to any Actions, including Bankruptcy Actions, shall be retained by the Debtor. The Debtor may investigate and file any Action that it determines is likely to result in a recovery greater than the estimated fees and expenses necessary to pursue such Action. At this time, the Debtor is unaware of any such Actions and does not intend to pursue, investigate or file any such Actions.

X. RETENTION OF JURISDICTION

A. SCOPE OF JURISDICTION

The Bankruptcy Court shall retain its jurisdiction over this Case under 28 U.S.C. §§ 157 and 1334 to:

1. Authorize or approve a sale of any or all assets of the Debtor;
2. Determine any and all objections to the allowance of Claims or interests;

3. Determine any and all applications for allowance of fees and reimbursement of professionals' expenses under the Bankruptcy Code relating to services provided and expenses incurred;
4. Determine any and all motions, adversary proceedings, or contested matters brought before the Bankruptcy Court;
5. Determine any and all actions arising in or relating to title 11 of the United States Code after the Confirmation Date, including, but not limited to, all Actions of the Debtor;
6. Modify this Plan, or grant declaratory relief with regard to any defect, omission, or inconsistency in this Plan;
7. Take any action to enforce this Plan and issue such orders as may be necessary to implement, execute, and consummate this Plan or the Purchase Agreement;
8. Determine any dispute regarding implementation of this Plan; and
9. Determine such other matters as may arise in connection with this Plan or consummation of this Plan.

Nothing in this Plan or the Confirmation Order shall expand the jurisdiction of the Bankruptcy Court beyond that permitted by title 28 of the United States Code. In addition, nothing in this Plan or the Confirmation Order shall impair any right to a jury trial that any party in interest in this Case would have notwithstanding confirmation of this Plan.

B. CONCURRENT WITH OTHER COURTS

Except as otherwise provided in title 28 of the United States Code, the jurisdiction of the Bankruptcy Court shall be concurrent with other courts of competent jurisdiction. This Plan shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court of competent jurisdiction with respect to such matters. If the Bankruptcy Court declines to exercise its jurisdiction on any matter under this Plan, the reference to the Bankruptcy Court in this Plan shall be deemed to include any court of competent jurisdiction unless the context requires otherwise.

XI. MISCELLANEOUS PROVISIONS

A. WITHHOLDING TAXES

Any federal or state withholding taxes or other amounts required to be withheld under any applicable law shall be deducted and withheld from any distribution under the terms of this Plan.

B. AMENDMENTS AND MODIFICATIONS

This Plan may be amended or modified in the manner prescribed in section 1127 of the Bankruptcy Code. A holder of a Claim or interest that has accepted or rejected this Plan shall be deemed to have accepted or rejected, as the case may be, this Plan as modified, unless, within applicable time periods, such holder changes its previous acceptance or rejection.

C. NOTICES

Any notice of appearance filed pursuant to Bankruptcy Rule 9010 requesting notice under Bankruptcy Rule 2002 shall be null and void on the Effective Date. Any Creditor or other party in interest appearing in these Cases and requesting notice under Bankruptcy Rule 2002 on or after the Effective Date must file and serve a new notice of appearance to receive notice of any matter permitted or required under this Plan.

D. HEADINGS

The headings used in this Plan are inserted for convenience only and do not constitute a portion of this Plan, or in any way limit or affect the enforceability, operation, or effect of any provision of this Plan.

E. EXHIBITS

All exhibits to this Plan are incorporated by reference and, except to the extent that any exhibit is inconsistent with this Plan, are expressly made a part of this Plan.

F. TIME PERIODS

In computing any period of time prescribed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply unless the context requires otherwise.

G. GOVERNING LAW

Except to the extent that the provisions of the Bankruptcy Code, Bankruptcy Rules, federal statutes or common law, and subject to the provisions of any contract, instrument, or other agreement entered into in conjunction with this Plan, the rights and obligations arising under this Plan shall be governed by and enforced in accordance with the laws of the State of Minnesota.

H. SEVERABILITY

Should any provision of this Plan be determined to be unenforceable, such determination shall not in any way limit or affect the enforceability, operation, or effect of any other provision of this Plan.

EXHIBIT 1

WHITEBIRCH PURCHASE AGREEMENT

PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into as of the ___ day of May, 2004, between Breezy Point LLC, a Minnesota limited liability company ("Seller"), and Whitebirch, Inc., a Minnesota corporation ("Buyer").

WITNESSETH THAT:

WHEREAS, Seller owns the Property and desires to sell the Property to Buyer;
and

WHEREAS, Buyer desires to purchase the Property from Seller.

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants and agreements herein contained, Seller and Buyer agree as follows:

1. **Definitions and Exhibits.**

1.1 Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, will have the meaning ascribed to it as follows:

"Agreement" means this Purchase Agreement.

"Associated Bank" means Associated Bank Minnesota, N.A.

"Building" means a hotel known as Breezy Point Inn & Suites located on Breezy Point Drive, Breezy Point, Minnesota.

"Buyer's Closing Documents" means the Buyer's closing documents described in Section 5.2 hereof.

"Carlton" means Carlton Financial Corporation.

"Closing" means the closing and consummation of the purchase and sale of the Property as described in Section 5.

"Closing Date" means the date on which the Closing occurs as provided in Section 5.

"Closing Documents" means Buyer's Closing Documents and Seller's Closing Documents as defined in Section 5.

"Contract Date" means the date upon which this Agreement is deemed effective, which is the date this Agreement has been executed by both Seller and Buyer and set forth on page 1.

EXHIBIT 1 TO PLAN

"Contracts" means all of the service and management contracts, leasing and brokerage contracts, equipment and personal property leases, labor and material contracts, maintenance and repair contracts including elevator service contracts and HVAC service contracts and other agreements that affect the Property or the operation, repair or maintenance thereof, a complete list of which is attached hereto as **Exhibit D**.

"Court Order" means the order described in Section 4.5.

"Deed" means the Quit Claim Deed as described in Section 5.1.2.

"Improvements" means the Building and any other improvements located on the Land, including Seller's interest in all systems, facilities, fixtures, machinery, equipment and conduits to provide fire protection, security, heat, exhaust, ventilation, air conditioning, electrical power, light, plumbing, refrigeration, gas, sewer and water thereto (including all replacements and additions thereto between the Contract Date and the Closing Date).

"Land" means all those tracts or parcels of land described in **Exhibit B** attached hereto and all privileges, rights, rights of way, easements, hereditaments and appurtenances thereto belonging, and all right, title and interest of Seller in and to any streets, alleys, passages and other rights of way included therein or adjacent thereto (before or after the vacation thereof).

"Management Agreement" means the Hotel Management Agreement entered into between Seller and Buyer as of October 1, 1999.

"Permitted Title Exceptions" means those title matters which are not objected to by Buyer in accordance with Section 7 hereof.

