

**FILED & ENTERED**

**JUN 25 2013**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY egarcia DEPUTY CLERK

**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:	)	Case No. 6:09-bk-10348-PC
	)	
ALAMEDA INVESTMENTS, LLC,	)	Chapter 11
	)	
	)	<b>MEMORANDUM DECISION</b>
	)	
	)	Date: June 12, 2013
	)	Time: 9:30 a.m.
	)	Place: United States Bankruptcy Court
	)	Courtroom # 1468
Debtor.	)	255 East Temple Street
	)	Los Angeles, CA 90012

Before the court is the Motion by Alameda Liquidating Trust for Order Determining that Membership Interest in West Lakeside LLC was Unaffected by Plan ("Motion"), together with the written opposition of Phoenix, LLC ("Phoenix") and AKT Investments, Inc. ("AKT"). Having considered the Motion and opposition thereto, the evidentiary record, and arguments of

counsel, the court makes the following findings of fact and conclusions of law pursuant to F.R.Civ.P. 52(a),<sup>1</sup> as incorporated into FRBP 7052 and applied to contested matters by FRBP 9014(c).

#### I. STATEMENT OF FACTS

On January 9, 2009, Alameda Investments, Inc. (“Alameda”) filed a voluntary petition under chapter 11 of the Bankruptcy Code in the above referenced case. Alameda’s case was jointly administered with the bankruptcy case of Woodside Group, LLC and its affiliated entities (collectively, “Woodside”). On November 24, 2009, Woodside filed its Second Amended Joint Plan of Reorganization of Woodside Group, LLC and Affiliated Debtors, as Modified on November 24, 2009 (the “Plan”). Woodside’s Plan was confirmed by order entered on November 24, 2009 (the “Confirmation Order”) and became effective at the close of business on December 31, 2009 (the “Effective Date”).

On the Effective Date, the Alameda Liquidating Trust was “established for the primary purpose of liquidating and distributing Alameda’s assets” pursuant to the Plan and terms of the trust;<sup>2</sup> and except as specifically set forth in the Plan, all of Alameda’s right, title and interest in and to Alameda’s assets was “irrevocably transferred, absolutely assigned, conveyed, set over and delivered to the Alameda Liquidating Trust” for the benefit of the Alameda Trust Beneficiaries.<sup>3</sup>

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<sup>1</sup> Unless otherwise indicated, all “Code,” “chapter” and “section” references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 after its amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). “Rule” references are to the Federal Rules of Bankruptcy Procedure (“FRBP”), which make applicable certain Federal Rules of Civil Procedure (“F.R.Civ.P.”). “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (“LBR”).

<sup>2</sup> Request for Judicial Notice in Support of Motion by Alameda Liquidating Trust for Order Determining that Membership Interest in West Lakeside LLC was Unaffected by Plan (“Trust RJN”), Ex. A, 77:3-4

<sup>3</sup> Id. Ex. A, 79:16-25; Ex. D, 249.

On or about May 7, 2003, Alameda, Phoenix and AKT executed a document entitled “Operating Agreement West Lakeside, LLC, a California Limited Liability Company” for the development of a 133-acre tract of land in Sacramento County, California.<sup>4</sup> In 2004, Alameda, Phoenix and AKT executed an Amended and Restated Operating Agreement West Lakeside, LLC, a California Limited Liability Company (the “Operating Agreement”).<sup>5</sup> Paragraph 16.1 of the Operating Agreement for West Lakeside, LLC (“West Lakeside”) entitled “Prohibition Against Transfer” states, in part:

**16.1.1. Basic Prohibitions.** Alameda has entered into this Agreement because of the trust and confidence it places in Angelo K. Tsakopoulos, the sole owner of AKT, and AKT and Phoenix have entered into this Agreement because of the trust and confidence they place in Alameda and its affiliates (collectively, the “**Alameda Group**”). The Alameda Group includes Alameda, Woodside Group, Inc., a Nevada corporation, Danville Land Investments, LLC, a Nevada limited liability company, Pleasant Valley Investments, LC, Woodside Homes, and other related entities. In light of the parties’ reliance on the continuing interests of the other Members, except as provided in this Section 16.1 and in Article XV, none of the following sales, transfers, assignments or hypothecations (individually and jointly, a “**Transfer**”) shall be permitted without the prior written approval of a Majority of the Members, and any such attempted Transfer shall be void and ineffectual: (i) a Transfer, directly or indirectly, for consideration or gratuitously, by a Member or its successors or assigns, of all or any portion of its Member Interest or Economic Interest; (ii) a Transfer of any of beneficial interest of a Member to any other individual or entity other than its constituent owners as of the date of execution of this Agreement; or (iii) a Transfer which results in a change in the “**Principal Owner**” of the Member or Member Group, as applicable. Each Member shall inform the other as of the execution of the Agreement of its constituent owners.<sup>6</sup>

The parties essentially concede that at the time of confirmation of Woodside’s Plan, Alameda and Phoenix each owned a 50% membership interest in West Lakeside and AKT was the Managing Member of West Lakeside under the Operating Agreement.<sup>7</sup>

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<sup>4</sup> Motion (Scheffy Decl.) Ex. 1, 22.

<sup>5</sup> Id. Ex. 2, 80.

<sup>6</sup> Id. Ex. 2, 108.

<sup>7</sup> Prior to January 8, 2008, Alameda’s interest “was putatively transferred” to Liberty Holdings Group, LLC, but that purported transfer was reversed pursuant to the confirmed Plan

1 After the Effective Date, a dispute arose between Alameda, Phoenix and AKT as to the  
2 nature and extent of the interest in West Lakeside received by the Alameda Liquidating Trust  
3 (the “Trust”) under the Plan. The Trust asserts that because the Operating Agreement is not an  
4 executory contract, the Trust “is entitled to the same membership interest and benefits in West  
5 Lakeside to which Alameda was entitled prior to the filing of the bankruptcy case or the  
6 confirmation of the Plan.”<sup>8</sup> AKT and Phoenix disagree, arguing that the Trust received at best  
7 only an “economic interest”<sup>9</sup> in West Lakeside on the Effective Date and that the membership  
8 interest in West Lakeside “was never assigned to the Trust[,] nor could it have been without a  
9 majority vote of the non-transferring Members.”<sup>10</sup> After a hearing on June 12, 2013, the court  
10 took the matter under submission.

## 11 II. DISCUSSION

12 This court has jurisdiction over these contested matters pursuant to 28 U.S.C. §§ 157(b)  
13 and 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). Venue  
14 is appropriate in this court. 28 U.S.C. § 1409(a). “A bankruptcy court retains post-confirmation  
15 jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a  
16 bankruptcy plan of reorganization.” Luan Inv., S.E. v. Franklin 145 Corp. (In re Petrie Retail,

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19 and the Alameda Liquidating Trust was vested with all of Alameda’s right, title and interest in  
20 West Lakeside on the Effective Date. See Id. 15:23 – 16:1.

21 <sup>8</sup> Motion 1:19-22.

22 <sup>9</sup> “Economic Interest,” as used in the Operating Agreement, means “the right to receive  
23 distributions of the Company’s assets and allocations of income, gain, loss, deduction, credit and  
24 similar items from the Company pursuant to this Agreement and the Act, but shall not include  
25 any other rights of a Member, including, without limitation, the right to vote or participate in the  
26 management, or, except as provided in Section 17106 of the Corporations Code, any right to  
27 information concerning the business and affairs of the Company.” Id. (Scheffy Decl.) Ex. 2,  
28 123.

29 <sup>10</sup> AKT Investments, Inc.’s Memorandum of Points and Authorities in Opposition to  
30 Motion by Alameda Liquidating Trust for Order Determining that Membership Interest in West  
31 Lakeside LLC was Unaffected by Plan (“AKT Opposition”) 2:4-5; 6:21-23; Opposition to  
32 Motion by Alameda Liquidating Trust for Order Determining that Membership Interest in West  
33 Lakeside LLC was Unaffected by Plan (“Phoenix Opposition”) 8:16-9:18.