"Personal Property" means all of the personal property, together with all replacements and additions thereto between the Contract Date and the Closing Date, located in or on the Land and Improvements which is owned by Seller and used or usable in connection with the Land and Improvements, including without limitation, all that property listed on **Exhibit B** attached hereto.

"Plans" means all originals and copies of the as-built blueprints, drawings, site plans, engineering and architectural plans and specifications, land use and zoning materials for the Land and Improvements, if any, as may be in the possession of Seller or under its control, including without limitation, those plans listed on **Exhibit C** attached hereto.

"Property" means all of Seller's right, title and interest in, to and under the *following*:

- (i) the Land;
- (ii) the Improvements;

- (iii) the Personal Property;
- (iv) the Surviving Contracts;
- (v) the Plans;
- (vi) the Records; and
- (vii) the Reserve Fund.

"Proration Date" means the effective date of the prorations provided in Section 6, which is 11:59 p.m. on the date before the Closing Date.

"Purchase Price" means the purchase price for the Property described in Section 3.

"Records" means any books, records, bills, invoices and files within Seller's possession or control regarding the Land, Improvements and Personal Property, including all such records regarding management and leasing, credit reports, real estate taxes and assessments, insurance, maintenance, repairs, capital improvements, services, surveys, technical reports, structural reports, soil reports, engineering reports and environmental reports.

"Requirements" has the meaning set forth in Section 4.2.

"Reserve Fund" means Seller's interest, if any, in and to the Reserve Fund currently held at the Pine River State Bank as account number 203-445 which was established pursuant to Section 4.2 of the Management Agreement.

"Seller's Closing Documents" means the Seller's Closing Documents described in Section 5.1 hereof.

"Survey" means the survey of the Land and Improvements described in Section 4.2.

"Surviving Contracts" means those Contracts which Buyer elects in writing to assume, pursuant to Section 9 and which will be assigned to Buyer at the closing.

"Title Commitment" means the commitment to issue the Title Policy described in Section 7.

"Title Company" means _____.

"Title Evidence" means the Title Evidence described in Section 7.1.

"Title Objections" means Buyer's Title Objections described in Section 7.2.

"Title Policy" means an American Land Title Association (ALTA) Form B 1998 Owner's Title Insurance Policy (deleting the creditors' rights exception and arbitration clause) for the Land and Improvements issued by the Title Company in the full amount of the Purchase Price, subject only to the Permitted Title Exceptions, covering title to the Property and all appurtenant easements, showing Buyer as owner of the Land and Improvements, and providing for full extended coverage over all general title exceptions contained in such policies and the following special endorsements if required by Buyer: zoning (including parking), access, restrictions, utility, comprehensive, survey, tax parcel, contiguity, subdivision and location.

1.2 Exhibits. Attached hereto and forming an integral part of this Agreement are the following exhibits, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto:

- Exhibit A: Legal Description of Land
- Exhibit B: List of Personal Property
- Exhibit C: List of Plans
- Exhibit D: List of Contracts

2. Purchase and Sale of Property. Subject to and in accordance with the terms and provisions hereof, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property.

3. Purchase Price and Manner of Payment. The total purchase price ("Purchase Price") for the Property is \$3,400,000.00 payable in cash at Closing to Associated Bank.

4. Contingencies. Buyer's obligation under this Agreement are contingent upon Buyer's satisfaction with *each* of the following:

4.1 Physical Inspection. Although not an express contingency, subject to any rights or restrictions under any of the Permitted Title Exceptions, Buyer and its agents will have the right, from time to time prior to the Closing, to enter upon the Land and Improvements to examine the same and the condition thereof and to conduct such surveys and to make such engineering and other inspections, tests and studies as Buyer determines to be reasonably necessary, all at Buyer's sole cost and expense. Buyer shall restore the Land and Improvements to its condition prior to such examinations or survey. Notwithstanding the foregoing, Buyer will not be liable merely for the discovery of a pre-existing condition at the Land or Improvements.

4.2 Survey. Although not an express contingency, Buyer, at Buyer's expense, will obtain a current, ALTA/ACSM as-built survey of the Land and Improvements prepared by a registered land surveyor in form acceptable to Buyer (the "Survey"). The Survey will (a) be completed in accordance with the "Minimum Standard

Detail Requirements for ALTA/ACSM Land Title Surveys," as jointly established and adopted by ALTA and ACSM in 1999 (the "Requirements"), and certified to Buyer, Buyer's lender and the Title Company by such surveyor. The deed to be delivered by Seller to Buyer at the Closing will contain the legal description of the Land and Improvements as shown on the Survey and approved by Buyer and Title Company.

4.3 Financing. Buyer has obtained a commitment to finance the acquisition of the Property from a lender on terms satisfactory to Buyer in Buyer's sole determination and discretion.

4.4 FF&E Closing. Carlton and Buyer close on the purchase and sale of the furniture, fixture and equipment utilized with the Building pursuant to the terms and conditions of the Asset Purchase Agreement between Buyer and Carlton of even date herewith.

4.5 Court Approval. Issuance of an Order approving this Agreement by the Bankruptcy Court In re: Breezy Point LLC, Debtor, Bky. Case No. 03-45440, Chapter 11, and further authorizing the sale and transfer of the Property to Buyer, free and clear of all rights, title, interest, liens (other than real estate tax liens), claims or encumbrances of any third party in a sufficient manner to allow for the Title Company to issue the Title Policy.

5. Closing. Seller and Buyer will use their best efforts to schedule the Closing Date on or before thirty (30) days following issuance of the Court Order referenced in Section 4.5, each party recognizing that time is of the essence herein.

5.1 Seller's Closing Documents. On the Closing Date, Seller will execute and/or deliver to Buyer the following (collectively, "Seller's Closing Documents"), all in form and content reasonably satisfactory to Buyer:

5.1.1 Court Order. A certified copy of the Court Order referenced in Section 4.5.

5.1.2 Quit Claim Deed. A Quit Claim Deed conveying the Land and Improvements to Buyer pursuant to the Court Order referenced in Section 4.5.

5.1.3 Quit Claim Bill of Sale. A Quit Claim Bill of Sale conveying the Personal Property to Buyer pursuant to the Court Order referenced in Section 4.5.

5.1.4 Title Policy. A pro forma Title Policy, or a suitably marked up Title Commitment initialed by the Title Company to issue the Title Policy to Buyer, in the form required by this Agreement and as approved by Buyer, and in accordance with Section 6.1.

5.1.5 Resolution. A unanimous resolution of the managers of Seller authorizing and approving the sale of the Property to Buyer.

5.1.6 Non-Foreign Certificate. A non-foreign certificate, properly executed, containing such information as is required by Internal Revenue Code Section 1445(b)(2) and its regulations.

5.1.7 Abstract of Title. A current abstract of title if the Land is abstract.

5.1.8 Well Certificate. A statement on the Deed that Seller has no knowledge of any "wells" on the Land within the meaning of Minn. Stat. § 1031.005, subd. 21, or if there are "wells" on the Land, a Well Certificate in the form required by law.

5.1.9 Storage Tank Affidavit. If the Land contains or contained a storage tank, an affidavit with respect thereto, as required by Minn. Stat. § 116.48, subd. 6.

5.1.10 Other Documents. All other documents reasonably determined by Buyer to be necessary to transfer the Property to Buyer free and clear of all encumbrances (except those encumbrances assumed by Buyer).

5.2 Buyer's Closing Documents. On the Closing Date, Buyer will execute and/or deliver to Seller the following (collectively, "Buyer's Closing Documents") all in form and content reasonably satisfactory to Seller:

5.2.1 Purchase Price. The Purchase Price, by wire transfer of U.S. federal funds, or by certified check, to be received in Title Company's trust account for delivery to Associated Bank.

5.2.2 IRS Form. A Designation Agreement designating the Title Company as the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.

5.2.3 Title Documents. Such affidavits of purchaser, certificates of real estate value or other documents as may be reasonably required by Title Company in order to record the Deed and issue the Title Policy required by this Agreement.

6. Proration. Seller and Buyer agree to the following prorations and allocation of costs regarding this Agreement:

6.1 Title Insurance and Closing Fee. Buyer will pay all costs of the Title Commitment and all fees charged by the Title Company. Buyer will pay the premium for the Title Policy and any additional premiums required for the issuance of any mortgagee's title policy required by Buyer.

6.2 Deed Tax. Buyer will pay all state deed tax for recording the Deed to be delivered by Seller under this Agreement. Buyer will pay all mortgage registry tax for any mortgages placed on the Property by Buyer.

6.3 Recording Costs. Buyer will pay the cost of recording the Deed and all other documents.

6.4 Real Estate Taxes and Special Assessments. General real estate taxes and installments of special assessments payable therewith payable in 2004 and all years prior to Closing will be paid by Buyer.

6.5 Other Property Operating Expenses. Operating expenses for the Property (including payments under Surviving Contracts) will be prorated as of the Proration Date regardless of when invoices for the same are received. Seller and Buyer will pay all utility charges and other operating expenses attributable to the Property prior to the Proration Date pursuant to the terms and conditions of the Management Agreement; provided that Seller shall not be required to pay any unpaid amounts (i) for utility charges or operating expenses incurred prior to August 1, 2003, (ii) for real estate taxes or special assessments on the Land and Improvements, (iii) payable to Carlton, or (iv) identified in footnote 1 to this Agreement¹. Buyer will pay all utility charges and other operating expenses after the Proration Date. If operating expenses are not determined prior to the Proration Date, an escrow account will be established for the future payment of said expenses, or a proration will be made at Closing through an estimate based on the last available reading or estimate of other charges. Buyer will arrange with such services and companies to have accounts opened in Buyer's name beginning at 12:01 a.m. central time on the Proration Date. Further, Seller shall receive and retain fifty percent (50%) of the "Gross Revenues" as defined in the Management Agreement, which are earned but not deposited in Seller's cash collateral account with Associated Bank as of the Closing Date, for payment to Associated Bank.

6.6 Attorneys' Fees. Each of the parties will pay its own attorneys' fees.

7. Title Examination. Title Examination will be conducted as follows:

7.1 Title Evidence. Buyer will, as soon as possible after the Contract Date, furnish the following (collectively, "Title Evidence"):

7.1.1 Title Commitment. The Title Commitment accompanied by legible copies of all documents described in the Title Commitment.

7.1.2 Survey. The Survey described in Section 4.2.

7.1.3 UCC Search. A UCC, tax lien, judgment, bankruptcy, etc., report covering the records of the Minnesota Secretary of State and the county in

¹ Nothing in the Agreement shall require Seller to pay (a) the following expense items identified in that certain letter from Steve Nosek to John Rode dated April 6, 2004: (i) Carpenter & Lang, \$176.69, (ii) D. Weber, \$121.02, or (iii) Brian McGrane CPA, \$2,450.00; (b) any claims of David Weber, Robert Cline, Whitebirch, Inc. or any other insiders of the Seller, (c) any claims of any of the Seller's professionals (other than Steve Nosek) or any brokers retained by any party in connection with any sale of the Property, (d) or any amounts payable to Great River Energy or Crow Ring Power, other than amounts representing post-petition payment of utility charges through the Closing Date.

which the Land is located made by a search firm reasonably acceptable to Buyer.

7.2 Buyer's Title Objections. Within ten (10) days after receiving the last of the Title Evidence, Buyer will examine the title to the Land and Improvements and make written objections ("Title Objections") to the form or contents of the Title Evidence. If Buyer fails to give any notice to Seller by such date, Buyer will be deemed to have waived its right to object to any title exceptions or defects shown in the Title Evidence. If Buyer gives Seller timely notice of Title Objections, and if the Title Objections cannot be cured by the Court Order referenced in Section 4.5, Seller will use commercially reasonable efforts to cure or satisfy the Title Objections within a reasonable time, not to exceed sixty (60) days after Seller's receipt of the Title Objections, during which period the Closing will be postponed if necessary until five (5) days after Seller cures or satisfies the Title Objections. If the Title Objections are not cured by the Court Order referenced in Section 4.5 or are not cured by the Seller within the sixty (60) day period, Buyer will have the option to do any of the following:

7.2.1 Terminate this Agreement; or

7.2.2 Waive the Title Objections and proceed to Closing.

If Seller reasonably cures or satisfies, or undertakes to reasonably cure or satisfy, the Title Objections to the satisfaction of Buyer and Title Company, then this Agreement will continue in full force and effect. Buyer has the right at any time to waive any Title Objections that it may have made and, thereby preserve this Agreement in full force and effect. Seller will not voluntarily alter or encumber in any way Seller's title to the Property after the Contract Date (except to the extent provided in Section 8) without Buyer's written consent.

8. Operations Pending Closing. Seller will, at its expense, use reasonable efforts to maintain the Property until the Closing Date or until the termination of this Agreement, whichever is earlier, substantially in its present condition, except damage by fire or other insured casualty and condemnation. Seller will not enter into any agreement relating to the management or operation of the Property, which is not terminable upon thirty (30) days notice to the other party.

Through and including the Closing Date, Seller will, at Seller's sole cost and expense:

8.1 Keep all existing insurance policies affecting the Property in full force and effect;

8.2 Continue to provide all services currently provided by Seller with respect to the Property or any portion thereof, and continue to operate, manage and maintain (including repairs and replacements) the Property in substantially the same manner as Seller currently operates, manages and maintains (including repairs and replacements) the Property; and Seller will give Buyer written notice of any citation or other notice which Seller receives, subsequent to the Contract Date, from any governmental

authority concerning any alleged violation of any law, ordinance, code, rule, regulation or order regulating the Property or the use thereof. Seller will pay in full, prior to the Closing Date, all bills and invoices for labor, materials and services relating to the Property which are attributable to the period prior to the Closing Date, subject to Closing proration, and which Buyer is not otherwise responsible for paying pursuant to this Agreement.