1 Inc., 304 F.3d 223, 230 (2nd Cir. 2002) (citations omitted); see Sea Hawk Seafoods, Inc. v.  
2 State of Alaska (In re Valdez Fisheries Dev. Ass’n, Inc.), 439 F.3d 545, 549 (9th Cir. 2006)  
3 (stating that a court has ancillary jurisdiction “to vindicate its authority and effectuate its  
4 decrees”).

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6 A. The West Lakeside Operating Agreement is Not an Executory Contract

7 “An executory contract is one ‘on which performance remains due to some extent on both  
8 sides.’” Unsecured Creditors’ Comm. v. Southmark Corp. (In re Robert L. Helms Const. & Dev.  
9 Co., Inc.), 139 F.3d 702, 705 (9th Cir. 1998) (citation omitted); see also Everex Sys., Inc. v.  
10 Cadtrak Corp. (In re CFLC, Inc.), 89 F.3d 673, 677 (9th Cir. 1996) (stating that an executory  
11 contract is “‘a contract . . . on which performance is due to some extent on both sides’ and in  
12 which ‘the obligations of both parties are so far unperformed that the failure of either party to  
13 complete performance would constitute a material breach and thus excuse the performance of the  
14 other.’” (citation omitted)). Whether a contract is executory within the meaning of the  
15 Bankruptcy Code is determined under federal law. Otto Preminger Films, Ltd. v. Quintex Enters.,  
16 Inc. (In re Quintex Enters., Inc.), 950 F.2d 1492, 1495 (9th Cir. 1991).

17 Alameda asserts that the Operating Agreement is not an executory contract. Phoenix  
18 does not disagree. AKT responds that it “has never been AKT’s position” that the Operating  
19 Agreement is an executory contract<sup>11</sup> because “the Trust is not entitled to a Membership Interest  
20 in West Lakeside regardless of whether the Operating Agreement is or isn’t executory.”<sup>12</sup>  
21 However, AKT then proceeds to make “[a] more than colorable argument” that the Operating  
22 Agreement is, in fact, an executory contract “based on the numerous provisions that require a  
23 vote of the majority of the Members.”<sup>13</sup>

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<sup>11</sup> AKT Opposition 9:5.

27 <sup>12</sup> Id. 9:13-13.

28 <sup>13</sup> Id. 9: n.26.

1 The issue of whether or not an operating agreement is an executory contract is  
2 determined on a case by case basis. See Meiburger v. Endeka Enters., L.L.C. (In re Tsiaoushis),  
3 383 B.R. 616, 618 (Bankr E.D. Va. 2007) (“Courts considering whether an operating agreement  
4 is an executory contract [must look] . . . at the facts and circumstances of each case to determine  
5 the status of a particular operating agreement.”), aff’d, 2007 WL 2156162 (E.D. Va. July 19,  
6 2007).

7 Each operating agreement is separately analyzed. The courts . . . examine the  
8 operating agreement to determine whether there are unperformed obligations on  
9 the part of the parties. If not, the operating agreement is not an executory  
10 contract. If there are unperformed obligations of both the debtor and the other  
11 party or parties, the court must determine whether, if not performed, non-  
performance would constitute a material breach excusing the other party from  
further performance. If so, the operating agreement is an executory contract.

12 Id. at 620 (citations omitted).

13 The Operating Agreement is not an executory contract. Alameda had no outstanding  
14 performance due under the Operating Agreement on the date of bankruptcy. Alameda had no  
15 role in the management of West Lakeside, and no obligation to provide any personal expertise or  
16 service to the company. Alameda had made all required capital contributions prior to the petition  
17 date. There is no evidence that Alameda had any continuing fiduciary obligations under the  
18 agreement. AKT argues that an operating agreement can be executory if “material events  
19 requiring the debtor to vote [are] imminent[,] and the debtor [has] an obligation to participate in  
20 good faith,” citing In re Strata Title, LLC, 2013 WL 1773619, \*2 (Bankr. D. Ariz. April 25,  
21 2013).<sup>14</sup> The court in Strata Title determined that the operating agreement at issue in that case  
22 was an executory contract based on (a) certain “supermajority” voting requirements contained in  
23 the agreement, and (b) the fact that current circumstances, including the marketing of property  
24 held by the LLC and the impending removal of the manager, would soon require the debtor to  
25 perform such voting duties. Id. But even the court in Strata Title acknowledged that “remote  
26 possibilities of future obligations do not make a contract executory.” Id. citing In re Capital

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28 <sup>14</sup> Id.

1 Acquisitions & Management Corp., 341 B.R. 632, 636 (Bankr. N.D. Ill. 2006). See Movitz v.  
2 Fiesta Inv., LLC (In re Ehmann), 319 B.R. 200, 204 (Bankr. D. Ariz. 2005) (holding that an  
3 operating agreement for a limited liability company was not an executory contract despite a  
4 provision granting members “the right to approve by majority vote the sale, exchange or other  
5 disposition of all or substantially all of the company’s assets”).

6 West Lakeside members have a right to vote under Article 9 of the Operating Agreement.  
7 However, the matters on which members are entitled to vote are specifically limited by § 9.1.2  
8 and the existence of such a limited voting right does not, of and by itself, make the Operating  
9 Agreement executory. There is no evidence of facts demonstrating that an upcoming vote within  
10 the scope of § 9.1.2 of the Operating Agreement is imminent or likely nor that the failure of a  
11 member to vote would constitute a material breach of the Operating Agreement excusing other  
12 parties thereto from performance. Indeed, West Lakeside’s only asset is the 133-acre tract of  
13 land that may be years away from development.<sup>15</sup> West Lakeside has no income. It has made no  
14 distributions and is not scheduled to make a distribution in the foreseeable future.<sup>16</sup>

15 B. Alameda’s Membership Interest in West Lakeside was Transferred to the Trust

16 During oral argument, AKT’s counsel stated that the executory contract issue is a “red  
17 herring.” The question of whether or not the Operating Agreement is an executory contract,  
18 according to AKT, is a distinction without a difference.

19 Section 16.1.1 of the Operating Agreement expressly states that a transfer by a member  
20 of the member’s interest in West Lakeside (Member Interest or Economic Interest) without the  
21 prior written approval of a majority of the members is void.<sup>17</sup> Section 17301(a)(1) of the  
22 California Corporations Code also provides that “[e]xcept as provided in the articles of  
23 organization or the operating agreement . . . [a] membership interest or an economic interest is  
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25 <sup>15</sup> Omnibus Reply by Alameda Liquidating Trust to Oppositions of AKT Investments,  
26 Inc. and Phoenix, LLC to Motion for Order Determining that Membership Interest in West  
27 Lakeside LLC was Unaffected by Plan (“Reply”) (Scheffy Decl.) ¶ 20.

28 <sup>16</sup> Id.

<sup>17</sup> See note 6 supra.

1 assignable in whole or in part, provided, however, that no membership interest may be assigned  
2 without the consent of a majority in interest of the members not transferring their interests . . . . “  
3 Cal. Corp. Code § 17301(a)(1).

4 AKT and Phoenix concede that Alameda’s entire interest (membership, economic or  
5 otherwise) in West Lakeside became property of the estate under § 541(a) upon the filing of  
6 Alameda’s bankruptcy petition.<sup>18</sup> However, AKT and Phoenix argue that Alameda’s authority to  
7 transfer its entire interest in West Lakeside out of the estate to the Trust under the Plan was  
8 limited by the terms of the Plan and Confirmation Order, the Operating Agreement, and state  
9 law, and that the Trust received no more than an economic interest in West Lakeside on the  
10 Effective Date.