9. Contracts. Except for costs to be paid by Seller pursuant to Section 6.5 of this Agreement, Buyer will pay any cure costs associated with any Surviving Contracts required to be paid pursuant to 11 U.S.C. § 365 in connection with any assumption of such Surviving Contracts by Seller and assignment of such Surviving Contracts to Buyer.

10. Buyer's Conditions to Closing. Buyer's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent:

10.1 Seller will have performed and satisfied each and all of Seller's obligations under this Agreement;

10.2 Seller will deliver title to Buyer in condition that enables the Title Company to deliver the Title Policy to Buyer.

10.3 Carlton will have closed on the purchase and sale to Buyer of Carlton's interest in the furniture, fixtures and equipment associated with the Building.

In the event any of the foregoing conditions are not satisfied on the Closing Date, Buyer will have no obligation to proceed to Closing and, unless Buyer delivers written notice to Seller that Buyer has waived any unsatisfied condition and will proceed to Closing, this Agreement, upon notice from Buyer to Seller, will cease and terminate.

11. Seller's Conditions to Closing. Seller's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent:

11.1 Buyer will have performed and satisfied each and all of Buyer's obligations under this Agreement;

11.2 Each and all of Buyer's representations and warranties set forth in this Agreement will be true and correct on the Contract Date and on the Closing Date;

In the event any of the foregoing conditions are not satisfied on the Closing Date, Seller will have no obligation to proceed to Closing and, unless Seller delivers written notice to Buyer that Seller has waived any unsatisfied condition and will proceed to Closing, this Agreement, upon notice from Seller to Buyer, will cease and terminate.

12. Damage. If, prior to the Closing, all or any part of the Property is substantially damaged by fire, casualty, the elements or any other cause, Seller will immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within thirty (30) days after Seller's notice), this Agreement will terminate, in which event

neither party will have any further obligations under this Agreement. If Buyer fails to elect to terminate this Agreement despite such damage, or if the Property is not substantially damaged, Seller will assign to Buyer all of Seller's rights to receive the proceeds of all insurance related to such damage, the Transaction will close, and the Purchase Price will remain the same. For purposes of this Section, the words "substantially damaged" mean damage that is reasonably estimated to cost \$50,000 or more to repair.

13. Condemnation. If, prior to the Closing, eminent domain proceedings are commenced against all or any material part of the Property, Seller will immediately give notice to Buyer of such fact, and at Buyer's option (to be exercised within thirty (30) days after Seller's notice), this Agreement will terminate, in which event neither party will have further obligations under this Agreement, and the Earnest Money will be refunded to Buyer. If Buyer fails to give such notice then there will be no reduction in the Purchase Price, and Seller will assign to Buyer at the Closing all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings. Prior to the Closing, Seller will not designate counsel, appear in, or otherwise take any action with respect to the condemnation proceedings without Buyer's prior written consent.

14. Brokers' Commission. Seller and Buyer represent and warrant to each other that they have dealt with no brokers, finders or the like in connection with this transaction.

15. Assignment. Buyer will have the right to assign or transfer all or any part of its right in this Agreement. Upon such assignment, the assignee will have and be subject to all of the rights, benefits, duties and obligations of Buyer hereunder, and Buyer will be released from any liability or obligation of Buyer hereunder.

16. Survival The warranties and representations contained herein will survive and be enforceable after the Closing as provided in Section 11. All of the other terms of this Agreement will survive the Closing.

17. Notices. Any notice required or permitted hereunder will be given if delivered by personal delivery upon an authorized representation of a party hereto; or if mailed by United States registered or certified mail, return receipt requested, postage prepaid; or if transmitted by facsimile copy followed by mailed notice; or if deposited cost paid with a nationally recognized overnight courier, properly addressed as follows:

If to Seller: Breezy Point LLC
830 North St. Mary's Street
San Antonio, Texas 78205
Attn: Robert Cline

With a copy to: Steven B. Nosek
Suite 300
701 Fourth Avenue South

Minneapolis, Minnesota 55415
Fax Number: 612-333-9220

If to Buyer: Whitebirch, Inc.
9252 Breezy Point Drive
Breezy Point, Minnesota 56472
Attn: Robert B. Spizzo
Fax Number: 218-562-4510

With a copy to: John E. Rode
Thomsen & Nybeck, P.A.
3300 Edinborough Way, Suite 600
Edina, Minnesota 55435-5962
Fax Number: 952-835-9450

Notices will be deemed effective on the earlier of the date or receipt or the date of deposit, as aforesaid; provided, however, that if notice is given by deposit, the time for response to any notice by the other party will start running one (1) business *day after any such* deposit. Any party may change its address for the service of notice by giving notice of such change ten (10) days prior to the effective date of such change.

18. Miscellaneous.

18.1 Captions. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

18.2 Entire Agreement; Modification. This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are not verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.

18.3 Controlling Law. This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.

18.4 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof constitutes a waiver of either party's right to demand exact compliance with the terms hereof.

18.5 Binding Effect. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

18.6 Amendments. No amendments to this Agreement will be binding on either of the parties hereto unless such amendment is in writing and is executed by the party against whom enforcement of such amendment is sought.

18.7 Date for Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal holiday, then such time period will be automatically extended through the close of business on the next regularly scheduled business day.

18.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which, when taken together, constitute the same instrument.

18.9 Time of the Essence. Time is of the essence of this Agreement and each and every term and condition thereof.

18.10 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations, and is intended, and will for all purposes be deemed to be, a single, integrated document setting forth all of the agreements and understandings of the parties hereto, and superseding all prior negotiations, understandings and agreements of such parties. If any term or provision of this Agreement or the application thereof to any person or circumstance is, for any reason and to any extent, held to be invalid or unenforceable, then such term or provision will be ignored, and to the maximum extent possible, this Agreement will continue in full force and effect, but without giving effect to such term or provision.

19. Default and Remedies.

19.1 Buyer's Default. If Buyer defaults under this Agreement, Seller will have the right to terminate this Agreement, after written notice of cancellation as provided under Minn. Stat. § 559.21. The termination of this Agreement will be the sole and exclusive remedy available to Seller for default by Buyer, and Buyer will not be liable for damages or specific performance.

19.2 Seller's Default. If Seller defaults under this Agreement, Buyer will have the right to terminate this Agreement by giving written notice of termination to Seller, whereupon this Agreement will terminate. The termination of this Agreement will be the sole and exclusive remedy available to Buyer for default by Seller, and Seller will not be liable for damages or specific performance.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first above written.

SELLER:

BREEZY POINT LLC

By Robert F. Cloud
Its Treasurer

BUYER:

WHITEBIRCH, INC.