11 With respect to the Plan, AKT and Phoenix maintain that the following language in  
12 section 8.4 of the Plan discussing the effect of the Confirmation Order expressly limits the  
13 Trust’s interest, if any, in West Lakeside to an economic interest:

14 **8.4 Effect of Confirmation Order.** The Confirmation Order shall constitute an  
15 order of the Bankruptcy Court: (i) approving, as of the Effective Date, the  
16 assumption or rejection by the Reorganized Debtors, Liberty or Alameda, as the  
17 case may be, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code,  
18 all of executory contracts and unexpired leases identified under this Article 8 of  
19 the Plan; and (ii) that any provisions of a limited liability company agreement or  
20 operating agreement of a limited liability company or similar entity which  
21 purports to restrict the transfer of the **economic interest** in such entity to one of  
22 its members which is one of the Debtors herein, or its assignee, is invalidated as  
23 an “*ipso facto*” clause under Section 365(e) of the Bankruptcy Code, to the extent  
24 that Section 365 applies. The contracts and leases identified in this Plan will be  
25 assumed or rejected, respectively, only to the extent that such contracts or leases  
26 constitute pre-petition executory contracts or unexpired leases of the Debtors, and

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24 <sup>18</sup> Section 541(c)(1)(A) preempts the anti-assignment provisions of the Operating  
25 Agreement and the impact of Cal. Corp. Code § 17301(a)(1). Property of the debtor enters the  
26 estate upon the filing of the petition “notwithstanding any provision in an agreement, transfer  
27 instrument, or applicable nonbankruptcy law . . . that restricts or conditions transfer of such interest  
28 by debtor.” 11 USC § 541(c)(1)(A). “Section 541(c)(1)(A) overrides both contract and state law  
restrictions on the transfers or assignment of Debtors’ interest in [property] in order to sweep all  
their interests into their estate.” Fursman v. Ulrich (In re First Protection, Inc.), 440 B.R. 821,  
830 (9th Cir. BAP 2010).



1 the identification of such agreements under this Plan does not constitute an  
2 admission with respect to the characterization of such agreements or the existence  
3 of any unperformed obligations, defaults, or damages thereunder. This Plan does  
4 not affect any executory contracts or unexpired leases that: (a) have been  
5 assumed, rejected or terminated prior to the Confirmation Date, or (b) are the  
6 subject of a pending motion to assume, reject or terminate as of the Confirmation  
7 Date.<sup>19</sup>

8 Identical language regarding the effect of the Confirmation Order on the assumption, rejection or  
9 termination of executory contracts and unexpired leases is contained in paragraph (F)(3) of the  
10 Confirmation Order.<sup>20</sup>

11 By their respective terms, section 8.4 of the Plan and paragraph (F)(3) of the  
12 Confirmation Order deal specifically and exclusively with executory contracts and unexpired  
13 leases. Having determined that the Operating Agreement is not an executory contract, the court  
14 finds section 8.4 of the Plan and paragraph (F)(3) of the Confirmation Order inapplicable to the  
15 Operating Agreement. Neither provision limited the interest in West Lakeside transferred by  
16 Alameda to the Trust on the Effective Date. Because the Operating Agreement is not an  
17 executory contract, § 365 is inapplicable and the court must analyze under § 541 whether  
18 Alameda's transfer to the Trust of its entire interest in West Lakeside failed by virtue of § 16.1.1  
19 of the Operating Agreement and applicable state law. See, e.g., Sheehan v. Warner (In re  
20 Warner), 480 B.R. 641, 652 (Bankr. N.D. W.Va. 2012) ("Because § 365 does not apply . . . [t]he  
21 court must now examine what property rights of the Debtor entered his estate under § 541(a),  
22 and whether § 541(c) acts to bring those rights into his bankruptcy estate notwithstanding the  
23 Operating Agreement . . . ."); Ehmann, 319 B.R. at 206 ("Because there are no obligations  
24 imposed on members that bear on the rights the Trustee seeks to assert here, the Trustee's rights  
25 are not controlled by the law of executory contracts and Bankruptcy Code § 365 . . . [but] are  
26 controlled by the more general provision governing property of the estate, which is Bankruptcy  
27 Code § 541.").