By _____
Its _____

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6/27/2004 10:02 AM

Exhibits

- Exhibit A - Legal Description of Land
- Exhibit B - List of Personal Property
- Exhibit C - List of Plans
- Exhibit D - List of Contracts

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first above written.

SELLER:

BREEZY POINT LLC

By _____
Its _____

BUYER:

WHITEBIRCH, INC.

By Robert B. Spitzer
Its pres.

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5/20/2004 4:38 PM

Exhibits

- Exhibit A - Legal Description of Land
- Exhibit B - List of Personal Property
- Exhibit C - List of Plans
- Exhibit D - List of Contracts

**EXHIBIT A
TO
PURCHASE AGREEMENT
DATED MAY 21, 2004**

Legal Description of Land

Apartments 300 through 401, of GOLF VIEW TERRACE, located on Lot One (1) of Nineteenth Addition to Breezy Point Estates, according to the plat thereof on file in the office of the Registrar of Titles in and for said county; AND

An undivided .98% interest for each apartment in Lot One (1) of Nineteenth Addition to Breezy Point Estates, according to the plat thereof on file in the office of the Registrar of Titles in and for Crow Wing County, State of Minnesota; and said property being dedicated pursuant to Minnesota Statutes, Chapter 515 known as the "Apartment Ownership Act" and laws amendatory thereof and supplemental thereto, including as part of said Lot One (1) an undivided .98% interest for each Apartment, in the Common Areas and facilities as defined by Minnesota Statutes Section 515.02, Subdivision F, Paragraphs 1 through 8, inclusive, of any structure or building situated on said Lot One (1), which structure or building is and shall be a fixture to said Lot One (1); and including as incidental to the estate granted herein the rights now or hereafter given by laws to a tenant in common;

Except all minerals and mineral rights; AND ALSO

That part of GOVERNMENT LOT 5, SECTION SIXTEEN (16), TOWNSHIP ONE HUNDRED THIRTY-SIX (136), NORTH, RANGE TWENTY-EIGHT (28) WEST described as follows:

Commencing at the Northwest corner of Lot 25, Third Addition to Breezy Point Estates, said point being on the Southerly line of Breezy Point Drive; thence North 87 degrees 48 minutes West, 103.08 feet along said Breezy Point Drive; thence North 79 degrees 26 minutes West, 109.39 feet continuing along said Breezy Point Drive; thence North 71 degrees 32 minutes West 51.31 feet continuing along said Breezy Point Drive to the place of beginning; thence South 18 degrees 42 minutes West, 81.77 feet; thence North 61 degrees 12 minutes West, 65.72 feet; thence North 18 degrees 28 minutes East 69.99 feet to the Southerly line of Breezy Point Drive; thence South 71 degrees 32 minutes East, 65 feet to the place of beginning; AND ALSO

That part of GOVERNMENT LOT 5, SECTION SIXTEEN (16), TOWNSHIP ONE HUNDRED THIRTY-SIX (136), NORTH, RANGE TWENTY-EIGHT (28) WEST, described as follows:

Commencing at the Northwest corner of Lot 25 of Third Addition to Breezy Point Estates, said point being on the Southerly line of Breezy Point Drive of said Third Addition to Breezy Point Estates; thence North 87 degrees 48 minutes West, 103.08 feet along said Breezy Point Drive; thence North 79 degrees 26 minutes West, 95.7 feet continuing along said Breezy Point Drive to the place of beginning; thence South 18 degrees 52 minutes West, 112.12 feet; thence North 43 degrees 12 minutes West, 53.25 feet; thence North 61 degrees 12 minutes West, 17.81 feet; thence North 18 degrees 42 minutes East 81.77 feet to the Southerly line of Breezy Point Drive; thence South 71 degrees 32 minutes East, 51.31 feet along said Breezy Point Drive; thence South 79 degrees 26 minutes East, 13.69 feet continuing along said Breezy Point Drive to the place of beginning; AND ALSO

That part of GOVERNMENT LOT FIVE (5), SECTION SIXTEEN (16), TOWNSHIP ONE HUNDRED THIRTY-SIX (136), RANGE TWENTY-EIGHT (28), described as follows:

Commencing at the Northwest corner of Lot 25 of Third Addition to Breezy Point Estates, said point being on the southerly line of Breezy Point Drive; thence North 87 degrees 48 minutes West, 103.08 feet along said Breezy Point Drive; thence North 79 degrees 26 minutes West, 109.39 feet continuing along said Breezy Point Drive; thence North 71 degrees 32 minutes West, 116.31 feet continuing along said Breezy Point Drive to the place of beginning of the tract to be described; thence South 18 degrees 28 minutes West, 69.99 feet; thence North 61 degrees 12 minutes East, 66.08 feet; thence North 18 degrees 28 minutes East, 60.75 feet to the Southerly line of Breezy Point Drive; thence South 65 degrees 02 minutes East, 23.15 feet along said Breezy Point Drive; thence South 71 degrees 32 minutes West, 42 feet continuing along said Breezy Point Drive to the place of beginning; AND ALSO

That part of GOVERNMENT LOT FIVE (5), SECTION SIXTEEN (16), TOWNSHIP ONE HUNDRED THIRTY-SIX (136), RANGE TWENTY-EIGHT (28) WEST, described as follows:

Commencing at the Northwest corner of Lot 25 of Third Addition to Breezy Point Estates, said point being on the Southerly line of Breezy Point Drive; thence North 87 degrees 48 minutes West, 103.08 feet along said Breezy Point Drive; thence North 79 degrees 26 minutes West 30.7 feet continuing along said Breezy Point Drive to the place of beginning; thence South 18 degrees 51 minutes West, 150 feet; thence North 74 degrees 44 minutes West, 9.55 feet; thence North 43 degrees 12 minutes West, 62.11 feet; thence North 18 degrees 52 minutes East, 112.12 feet to the Southerly line of Breezy Point Drive; thence South 79 degrees 26 minutes East, 65 feet to the place of beginning;

AND ALSO

That part of Government Lot Five (5), Section Sixteen (16), Township One hundred thirty-six (136) North, Range Twenty-eight (28) West, described as follows:

Commencing at the Southwest corner of Lot 1 of Nineteenth Addition to Breezy Point Estates; thence South, 80 degrees 14 minutes East, 136.84 feet along the South line of said Lot 1 to the place of beginning; thence North 09 degrees 30 minutes 30 seconds East, 181.22 feet along the Easterly line of said Lot 1; thence North 77 degrees 23 minutes 30 seconds East, 91.70 feet along the Southerly line of said Lot 1; thence South 51 degrees 14 minutes 30 seconds East, 94.90 feet along the Southerly line of said Lot 1; thence South 54 degrees 14 minutes West, 188.39 feet; thence South 35 degrees 14 minutes East, 75.0 feet to the shore of Breezy Channel; thence South 78 degrees 04 minutes West, 54.44 feet along said Channel; thence North 35 degrees 14 minutes West, 53.0 feet to the place of beginning;

AND ALSO THAT PART OF Government Lot Five (5), Section Sixteen (16), Township One hundred Thirty-six (136) North, Range Twenty-eight (28) West, described as follows: Commencing at the point on the North line of said Lot 5 where said North line intersects the shore of Pelican Lake; thence North 89 degrees 51 minutes West, 254 feet, more or less, along said North line to the Northwest corner of said Lot 5; thence South 0 degrees 03 minutes East 315.53 feet along the West line of said Lot 5 to the south line of Breezy Point Drive of Third Addition to Breezy Point Estates, thence South 60 degrees 17 minutes East along said South line of said Breezy Point Drive, 118.81 feet to the Westerly boundary of Lot 1 of Nineteenth Addition to Breezy Point Estates; thence South 38 degrees 45 minutes 30 seconds West, 64.09 feet continuing along said Westerly boundary of said Lot 1; thence South 9 degrees 31 minutes West 58.47 feet to the point of beginning; thence continuing South 9 degrees 31 minutes West, 320.5 feet continuing along said Westerly boundary of Lot 1 to the point where said Westerly boundary intersects the west line of said Govt. Lot 5; thence North 0 degrees 03 minutes West 186.08 feet along said West line of Lot 5; thence North 13 degrees 00 minutes East 35.91 feet; thence North 6 degrees 23 minutes East, 100 feet; thence South 83 degrees 37 minutes East 30.56 feet to the point of beginning;

AND ALSO THAT PART OF Government Lot Five (5), Section Sixteen (16), Township One hundred thirty-six (136) North, Range Twenty-eight (28) West, described as follows: Commencing at the Southwesterly corner of Lot 4A of Third Addition to Breezy Point Estates; thence South 14 degrees 30 minutes West 158.76 feet; thence South 71 degrees 48 minutes East, 89.77 feet to the place of beginning; thence South 71 degrees 48 minutes East, 54.35 feet; thence South 9 degrees 31 minutes West, 58.47 feet; thence North 83 degrees 37 minutes West, 50 feet; thence North 6 degrees 23 minutes East, 69.52 feet to the place of beginning; AND ALSO

That part of Government Lot Five (5), Section Sixteen (16), Township One Hundred Thirty-six (136) North, Range Twenty-eight (28) West, described as follows: Commencing at the Southwest corner of Government Lot 5; thence North 0 degrees 03 minutes West 21.79 feet along the Westerly line of said Govt. Lot 5 to the North boundary of Twenty-second Addition to Breezy Point Estates, the point of beginning; thence North 0 degrees 03 minutes West 120.36 feet, more or less, continuing along the west line of said Govt. Lot 5 to the Northerly boundary of the Channel; thence North 39 degrees 11 minutes East, 15.47 feet along said Northerly boundary of the Channel; thence North 26 degrees 00 minutes East, 284.09 feet continuing along said Northerly boundary of the Channel; thence North 71 degrees 36 minutes West, 142.58 feet to the West line of said Govt. Lot 5; thence North 0 degrees 03 minutes West, 40.60 feet along the West boundary of said Govt. Lot 5 to the Southerly boundary of Lot 1 of Nineteenth Addition to Breezy Point Estates, thence South 80 degrees 14 minutes East, 136.84 feet along said boundary of said Lot 1; thence South 35 degrees 14 minutes East, 53.0 feet to the Northerly boundary of the Channel; thence North 78 degrees 04 minutes East, 54.44 feet along the northerly boundary of the Channel; thence North 35 degrees 14 minutes West, 75.0 feet; thence North 54 degrees 14 minutes East, 188.39 feet to the Southerly boundary of Lot 1 of Nineteenth Addition to Breezy Point Estates, thence North 38 degrees 45 minutes 30 seconds East 23.12 feet to the Southerly line of Channel Boulevard of Twenty-first Addition to Breezy Point Estates, thence South 61 degrees 33 minutes East 46.2 feet to the Northwesterly corner of Lot 1 of Twenty-first Addition; thence South 28 degrees 27 minutes West 214.0 feet along the Westerly line of said Lot 1 to the Southwesterly corner thereof; thence South 47 degrees 01 minutes East, 426.8 feet along the Southerly boundary of said Twenty-first Addition; thence South 71 degrees 21 minutes East, 185.0 feet continuing along said Southerly boundary; thence South 71 degrees 44 minutes East, 231.9 feet continuing along said Southerly boundary; thence South 64 degrees 28 minutes East, 32.38 feet continuing along said Southerly boundary to the Southerly line of Govt. Lot 5; thence North 89 degrees 39 minutes West, 162.46 feet along said Southerly line of Govt. 5 to the Northerly boundary of Twenty-second Addition to Breezy Point Estates, thence North 74 degrees 00 minutes West, 295.94 feet along the Northerly boundary of Twenty-second Addition; thence South 83 degrees 42 minutes West, 304.5 feet continuing along said Northerly boundary; thence South 88 degrees 08 minutes West, 214.8 feet continuing along said Northerly boundary; thence South 70 degrees 06 minutes West, 41.92 feet continuing along said Northerly boundary to the West line of Govt. Lot 5, the place of beginning; EXCEPT THAT PARCEL DESCRIBED AS FOLLOWS:

TRACT B: That part of Government Lot Five (5), Section Sixteen (16), Township One hundred Thirty-six (136), North, Range Twenty-eight (28) West, described as follows: Commencing at the southeasterly corner of Lot 4A of Third Addition to Breezy Point Estates; thence North 67 degrees 57 minutes West along the southerly line of said Lot 4A a distance of 36.70 feet to the Southwesterly corner thereof; thence South 14 degrees 30 minutes West 222.20 feet; thence South 09 degrees 28 minutes West 125.27 feet; thence South 08 degrees 51 minutes West 129.89 feet; thence South 13 degrees 40 minutes West 50.0 feet; thence South 29 degrees 41 minutes East 68.07 feet; thence South 82 degrees 25 minutes East 83.75 feet; thence South 69 degrees 01 minutes 49 seconds East 27.66 feet; more or less, to the west line of Government Lot 5 to the place of beginning of the tract herein described; thence South 69 degrees 01 minutes 49 seconds East 184.87 feet, more or less, to the northerly boundary and waters edge of Breezy Channel; thence southwesterly along said northerly boundary of the Breezy Channel to its intersection with the Southwesterly line of tract conveyed to Alderman as evidenced by Certificate of Title Number 36949 on file in the Crow Wing County Recorder's Office; thence northwesterly along said southwesterly line of Alderman tract 157.0 feet, more or less, to the southwesterly corner of said Alderman tract and the west line of said Government Lot 5; thence northerly along said West line 36.50 feet, more or less, to the place of beginning of the tract herein described;

Except all minerals and mineral rights.