28 <sup>19</sup> Trust RJN Ex. A, 97:10-25 (emphasis added).

<sup>20</sup> Id. Ex. D, 254.

1 With respect to § 16.1.1 of the Operating Agreement and Cal. Corp. Code § 17301(a)(1),  
2 AKT argues that “[t]he Trust is operated by an independent trustee, un beholden to Alameda and  
3 subject only to the oversight of a supervisory board whose members represent the creditors, not  
4 Alameda.”<sup>21</sup> According to AKT, “[i]t is beyond peradventure that Alameda and the Trust are  
5 distinctly different and separate entities, and as such the Trust is unquestionably subject to the  
6 prohibition on transfers contained in the Operating Agreement.”<sup>22</sup> The court disagrees.

7 “[N]onbankruptcy law defines the nature, scope, and extent of the property rights that  
8 come into the hands of the bankruptcy estate. Gumport v. Sterling Press (In re Transcon Lines),  
9 58 F.3d 1432, 1438 (9th Cir. 1995), cert. denied, 516 U.S. 1146 (1996); see State of Cal. v.  
10 Farmers Markets, Inc. (In re Farmers Markets, Inc.), 792 F.2d 1400, 1402 (9th Cir. 1986)  
11 (holding that § 541(c)(1) did not preclude the enforcement of Cal. Bus. & Prof. Code § 24049  
12 against a debtor in bankruptcy to prevent a sale of a liquor license to a third party without paying  
13 the relevant tax). “[T]he estate succeeds to no more interest than the debtor had, and the estate  
14 takes its interest subject to the conditions under which the debtor held the interest.” In re South  
15 Side House, LLC, 474 B.R. 391, 402 (Bankr. E.D.N.Y. 2012), citing Kipp v. Depoy (In re  
16 Depoy), 29 B.R. 466, 469 (Bankr. N.D. Ind. 1983).

17 Even if the court were to find that either the Operating Agreement or § 17301(a)(1) of the  
18 California Corporations Code restricted the transfer of Alameda’s interest in West Lakeside to a  
19 third party, the Alameda Liquidating Trust is not a third party. See Motor Vehicle Cas. Co. v.  
20 Thorp Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d 869, 890 (9th Cir. 2012) (holding  
21 that the creation of a trust under a confirmed plan for the purpose of resolving certain asbestos-  
22 related claims was not a transfer to a third party in violation of a contractual anti-assignment  
23 clause). As previously stated, the Alameda Liquidating Trust was established for the purpose of  
24 liquidating and distributing Alameda’s assets pursuant to the Plan and terms of the trust. The  
25 Plan states specifically:

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27 <sup>21</sup> AKT Opposition 12:8-10.

28 <sup>22</sup> Id. 12:11-14.

On the Effective Date, the Alameda Liquidating Trustee shall be the representative of the Alameda Estate within the meaning of Section 1123(b)(3)(B) of the Bankruptcy Code<sup>23</sup> and shall have the rights and powers provided for in the Bankruptcy Code in addition to any rights and powers granted in the Alameda Liquidating Trust and herein. The Alameda Liquidating Trustee shall be a party in interest as to all matters over which the Bankruptcy Court has jurisdiction.

In his or her capacity as the Estate representative of the Alameda Estate, . . . the Alameda Liquidating Trustee shall be the successor-in-interest to Alameda with respect to any Claim, right or Cause of Action and Defense that was or could have been commenced by Alameda prior to the Effective Date, or thereafter arising in conjunction with any Alameda Trust Assets until the Alameda Liquidating Trustee disposes of them.<sup>24</sup>

Thorpe is dispositive. Under the Plan and Confirmation Order, the Alameda Liquidating Trustee is the estate representative of the Alameda Estate. As such, the Alameda Liquidating Trust holds Alameda's entire interest (membership, economic, and otherwise) in West Lakeside under the Operating Agreement as the estate representative, and that interest was not diluted on the Effective Date by either the anti-assignment provisions of § 16.1.1 of the Operating Agreement or § 17301(a)(1) of the California Corporations Code.