**EXHIBIT B
TO
PURCHASE AGREEMENT
DATED MAY 21, 2004**

List of Personal Property

All Personal Property located on the Premises and owned by Seller

**EXHIBIT C
TO
PURCHASE AGREEMENT
DATED MAY 21, 2004**

List of Plans

All Plans, Specifications and Drawings prepared by Bruce Knutson in 1998

**EXHIBIT D
TO
PURCHASE AGREEMENT
DATED MAY 21, 2004**

List of Contracts

- 1. Property and Liability Insurance Contract**
- 2. Life Insurance Contract**
- 3. Elevator Maintenance Agreement**
- 4. Hotel Management Agreement; and**
- 5. Furniture and Equipment Lease**

**AMENDMENT NO. 1 TO
PURCHASE AGREEMENT**

THIS AMENDMENT NO. 1 TO PURCHASE AGREEMENT is made and entered into this ___ day of July, 2004, between Breezy Point LLC, a Minnesota limited liability company ("Seller"), and Whitebirch, Inc., a Minnesota corporation ("Buyer").

WITNESSETH THAT:

WHEREAS, Seller and Buyer are parties to a certain Purchase Agreement ("Agreement") dated May 21, 2004 for the sale and purchase of the Property defined therein;

WHEREAS, the parties desire to continue with the sale and purchase of the Property but the procedures to consummate the transaction have changed due to the Order of the Bankruptcy Court denying Seller's Motion to Sell pursuant to § 363 of the Bankruptcy Code; and

WHEREAS, the parties desire to amend the Agreement pursuant to this Amendment No. 1 to set forth the terms and conditions upon which the Property will be sold and transferred by Seller to Buyer.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and contained in the Agreement, the parties agree as follows:

1. All capitalized terms used in this Amendment No. 1 and not otherwise defined herein shall have the meanings set forth in the Agreement.

2. The Agreement is hereby amended by substituting Section 4.5 to read as follows:

4.5 Court Approval. Issuance of an Order Confirming Liquidating Plan of Reorganization by the Bankruptcy Court In re: Breezy Point LLC, Debtor, Bky. Case No. 03-45440, Chapter 11, and further authorizing the sale and transfer of the Property to Buyer, free and clear of all rights, title, interest, liens (other than real estate tax liens), claims or encumbrances of any third party (other than Robert Bruns, Linda Hallman, Jean Osmund, and Jonathon J. Schluck) in a sufficient manner to allow for the Title Company to issue the Title Policy.

3. Except as herein amended, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment No. 1 as of the date first above written.

SELLER:

BREEZY POINT LLC

By Robert J. Lewis
Its Treasurer

BUYER:

WHITEBIRCH, INC.

By _____
Its _____

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment No. 1 as of the date first above written.

SELLER:

BREEZY POINT LLC

By _____
Its _____

BUYER:

WHITEBIRCH, INC.

By Robert B. Jairo
Its pres.

EXHIBIT 2

BID PROCEDURES

These Bid Procedures set forth the process by which Breezy Point, LLC (“Breezy Point”) is authorized to accept and review competing bids for the Conveyed Property and conduct an auction, if necessary. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Plan. Any party desiring to obtain a copy of the Whitebirch Purchase Agreement may do so by contacting Breezy Point’s counsel at:

Steven B. Nosek
Attorney at Law
701 4th Avenue South
Suite 300
Minneapolis, MN 55415
612-335-9171

1. Determination of “Qualifying Bidder” Status.

In order to participate in the bidding process, each bidder must be deemed a “Qualifying Bidder”. To be deemed a Qualifying Bidder, each bidder, other than Whitebirch, must deliver:

- (a) to Breezy Point a confidentiality agreement in form and substance satisfactory to Breezy Point, and
- (b) written evidence satisfactory to Breezy Point, in consultation with Associated Bank, demonstrating that such party has cash reserves, irrevocable commitments by lenders or other similar sources to provide the cash required to consummate the proposed purchase of the Conveyed Property (such information should include, among other things, evidence, including contact numbers for verification of financing sources, that the bidder either has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the transaction and give the assurances described above). Upon Breezy Point’s determination that a party is a Qualifying Bidder, Breezy Point shall provide such Qualifying Bidder with access to all relevant business and financial information necessary to enable such Qualifying Bidder to evaluate its assets, for the sole purpose of submitting an offer to acquire same. Whitebirch is deemed a Qualifying Bidder for all purposes.

2. Requirements of a “Qualifying Bid”.

To be deemed a “Qualifying Bid” to be considered at the Auction (as defined below), a bid must conform to the following requirements:

- (a) It must be submitted to:

- (i) Breezy Point's counsel:

Steven B. Nosek
Attorney at Law
701 4th Avenue South
Suite 300
Minneapolis, MN 55415
612-335-9171

- (ii) counsel for Associated Bank:

Stephen Mertz
Faegre & Benson LLP
2200 Wells Fargo Center
90 S. 7th St.
Minneapolis, MN 55402-3901
(612) 766-7223

so as to be received by such parties not later than 5:00 p.m. CDT on September 3, 2004 (the "Bid Deadline");

- (b) It must be filed with the Bankruptcy Court by no later than the Bid Deadline;
- (c) It must be submitted by a Qualifying Bidder;
- (d) It must include an executed, legally binding, asset purchase agreement ("Bidder's APA") in substantially the same form as the Whitebirch Purchase Agreement, together with an electronic version thereof marked to show any changes from the Whitebirch Purchase Agreement;
- (e) It must not contain any financing contingencies;
- (f) It must confirm bidder's completion of all due diligence required by bidder in connection with the proposed transaction and contain no additions to the conditions to closing contained in the Whitebirch Purchase Agreement;
- (g) It must state a projected closing date no later than twenty (20) days after the Confirmation Order becomes a Final Order;
- (h) It must provide for a deposit at least equal to 10% of the Qualifying Bid (the "Deposit"). The Deposit must be submitted at the same time as the Qualifying Bid and must be in the form of a wire transfer or a cashier's check from a major U.S. bank, or other good funds deemed acceptable by Breezy Point in its reasonable judgment. The Deposit shall be held in escrow by an escrow agent

selected by Breezy Point in its sole discretion with interest to accrue to the benefit of the Qualifying Bidder. Unless a Qualifying Bid is ultimately approved as the Prevailing Bid, the Deposit, plus any interest accrued thereon, shall be returned to the Qualifying Bidder concurrently with the return of the Bidder's APA. In the event that a Qualifying Bid becomes the Prevailing Bid, the Deposit shall be applied as provided in the Bidder's APA; and

- (i) It must be determined by Breezy Point, in its business judgment, after consultation with Associated Bank, to be the highest and best offer for the Conveyed Property and to likely result in a value to Breezy Point that is more than the aggregate of the sum of:

- (i) the value of the Whitebirch Purchase Agreement, plus
- (ii) \$50,000.00.

The foregoing determination by Breezy Point shall take into account, among other things the amount and nature of the proposed consideration; the proposed assumption of any liabilities; the ability of the Qualifying Bidder to close the proposed transaction; the proposed closing date; the likelihood, extent and impact of any potential delays in closing; any purchase price adjustments; the net economic effect of any changes from the Whitebirch Purchase Agreement, if any, contemplated by the Bidder's APA; and the net benefit to Breezy Points' estate.

3. Procedures Regarding Bids.

- a) By submitting a Qualifying Bid, each Qualifying Bidder agrees that its Qualifying Bid shall remain open and binding until Breezy Point becomes obligated to return a Bidder's APA to such Qualifying Bidder pursuant to the provisions described herein.
- b) In the event that Breezy Point determines that a Qualifying Bidder's bid DOES NOT constitute a Qualifying Bid, Breezy Point shall promptly return the Qualifying Bidder's APA and the related Deposit plus accrued interest thereon to such Qualifying Bidder.
- c) In the event that Breezy Point determines that the bid DOES constitute a Qualifying Bid, but such Qualifying Bid does not become the Prevailing Bid (as defined below) or the Backup Bid (as defined below), Breezy Point shall return the Qualifying Bidder's APA and related Deposit plus accrued interest thereon to such Qualifying Bidder within five (5) days following conclusion of the Auction.
- d) In the event that a Qualifying Bidder's bid is deemed a Qualifying Bid, and such Qualifying Bid becomes the Backup Bid at the Auction (as defined below) but does not become the Prevailing Bid prior to the close of the sale, Breezy Point

shall return the Qualifying Bidder's APA and the related Deposit and accrued interest thereon to such Qualifying Bidder promptly after the close of the sale.

- e) In the event that a Qualifying Bidder's bid is deemed a Qualifying Bid, and such Qualifying Bid is approved by the Bankruptcy Court at the Confirmation Hearing, or is thereafter designated by Breezy Point as the Prevailing Bid, Breezy Point shall execute the Bidder's APA submitted by such Qualifying Bidder promptly following such approval or designation, and the provisions of such Bidder's APA shall thereupon become binding on both Breezy Point and on the Qualifying Bidder, as the Prevailing Bidder (as defined below).

4. No Qualifying Bids.

If no bids determined by Breezy Point to be Qualifying Bids, other than that of the Whitebirch, are submitted by the Bid Deadline, Breezy Point shall request at the Confirmation Hearing that the Bankruptcy Court approve the sale to Whitebirch pursuant to the terms of the Plan and the Whitebirch Purchase Agreement. The Whitebirch Purchase Agreement shall constitute a Qualified Bid for all purposes.

5. Auction.

In the event that at, or prior to the Bid Deadline, Breezy Point receives one or more Qualifying Bids, other than the bid from Whitebirch, Breezy Point shall conduct an Auction with respect to the Conveyed Property (the "Auction"). The Auction shall take place starting on Friday, September 10, 2004 at 1:00 p.m. at Steven B. Nosek's office, 701 4th Avenue South, Suite 300, Minneapolis, MN 55415, or at such other place, date and time as may be designated in writing by Breezy Point in a notice to be given to all Qualified Bidders not later than 2 business days prior thereto. The Auction shall be governed by the following procedures:

- a) Each Qualifying Bidder shall appear at the Auction either in person, or through a representative who presents at, or prior to, the Auction documentation of authorization, acceptable to Breezy Point and its counsel in their reasonable judgment, of such representative to participate in the Auction on behalf of such Qualifying Bidder, and to execute all documents related thereto;
- b) Only Whitebirch and other Qualifying Bidders who have timely submitted Qualifying Bids shall be entitled to make bids at the Auction;
- c) Bidding shall commence with the highest Qualifying Bid ("Initial Bid"), as determined by Breezy Point, in its business judgment, after consultation with its advisors and Associated Bank. The foregoing determination by the Sellers shall take into account, among other things: the amount and nature of the consideration; the proposed assumption of any liabilities; the ability of the Qualifying Bidder to close the proposed transaction; the proposed closing date; the likelihood, extent and impact of any potential delays in closing; any purchase price adjustments; the net economic effect of any changes

from the Whitebirch Purchase Agreement, if any, contemplated by the Bidder's APA, and the net benefit to the Breezy Point estate;

d) Qualifying Bidders may then submit successive bids in increments at least \$50,000 greater than the Initial Bid, and then continue in minimum increments of at least \$50,000 higher than the previous bid;

e) Breezy Point reserves the exclusive right, in its business judgment, to make one or more adjournments in the Auction to, among other things: facilitate discussions between Breezy Point, Associated bank and individual bidders and allow individual bidders to consider how they wish to proceed;

f) The Auction shall continue until there is only one Qualifying Bid that Breezy Point determines in its business judgment, after consultation with its advisors and Associated bank, is the highest and best Qualifying Bid (the "Prevailing Bid");

g) The Qualifying Bidder submitting such Prevailing Bid shall become the prevailing bidder (the "Prevailing Bidder"), and shall have the rights and obligations of the Purchaser, as set forth in the Plan and in the Bidder's APA of such Prevailing Bidder;

h) Prior to the conclusion of the Auction, Breezy Point may require the Prevailing Bidder and the Backup Bidder (as defined below) to execute a modification, amendment or other such document in respect of their respective Bidder's APA to reflect the terms of the Prevailing Bid or the Backup Bid, as appropriate. In any event, prior to the Confirmation Hearing, the Prevailing Bidder shall complete and execute any and all additional agreements, contracts, instruments or other documents, evidencing and containing the terms and conditions upon which the Prevailing Bid was made, and which are necessary to consummate the proposed transaction.

i) The results at the conclusion of the Auction shall be final and no additional bid, other than potentially the Backup Bid, will be accepted after the conclusion of the Auction;

j) Breezy Point or its professionals may announce at the Auction additional procedural rules that are reasonable under the circumstances(e.g. the amount of time to make subsequent overbids) for conducting the Auction so long as such rules are not inconsistent with these Bid Procedures; and

k) All bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction and the sale of the Conveyed Property.

6. Sale Subject to Confirmation Hearing.

The Prevailing Bid (or the Whitebirch Purchase Agreement if no other Qualifying Bid is received) will be subject to approval by the Bankruptcy Court at the Confirmation Hearing.

7. Failure to Consummate Purchase; Backup Bids.

If the Bankruptcy Court fails to approve the terms of the Prevailing Bid at the Sale Hearing, or if the Prevailing Bidder fails to consummate the approved transaction pursuant to the terms of the Prevailing Bid for any reason, other than a default by Breezy Point, the next highest or otherwise best Qualifying Bid (the “Backup Bid”), as determined by Breezy Point in the exercise of its business judgment in consultation with its advisors and secured creditors, shall become the new Prevailing Bidder and, in the event that the Bankruptcy Court failed to approve the terms of the sale to the original Prevailing Bidder, the Sellers will seek Bankruptcy Court approval of the sale of the Conveyed Property to the Backup Bidder and consummate the transaction contemplated by the Backup Bidder’s final bid.