#### CONCLUSION

Based upon the foregoing, the court concludes that (1) the Operating Agreement is not an executory contract nor was it rejected as an executory contract under the Plan and Confirmation Order; (2) the Alameda Liquidating Trust succeeded to Alameda's entire interest in West Lakeside under the Operating Agreement as the estate representative under the Plan and Confirmation Order; and (3) the Alameda Liquidating Trust enjoys the same Alameda Membership Interest in West Lakeside which Alameda had prior to bankruptcy.

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<sup>23</sup> Section 1123(b)(3)(B) states: "Subject to subsection (a) of this section, a plan may . . . provide for . . . the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest." 11 U.S.C. § 1123(b)(3)(B) (emphasis added).

<sup>24</sup> Trust RJN Ex. A, 78 (emphasis added).

1 The Trust shall lodge a proposed order granting the relief requested in the Motion  
2 consistent with this Memorandum Decision.<sup>25</sup>

3 ###

24 Date: June 25, 2013



Peter H. Carroll  
United States Bankruptcy Judge

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27 <sup>25</sup> The Trust seeks an order prohibiting AKT or Phoenix from interfering in the  
28 liquidation of its interest in West Lakeside under the Operating Agreement. Motion 13:14-15.  
The requested relief is in the nature of an injunction which the court declines to grant absent an  
adversary proceeding. See FRBP 7001(7); LBR 7065-1.

## NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): **Memorandum Decision** was entered on the date indicated as Entered on the first page of this judgment or order and will be served in the manner stated below:

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)** Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) 06-25-2013, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

- Linda F Cantor lcantor@pszjlaw.com, lcantor@pszjlaw.com
- Brian L Davidoff bdavidoff@greenbergglusker.com, jreinglass@greenbergglusker.com; kwoodson@greenbergglusker.com; calendar@greenbergglusker.com; sgaeta@greenbergglusker.com
- Irving M Gross img@lnbrb.com, angela@lnbrb.com
- Matthew B Holbrook mholbrook@sheppardmullin.com, mmanns@sheppardmullin.com
- John J Immordino john.immordino@wilsonelser.com, raquel.burgess@wilsonelser.com
- Ivan L Kallick ikallick@manatt.com, ihernandez@manatt.com
- Jeffrey A Krieger jkrieger@ggfirm.com, kwoodson@greenbergglusker.com; calendar@greenbergglusker.com; pporooshani@greenbergglusker.com
- Robert S Marticello Rmarticello@wglp.com, msciesinski@wglp.com
- C John M Melissinos jmelissinos@greenbergglusker.com, jreinglass@greenbergglusker.com; kwoodson@greenbergglusker.com; calendar@greenbergglusker.com; sgaeta@greenbergglusker.com
- Mark Minuti mminuti@saul.com
- Eric A Nyberg e.nyberg@kornfieldlaw.com
- Eric S Pezold epezold@swlaw.com, dwlewis@swlaw.com
- Jeremy V Richards jrichards@pszjlaw.com, bdassa@pszjlaw.com; imorris@pszjlaw.com
- Chad L Schexnayder cls@jhc-law.com, sh@jhc-law.com
- Jason K Schrader jason.K.Schrader@usdoj.gov
- Mark A Serlin mserlin@globelaw.com
- Kenneth J Shaffer jshaffer@stutman.com
- United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov
- Michael A Wallin mwallin@sheppardmullin.com
- Michael R Williams mwilliams@fwtrl.com, wmills@fwtrl.com

☐ Service information continued on attached page

**2. SERVED BY THE COURT VIA UNITED STATES MAIL:** A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below: