

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

QUARLES & BRADY LLP  
Firm State Bar No. 00443101  
One South Church Avenue, Suite 1700  
Tucson, Arizona 85701-1621  
Telephone: (520) 770-8700

Kasey C. Nye, Esq. (AZ#020610)  
E-mail: kasey.nye@quarles.com  
Susan G. Boswell, Esq. (AZ#004791)  
E-mail: susan.boswell@quarles.com  
Elizabeth S. Fella, Esq. (AZ#025236)  
E-mail: elizabeth.fella@quarles.com

Attorneys for Debtors

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:  
TRANSWEST RESORT PROPERTIES, INC.,  
an Arizona corporation,  
  
Debtor.  
  
Joint Administration with:  
  
TRANSWEST TUCSON PROPERTY, L.L.C.,  
a Delaware limited liability company,  
TRANSWEST HILTON HEAD PROPERTY,  
L.L.C., a Delaware limited liability company,  
TRANSWEST TUCSON II, L.L.C.,  
a Delaware limited liability company, and  
TRANSWEST HILTON HEAD II, L.L.C.,  
a Delaware limited liability company.

In Proceedings Under Chapter 11  
Case No. 4:10-bk-37134-EWH

Joint Administration with Case Nos.:

- 4:10-bk-37160-EWH
- 4:10-bk-37170-EWH
- 4:10-bk-37151-EWH
- 4:10-bk-37145-EWH

This Pleading applies to:  
 All Debtors  
 Specified Debtors

**THIRD AMENDED AND RESTATED  
JOINT PLAN OF REORGANIZATION  
DATED NOVEMBER 17, 2011**

**TABLE OF CONTENTS**  
**(continued)**

		<b>Page</b>
1		
2		
3	ARTICLE 1      SUMMARY OF THE PLAN.....	1
4	1.1   Unclassified Claims .....	2
5	1.2   Classified Claims and Equity Interests .....	2
6	1.3   Cramdown .....	3
7	ARTICLE 2      DESCRIPTION AND TREATMENT OF UNCLASSIFIED CLAIMS .....	3
8	2.1   Administrative Claims .....	3
9	2.2   Priority Tax Claims .....	3
10	2.3   Priority Unsecured Claims .....	3
11	ARTICLE 3      CLASS 1–SENIOR LENDER SECURED CLAIM .....	3
12	3.1   Description .....	3
13	3.2   Treatment .....	3
14	3.3   Liens; Amended Mortgage Loan Documents .....	4
15	3.4   Deemed Cure or Waiver of Certain Loan Provisions .....	5
16	3.5   Cancellation of Other Mortgage Loan Documents .....	5
17	3.6   Impairment .....	5
18	ARTICLE 4      CLASS 2–EZ TRADER SECURED CLAIMS .....	5
19	4.1   Description .....	5
20	4.2   Treatment .....	6
21	4.3   Liens .....	6
22	4.4   Impairment .....	6
23	ARTICLE 5      CLASS 3–GE CAPITAL SECURED CLAIMS.....	6
24	5.1   Description .....	6
25	5.2   Treatment .....	6
26	5.3   Liens .....	7
	5.4   Impairment .....	7
	ARTICLE 6      CLASS 4–CONVENIENCE CLAIMS.....	7
	6.1   Description .....	7
	6.2   Treatment .....	7
	6.3   Impairment .....	7
	ARTICLE 7      CLASS 5-UNSECURED TRADE CREDITOR CLAIMS .....	7
	7.1   Description .....	7

**TABLE OF CONTENTS**  
**(continued)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

		<b>Page</b>
	7.2 Treatment .....	8
	7.3 Impairment .....	8
	<b>ARTICLE 8 CLASS 6–GENERAL UNSECURED CLAIMS .....</b>	<b>8</b>
	8.1 Description .....	8
	8.2 Treatment .....	8
	8.3 Impairment .....	9
	<b>ARTICLE 9 CLASS 7–MEZZANINE LENDER CLAIMS .....</b>	<b>9</b>
	9.1 Description .....	9
	9.2 Treatment .....	9
	9.3 Impairment .....	10
	<b>ARTICLE 10 CLASS 8–SUBORDINATED PENALTY CLAIMS .....</b>	<b>10</b>
	10.1 Description .....	10
	10.2 Treatment .....	10
	10.3 Impairment .....	10
	<b>ARTICLE 11 CLASS-9 TRP CREDITORS .....</b>	<b>10</b>
	11.1 Description .....	10
	11.2 Treatment .....	10
	11.3 Impairment .....	11
	<b>ARTICLE 12 CLASS 10–EQUITY INTERESTS AND .....</b>	<b>11</b>
	12.1 Description .....	11
	12.2 Treatment .....	11
	12.3 Impairment .....	11
	<b>ARTICLE 13 TREATMENT OF EXECUTORY CONTRACTS .....</b>	<b>11</b>
	13.1 Management Agreements .....	11
	13.2 Golf .....	11
	13.3 Restaurant, Spa, and Retail Leases .....	11
	13.4 Country Club Membership Agreements .....	11
	13.5 Other Executory Contracts .....	12
	13.6 Claims Based on Rejection of Executory Contracts .....	12
	<b>ARTICLE 14 IMPLEMENTATION OF THE PLAN .....</b>	<b>12</b>
	14.1 Joint Plan .....	12

**TABLE OF CONTENTS**  
**(continued)**

		<b>Page</b>
1		
2		
3	14.2 Transactions To Occur Prior To The Effective Date .....	12
4	14.3 Continued Existence and Vesting of Assets in Reorganized Debtors.....	13
5	14.4 Management of Reorganized Debtors.....	13
6	14.5 Funding on the Effective Date .....	13
7	14.6 Funding after the Effective Date .....	13
8	14.7 Procedure for Determination of Claims .....	14
9	ARTICLE 15 CONDITIONS PRECEDENT .....	15
10	15.1 Conditions to Effectiveness.....	15
11	15.2 Waiver of Conditions .....	15
12	15.3 Effect of Non-occurrence of Conditions .....	16
13	ARTICLE 16 PROVISIONS REGARDING VOTING AND DISTRIBUTIONS	
14	UNDER THE PLAN.....	16
15	16.1 Voting of Claims; Classes Subsequently Deemed Unimpaired.....	16
16	16.2 Nonconsensual Confirmation.....	16
17	16.3 Manner of Distributions .....	16
18	16.4 Timing of Distributions.....	16
19	16.5 Maximum Distribution.....	16
20	16.6 De Minimis Distributions.....	17
21	16.7 Interest on Claims .....	17
22	16.8 Withholding Taxes on Distributions .....	17
23	16.9 Disputed Payment of Allowed Claims.....	17
24	16.10 Unclaimed Distributions .....	17
25	ARTICLE 17 MODIFICATION OF PLAN.....	17
26	ARTICLE 18 EFFECT OF CONFIRMATION .....	18
	18.1 Binding Effect .....	18
	18.2 Vesting of Assets .....	18
	18.3 Discharge of the Debtors and of Claims, and Termination of Equity	
	Interests .....	18
	18.4 Term of Pre-Confirmation Injunctions or Stays.....	18
	18.5 Injunction Against Interference with Plan .....	19
	18.6 Exculpation and Limitation of Liability.....	19
	18.7 Injunction Related to Releases and Exculpation.....	19

**TABLE OF CONTENTS**  
**(continued)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

		<b>Page</b>
	18.8 Termination of Subordination Rights and Settlement of Related Claims.....	19
	18.9 Release of Liens .....	20
	18.10 Retention of Causes of Action/Reservation of Rights .....	20
	<b>ARTICLE 19 RETENTION OF JURISDICTION .....</b>	<b>21</b>
	19.1 In General.....	21
	19.2 Plan Disputes And Enforcement .....	21
	19.3 Further Orders .....	21
	19.4 Governmental Units Or Regulatory Agencies .....	21
	19.5 Final Decree .....	21
	19.6 Appeals.....	21
	19.7 Executory Contracts.....	21
	19.8 Claims .....	21
	<b>ARTICLE 20 MISCELLANEOUS PROVISIONS.....</b>	<b>22</b>
	20.1 Effectuating Documents and Further Transactions.....	22
	20.2 Corporate Action.....	22
	20.3 Exemption from Transfer Taxes .....	22
	20.4 Plan Supplement .....	22
	20.5 Revocation or Withdrawal of the Plan.....	22
	20.6 Confirmation Order.....	23
	20.7 Severability .....	23
	20.8 Expedited Tax Determination .....	23
	20.9 Governing Law.....	23
	20.10 Binding Effect .....	23
	20.11 Exhibits/Schedules .....	23
	20.12 Payment of Statutory Fees and Filing of Quarterly Reports .....	23
	20.13 No Professional Fees or Expenses .....	23
	20.14 Headings.....	24
	<b>ARTICLE 21 DEFINITIONS AND RULES OF CONSTRUCTION .....</b>	<b>24</b>

1                   TRANSWEST RESORT PROPERTIES, INC., TRANSWEST TUCSON  
2 PROPERTY, L.L.C., TRANSWEST HILTON HEAD PROPERTY L.L.C., TRANSWEST  
3 TUCSON II, L.L.C., and TRANSWEST HILTON HEAD II, L.L.C. (collectively, the “Debtors”),  
4 the debtors and debtors-in-possession in the above-captioned Chapter 11 cases (the  
5 “Reorganization Cases”), by and through their attorneys undersigned, hereby propose the  
6 following Amended and Restated Joint Plan of Reorganization (the “Plan”) under Bankruptcy  
7 Code § 1121(a) for the resolution of all outstanding creditor Claims against and Interests in the  
8 Debtors.

9                   **All creditors are encouraged to consult the Disclosure Statement**  
10 **before voting to accept or reject the Plan. Among other information, the**  
11 **Disclosure Statement discusses the Debtors and the background of the**  
12 **Reorganization Cases, provides projections germane to the Plan and the post-**  
13 **confirmation operations of the Debtors and the Reorganized Debtors, and**  
14 **provides a summary and analysis of the Plan. No solicitation materials, other**  
15 **than the Disclosure Statement and related materials, have been authorized by**  
16 **the Bankruptcy Court or by the Bankruptcy Code for use in soliciting**  
17 **acceptances or rejections of the Plan.**

18                   The Court has scheduled the Confirmation Hearing to commence on  
19 November 28, 2011.

20                   **ARTICLE 1**  
21 **SUMMARY OF THE PLAN**

22                   The Plan is a joint plan for all of the Debtors. Transwest Resort Properties, Inc.  
23 (“TRP”) is an Arizona corporation that indirectly owns an interest in two of the other Debtors  
24 (Transwest Tucson Property, L.L.C. and Transwest Hilton Head Property, L.L.C. (collectively the  
25 “Operating Debtors”). Each of the Operating Debtors owns and manages a resort hotel: the  
26 Westin La Paloma Resort and Country Club in Tucson, Arizona (the “La Paloma Resort” or “La  
Paloma”) which is owned and managed by Transwest Tucson Property, L.L.C., and the Westin  
Hilton Head Island Resort and Spa on Hilton Head Island in South Carolina (the “Hilton Head  
Resort,” and collectively, with La Paloma, the “Resorts”) which is owned and managed by  
Transwest Hilton Head Property, L.L.C. Pursuant to lender requirements, TRP indirectly owns  
and manages the Resorts through a series of special purpose entities. Transwest Tucson II, L.L.C.  
owns 100% of the Equity Interests in Transwest Tucson Property, L.L.C., and Transwest Hilton  
Head II, L.L.C. owns 100% of the Equity Interests in Transwest Hilton Head Property, L.L.C.  
(Debtors Transwest Tucson, II, L.L.C. and Transwest Hilton Head II, L.L.C. will be referred to  
collectively as the “Level II Debtors”.) TRP indirectly has an interest in the Level II Debtors and  
Operating Debtors through certain non-debtor entities that have no other business operations.  
Only the Operating Debtors operate a business.

                  All of the Debtors are affiliates of Transwest Partners, a real estate development  
and investment firm which has been active in the hospitality sector in Southern Arizona and  
Sonora Mexico since 1998. Transwest Partners acquired the Debtors in 2007—on the eve of the  
so-called “Great Recession”—with a highly leveraged capital structure that is no longer justified  
by the Resorts’ present or foreseeable economic performance. The Plan contemplates a  
comprehensive restructuring of the Debtors’ capital structure by re-sizing and modifying the  
Mortgage Loan secured by the Resorts, cancelling the Equity Interests in the Operating Debtors  
and providing for treatment of the Claims of the Mezzanine Lender (whose Claims are solely  
against the Level II Debtors). The Plan is funded, in part, by an investment of not less than \$30

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

million of new capital (defined herein as the New Equity Investment) in the Reorganized Debtors by Newco for which Newco will acquire 100% of the New Membership Interests (the equity) in the Reorganized Debtors (i.e., the Operating Debtors, as reorganized under this Plan). Newco will be a limited liability company, the sole member of which is SWVP Fund XV. The New Equity Investment will be used, in part, to bridge the Resorts to stabilized operating performance and facilitate the property improvement plans prepared by Westin and as filed as Exhibits E and F of the “Notice of Filing Documents in Support of ‘Second Amended Plan and Restated Joint Plan of Reorganization Dated October 4, 2011’” [Dkt. No. 626].

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described below, have not been classified.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. If a Claim is acquired or transferred, the Claim shall be placed in the Class in which it would have been placed if it were owned by the original holder of such Claim. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

1.1 Unclassified Claims. *The following types* of claims are not classified under this Plan and will not be entitled to vote on this Plan:

1. Administrative Claims
2. Priority Tax Claims
3. Priority Unsecured Claims

1.2 Classified Claims and Equity Interests. Claims and Interests, other than Administrative Claims, Priority Tax Claims, and Priority Unsecured Claims are classified for all purposes, including, where applicable, voting, confirmation, and distribution pursuant to the Plan as follows:

<b>Class</b>	<b>Class Description</b>	<b>Status</b>	<b>Voting Rights</b>
Class 1	Senior Lender Secured Claims	Impaired	Entitled to Vote
Class 2	EZ Trader Secured Claim	Impaired	Entitled to Vote
Class 3	GE Capital Secured Claim	Impaired	Entitled to Vote
Class 4	Convenience Unsecured Claims	Impaired	Entitled to Vote
Class 5	Unsecured Trade Creditor Claims	Impaired	Entitled to Vote
Class 6	General Unsecured Claims	Impaired	Entitled to Vote
Class 7	Mezzanine Lender Claims	Impaired	Entitled to Vote
Class 8	Subordinated Penalty Claims	Impaired (No Distribution)	Deemed to Reject

1	Class 9	TRP Creditor Claims	Unimpaired	Not Entitled to Vote
2	Class 10	Equity Interests And Subject Insider Claims	Cancelled	Deemed to Reject

3 The treatment afforded to the holders of Claims and Equity Interests as set forth  
4 herein will be in full satisfaction, settlement, release, and discharge for and in exchange for such  
5 Claims and Equity Interests, respectively.

6 1.3 Cramdown. Debtors request that the Bankruptcy Court confirm the Plan if all of  
7 Bankruptcy Code § 1129(a)'s requirements, other than subsection (8), are met with respect to the  
8 Plan.

9 **ARTICLE 2**  
10 **DESCRIPTION AND TREATMENT OF UNCLASSIFIED CLAIMS**

11 2.1 Administrative Claims. All Allowed Administrative Claims will be paid in cash in  
12 full on the later of the Effective Date or the applicable Claim Payment Date. Administrative  
13 Claims for expenses incurred in the ordinary course of business of any of the Debtors will be paid  
14 in the ordinary course of business as they become due according to ordinary business terms. Any  
15 creditor seeking payment as an Administrative Claim not paid in the ordinary course of business  
16 must file an application for allowance and payment of its Administrative Claim with the  
17 Bankruptcy Court no later than the Administrative Claims Bar Date.

18 2.2 Priority Tax Claims. Allowed Priority Tax Claims will be paid (a) in monthly  
19 cash installments so that the Claim plus applicable Statutory Interest will be fully amortized by  
20 November 17, 2015, or (b) such other terms as the holder of such Claim and the Debtors or the  
21 Reorganized Debtors may agree; provided, however, that the Reorganized Debtors will have the  
22 right to pay any Allowed Priority Tax Claim, or any unpaid balance of such Claim, in full, at any  
23 time after the Effective Date without premium or penalty.

24 2.3 Priority Unsecured Claims. Allowed Priority Unsecured Claims, if any, will be  
25 paid in cash in full on the later of the Effective Date or the applicable Claim Payment Date.

26 **ARTICLE 3**  
**CLASS 1—SENIOR LENDER SECURED CLAIM**

3.1 Description. Class 1 consists of that portion of the Claim owed by the Operating  
Debtors arising from the Mortgage Loan held by the Senior Lender, and secured by the Resorts  
and related collateral including Cash Collateral, that is an Allowed Secured Claim. This Allowed  
Secured Claim is defined in the Plan as the Senior Lender Secured Claim.

3.2 Treatment.

3.2.1 Allowance. The Senior Lender has made a Section 1111(b)(2) Election,  
therefore the Senior Lender Secured Claim will be Allowed in an amount equal to the amount  
owed under the Mortgage Notes as of the Petition Date *less* any Penalty Claims as determined by  
the Court, estimated to be \$233,679,381.49.

3.2.2 Satisfaction. The Senior Lender has made a Section 1111(b)(2) Election,  
as such the Reorganized Debtors will satisfy the Allowed Senior Lender Secured Claim as  
follows:

Quarles & Brady LLP



1 (a) Delivery of Replacement Notes. On the Effective Date, the Reorganized Debtors  
 2 will execute and deliver to the Senior Lender two *pari passu* promissory notes containing the  
 following terms:

- 3 (i) Principal Balance: In accordance with the allocation provided for under  
 4 the Mortgage Loan Documents, one note will be in a principal balance  
 5 equal to 50.24% of the Allowed Senior Lender Secured Claim, and the  
 6 other note will be in a principal balance equal to 49.76% of the Allowed  
 Senior Lender Secured Claim. All payments of principal as provided under  
 the Plan will be allocated pro rata between the two Replacement Notes.
- 7 (ii) Payments. Beginning on the first day of the first calendar month which is  
 8 at least 30 days after the Effective Date, the Reorganized Debtors will pay  
 9 the Senior Lender monthly installments equal to monthly interest-only  
 10 payments calculated assuming a principal balance equal to the Stipulated  
 11 Value and interest at a base rate of 5.25% per annum (or such other market  
 12 rate as the Court deems appropriate to provide the Senior Lender the  
 Stipulated Value of collateral as of the Effective Date) and rounded up to  
 the nearest \$5,000 until the earlier of—(i) sale of the Resorts, (ii) the 252nd  
 month after the Effective Date or (iii) such earlier maturity date as would  
 be necessary to satisfy §1129(a)(7) and § 1129(b)(2) — at which time,  
 except as otherwise modified by this Plan in section 3.3.1, the entire  
 remaining balance of the Replacement Notes must be paid in full.
- 13 (iii) Maturity. The Replacements Notes will each be fully due and payable 252  
 14 months after the date the first payment is due.

15 (b) Establishment of Debt Service Reserve Account. On the Effective Date, the  
 16 Reorganized Debtors will establish the Debt Service Reserve Account with at least \$7,000,000  
 17 Cash which must be used by the Reorganized Debtors to make monthly payments required under  
 18 the Replacement Notes to the extent that the Resorts' Adjusted Net Operating Income is not  
 19 sufficient to do so. The Reorganized Debtors may close the Debt Service Reserve Account and  
 transfer any funds remaining in the Debt Service Reserve Account to its Unrestricted Cash  
 Accounts anytime more than 36 months after the Effective Date, **but only if** the Reorganized  
 Debtors have maintained a trailing six-month aggregate Debt Service Coverage Ratio of  
 1.25:1.00 and have Cash on hand (including funds in the Debt Service Reserve Account, the  
 Unrestricted Cash Accounts, and the Operating Accounts) of at least \$8,000,000.

20 3.3 Liens; Amended Mortgage Loan Documents. Senior Lender will retain its Liens in  
 21 the Resorts and Cash Collateral and, to the extent applicable, will be granted liens against the  
 22 Debt Service Reserve Account, the Capital Improvement Reserve Account, and the Operating  
 23 Accounts. On the Effective Date, the Reorganized Debtor and Senior Lender will execute  
 amended Mortgage Loan Documents that are consistent with the treatment of the Allowed Senior  
 Lender Secured Claim provided under this Plan. Among other things, the financial covenants  
 will be revised consistent with this Plan.

24 3.3.1 Release of Liens Upon Sale or Refinancing; Transfer of Resorts Subject to  
 25 Liens. The Reorganized Debtors may at any time prior to maturity of the Replacement Notes, sell  
 26 or refinance the Resorts without penalty or premium in exchange for payment of the outstanding  
 balance of the Allowed Senior Lender Claim, or if an individual Resort is sold or refinanced,  
 upon payment of an agreed upon release price, or at the direction of the Bankruptcy Court.

1 Notwithstanding the foregoing, any time between 60 and 180 months after the Effective Date, the  
 2 Reorganized Debtors may transfer both Resorts subject to the Liens securing the Replacement  
 3 Notes, *but only if* (a) the Reorganized Debtors are not in default under the repayment terms of  
 4 this Replacement Notes, (b) the Reorganized Debtors or the transferee pays the Senior Lender a  
 5 transfer fee equal to 1% of the then outstanding principal balance of the Senior Lender Secured  
 6 Claim at closing of the transfer, and (c) the Senior Lender approves that transferee, which  
 7 approval may only be reasonably withheld based upon the financial qualifications of the  
 8 transferee or the hotel management experience of the hotel manager proposed by the transferee.

9 3.4 Deemed Cure or Waiver of Certain Loan Provisions. Immediately and  
 10 automatically upon the occurrence of the Effective Date, the Debtors and the Reorganized  
 11 Debtors will be deemed to have cured or the Senior Lender will be deemed to have waived:

12 (a) Any default arising from the Debtors' failure to complete the Future Improvements  
 13 provided for under § 5.1.29 of the Loan Agreement by March 5, 2010;

14 (b) Any payment defaults;

15 (c) Any covenant defaults related to loan to value, debt service coverage, tangible net  
 16 worth, or liquidity;

17 (d) Any default arising *ipso facto* as a result of any of the Debtors filing bankruptcy  
 18 petitions or as a result of the Resorts becoming assets in voluntary bankruptcy proceedings; and

19 (e) Any prepayment premium or penalty.

20 3.5 Cancellation of Other Mortgage Loan Documents. The Operating Debtors will  
 21 cancel, and to the extent they are executory contracts, reject pursuant to Bankruptcy Code § 365,  
 22 the following agreements associated with the Mortgage Loan:

23 (a) "Clearing Account Agreement" dated December 5, 2007, between  
 24 Transwest Tucson Property L.L.C. and the Senior Lender and Starwood and J.P. Morgan  
 25 Chase Bank N.A.; and,

26 (b) "Clearing Account Agreement" dated December 5, 2007 between  
 Transwest Hilton Head Property L.L.C. and the Senior Lender and Starwood and J.P.  
 Morgan Chase Bank N.A.

3.6 Impairment. Class 1 is impaired.

**ARTICLE 4**  
**CLASS 2—EZ TRADER SECURED CLAIMS**

4.1 Description. Class 2 consists of the Secured Claims of EZ Trader LLC arising  
 from that certain promissory note made by Transwest Hilton Head Property, L.L.C. in the original  
 principal amount of \$48,158.55 and secured by a purchase money security interest in 52 HD flat  
 screen television sets located at the Hilton Head Resort and that certain promissory note made by  
 Transwest Tucson Property, L.L.C. dated November 9, 2010, in the original principal amount of  
 \$5,297 and secured by a purchase money security interest in certain cleaning equipment. Each  
 Secured Claim in Class 2 shall be treated as a separate subclass for voting and distribution  
 purposes.

4.2 *Treatment.* The holder of the Class 2 Claims, will be paid the full amount of its Class 2 Secured Claim plus interest at the rate of 8.125% per annum in three installments with the first installment payable the first day of the first month that is more than 30 days after the Effective Date, the second installment paid 120 days thereafter, and the third installment 120 days after payment of the second installment.

4.3 *Liens.* The holder of the Class 2 Claims will retain its liens.

4.4 *Impairment.* Class 2 is impaired.

**ARTICLE 5**  
**CLASS 3-GE CAPITAL SECURED CLAIMS**

5.1 *Description.* Class 3 consists of the Secured Claims arising from the following capital equipment leases between the Transwest Tucson Property, L.L.C., dba La Paloma Country Club, and GE Capital/GE Capital Solutions:

Lease No.	Equipment Description	Start Date	Term	Amount Originally Financed	Original Monthly Payment
8380192001	Landscape Equipment, Trailers, and Vehicles	07/15/08	07/14/12	\$673,843.97	\$13,533.54
8380192002	Landscape Equipment	07/15/08	07/14/13	\$20,679.43	\$409.07
8380192003	Tractors and Related Landscape Equipment	8/28/2008	08/30/12	\$155,731.48	\$3,756.41
8380192008	Grinders and Shop Equipment related to landscaping.	08/06/08	08/14/12	\$54,503.91	\$1,314.70
8380192005	Dump Trailers, Backhoe, and Related Landscape Equipment	8/28/2008	08/27/12	\$79,626.47	\$1923.02
8380192006	Landscape Equipment	09/24/08	09/23/12	\$7,183.12	\$173.26
<b>TOTALS</b>				<b>\$991,568.38</b>	<b>\$21,107.65</b>

Each lease has a \$1.00 purchase option for the equipment at the end of the lease except for lease number 8380192001, which has a fair market value purchase price which the Debtors estimate to be approximately \$124,000. Each Secured Claim in Class 3 shall be treated as a separate subclass for voting and distribution purposes.

5.2 *Treatment.* Except for lease number 8380192001, each of the leases giving rise to the Class 3 Secured Claims will be converted to and recharacterized as secured loans and restructured as follows:

Lease No.	Recharacterization Fee	Restructured Term	Interest	Amount Originally Financed	Restructured Monthly Payment
8380192002	\$963.48	7/15/2013	8.125%	\$20,679.43	\$420.54
8380192003	\$1,557.31	8/30/2013	8.125%	\$155,731.48	\$3,167.00
8380192008	\$545.03	8/30/2013	8.125%	\$54,503.91	\$1,108.41
8380192005	\$796.26	8/30/2013	8.125%	\$79,626.47	\$1,619.31

Lease No.	Recharacterization Fee	Restructured Term	Interest	Amount Originally Financed	Restructured Monthly Payment
8380192006	\$71.83	9/23/2013	8.125%	\$7,183.12	\$146.08
<b>TOTALS</b>	<b>\$28,097.56</b>			<b>\$991,568.38</b>	<b>\$19,349.63</b>

As described in the table above, a recharacterization fee will be paid to the holders of the Class 3 claims on the Effective Date. The Reorganized Transwest Tucson Property, L.L.C. Debtor will begin making the Restructured Monthly Payment on the first Business Day of the first month following the Effective Date. Lease number 8380192001, will be assumed by the Reorganized Transwest Tucson Debtor.

5.3 Liens. The holders of the Class 3 Claims will retain their liens in the equipment that is the subject of the respective leases.

5.4 Impairment. Class 3 is impaired.

**ARTICLE 6  
CLASS 4-CONVENIENCE CLAIMS**

6.1 Description. Class 4 consists of the Unsecured Claims held by Unsecured Creditors that are allowed in an amount less than \$5,000 or such greater amount the Court determines is reasonable for administrative convenience under Bankruptcy Code § 1122(b) and any unsecured claims held by Unsecured Creditor that elects on the Ballot to reduce its claim to \$5,000 to be treated as a Class 4 claimant instead of treatment as an Unsecured Trade Creditor under Class 5 or a General Unsecured Creditor under Class 6. The Class 4 Claims against each of the Debtors shall be treated as a separate subclass for voting and distribution purposes.

6.2 Treatment. On the later of the first Business Day that is at least 30 days after the Effective Date or the applicable Claim Payment Date, each holder of an Allowed Class 4 Claim will be paid by the applicable Reorganized Debtor Cash equal to the lesser of (i) the amount of such Allowed Claim; or (ii) \$5,000. This one-time payment will be in full and final satisfaction of each such Class 4 Claim and will bar holders of Class 4 Claims from any additional recovery on account of such Claim. No interest will be paid on any Class 4 Convenience Claims.

6.3 Impairment. Class 4 is impaired.

**ARTICLE 7  
CLASS 5-UNSECURED TRADE CREDITOR CLAIMS**

7.1 Description. Class 5 consists of two subclasses 5A and 5B (each of which shall be treated as a separate subclass for voting and distribution purposes).

(a) Class 5A consists of Unsecured Trade Claims owing by Debtor Transwest Tucson Property, L.L.C.

(b) Class 5B consists of Unsecured Trade Claims owing by Debtor Transwest Hilton Head Property, L.L.C.

7.2 Treatment.

1 (a) The Reorganized Transwest Tucson Property L.L.C. will pay holders of  
 2 Allowed Class 5A Unsecured Trade Claims 40% of the Allowed amount of such holder's Class  
 3 5A Unsecured Trade Claim in four (4) equal annual installments payable on the first Business  
 Day of March beginning in 2012. No interest will be paid on any Class 5A Unsecured Trade  
 Claims.

4 (b) The Reorganized Transwest Hilton Head Property L.L.C. will pay holders of  
 5 Allowed Class 5B Unsecured Trade Claims 40% of the Allowed amount of such holder's Class  
 6 5B Unsecured Trade Claim in four (4) equal annual installments payable on the first Business  
 Day of July beginning in 2012. No interest will be paid on any Class 5B Unsecured Trade  
 Claims.

7 7.3 Impairment. Class 5 is impaired.

8 **ARTICLE 8**  
 9 **CLASS 6—GENERAL UNSECURED CLAIMS**

10 8.1 Description. Class 6 consists of every Unsecured Claim against an Operating  
 Debtor that is not an Administrative Claim, a Priority Tax Claim, a Priority Unsecured Claim, a  
 11 Class 4 Convenience Unsecured Claim, a Class 5 Unsecured Trade Claim, a Class 8 Penalty  
 Claim, or a Class 10 Subject Insider Claim.

12 8.2 Treatment. On the later of the date sixty (60) days after the Effective Date or the  
 applicable Claim Payment Date, each holder of an Allowed Class 6 Claim will receive:

13 (a) A Cash payment equal to a pro rata share of the Unsecured Creditor Fund  
 14 (with reserves for Disputed Claims, which will later be distributed to the holders of Allowed  
 Class 6 Claims to the extent not paid with respect to such Disputed Claims); and

15 (b) A Class 6 Membership Appreciation and Cash Flow Certificate entitling the  
 16 holder to the following:

17 (i) A holder of a Class 6 Membership Appreciation and Cash Flow  
 Certificate will be entitled to a pro rata share (based the total of Allowed Class 6 Claims) of five  
 18 percent (5%) of the Surplus Cash Flow for a calendar year commencing after the Effective Date,  
 payable annually on April 15 after each calendar year in which the Reorganized Debtors have  
 19 achieved a positive Surplus Cash Flow.

20 (ii) A holder of a Class 6 Membership Appreciation and Cash Flow  
 Certificate will also be entitled to a pro rata payment (based the total of Allowed Class 6 Claims)  
 21 equal to twenty five percent (25%) of the applicable Membership Appreciation Amount in certain  
 circumstances.

22 (iii) Class 6 Membership Appreciation and Cash Flow Certificate are  
 23 redeemable on the earlier of (i) the closing date of a sale of both Resorts (or, if one Resort is sold  
 before the other, the last Resort), or (ii) the first day of the month at least 123 months after the  
 24 Effective Date.

25 (iv) If redeemed on sale, the right to payment under the Class 6  
 26 Membership Appreciation and Cash Flow Certificate is calculated based on a pro rata share of

1 twenty five percent (25%) of the Membership Appreciation Amount as of the applicable sale  
 2 closing date.

3 (v) If redeemed at the expiration of term, the right to payment under the  
 4 Class 6 Membership Appreciation and Cash Flow Certificate is calculated based on a pro rata  
 share of twenty five percent (25%) of the Membership Appreciation Amount as of the expiration  
 date.

5 (vi) Holders of Class 6 Membership Appreciation and Cash Flow  
 6 Certificate will be entitled to receive annual audited financial statements which will be provided  
 by the date 120 days after the end of the Reorganized Debtor's fiscal year.

7 (c) No Class 6 claimant will be entitled to receive payments from the Unsecured  
 8 Creditor Fund and on account of their Class 6 Certificates that, in the aggregate, total more than  
 the amount of such Claimant's Allowed Unsecured Claim.

9 8.3 Impairment. Class 6 is impaired.

10 **ARTICLE 9**  
 11 **CLASS 7—MEZZANINE LENDER CLAIMS**

12 9.1 Description. Class 7 consists of the Claims arising from that certain Mezzanine  
 13 Loan between Ashford Hospitality and the Level II Debtors in the original principal amount of  
 \$21,500,000 which is secured by the Level II Debtors' membership interests in the Operating  
 Debtors.

14 9.2 Treatment. On the Effective Date, the Level II Debtors' Equity Interests in the  
 15 Operating Debtors will be cancelled and the Level II Debtors will be dissolved. If the holders of  
 16 Allowed Class 7 Claims vote to reject the Plan, the holders of Allowed Class 7 Claims will not  
 17 receive any distribution on account of such Class 7 Claims. If the holders of Allowed Class 7  
 Claims vote to accept the Plan, the holders of Allowed Class 7 Claims will receive, on the later of  
 the date sixty (60) days after the Effective Date or the applicable Claim Payment Date the  
 following:

18 (a) A Cash payment equal to a pro rata share of \$250,000 (with reserves for  
 19 Disputed Claims, which will later be distributed to the holders of Allowed Class 7 Claims to the  
 extent not paid with respect to such Disputed Claims); and

20 (b) A Class 7 Membership Appreciation and Cash Flow Certificate entitling the  
 21 holder to the following:

22 (i) A holder of a Class 7 Membership Appreciation and Cash Flow  
 23 Certificate will be entitled to a pro rata share (based the total of Allowed Class 7 Claims) of one  
 percent (1%) of the Surplus Cash Flow for a calendar year commencing after the Effective Date,  
 payable annually on April 15 after each calendar year in which the Reorganized Debtors have  
 24 achieved a positive Surplus Cash Flow.

25 (ii) A holder of a Class 7 Membership Appreciation and Cash Flow  
 26 Certificate will also be entitled to a pro rata payment (based the total of Allowed Class 7 Claims)  
 equal to five percent (5%) of the applicable Membership Appreciation Amount in certain  
 circumstances.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

(iii) Class 7 Membership Appreciation and Cash Flow Certificate are redeemable on the earlier of (i) the closing date of a sale of both Resorts (or, if one Resort is sold before the other, the last Resort) , or (ii) the first day of the month at least 123 months after the Effective Date.

(iv) If redeemed on sale, the right to payment under the Class 7 Membership Appreciation and Cash Flow Certificate is calculated based on a pro rata share of five percent (5%) of the Membership Appreciation Amount as of the applicable sale closing date.

(v) If redeemed at the expiration of term, the right to payment under the Class 7 Membership Appreciation and Cash Flow Certificate is calculated based on a pro rata share of five percent (5%) of the Membership Appreciation Amount as of the expiration date.

(c) Holders of Class 7 Membership Appreciation and Cash Flow Certificate will be entitled to receive annual audited financial statements which will be provided by the date 120 days after the end of the Reorganized Debtor’s fiscal year.

(d) No Class 7 claimant will be entitled to receive payments that, in the aggregate, total more than the amount of its Allowed Claim.

9.3 Impairment. Class 7 is impaired.

**ARTICLE 10  
CLASS 8–SUBORDINATED PENALTY CLAIMS**

10.1 Description. Class 8 consists of any Allowed Penalty Claims, including, but not limited to, the pre-petition default interest and prepayment premium that Senior Lender contends are owing under the Mortgage Loan and the pre-petition default interest that Mezzanine Lender contends is owing under the Mezzanine Loan.

10.2 Treatment. Holders of Class 8 Penalty Claims will be paid nothing on account of such claims under the Plan.

10.3 Impairment. The holders of Class 8 Claims will not receive or retain anything under the Plan, and thus Class 8 is deemed to reject the Plan.

**ARTICLE 11  
CLASS-9 TRP CREDITORS**

11.1 Description. Class 9 consists of all the Claims of creditors of Transwest Resort Properties, Inc., including but not limited to, SGC Hotel DLP, LP, the United States Internal Revenue Service, and certain state taxing authorities.

11.2 Treatment. On the Effective Date, Transwest Resort Properties, Inc.’s Reorganization Case will be dismissed and the Holders of Class 9 Claims will be free to pursue any and all legal, equitable or contractual remedies as existed as of the Petition Date.

11.3 Impairment. Class 9 Claims are not impaired.

**ARTICLE 12  
CLASS 10–EQUITY INTERESTS AND**

1 **SUBJECT INSIDER CLAIMS**

2 12.1 *Description.* Class 10 consists of all of the Equity Interests in the Level II Debtors  
3 and the Operating Debtors, and the Subject Insider Claims.

4 12.2 *Treatment.* On the Effective Date, all Equity Interests in the Debtors will be  
5 automatically cancelled and voided. All holders of Equity Interests and Subject Insider Claims  
6 will receive nothing on account of those Equity Interests and Subject Insider Claims.

7 12.3 *Impairment.* The holders of Class 10 Equity Interests and Subject Insider Claims  
8 will not receive or retain anything under the Plan, and thus Class 10 is deemed to reject the Plan.

9 **ARTICLE 13**  
10 **TREATMENT OF EXECUTORY CONTRACTS**

11 13.1 *Management Agreements.* The Operating Debtors are each parties to Management  
12 Agreements through which they contract with Starwood to operate the Resorts. The present  
13 Management Agreements date back to 1988 and would encumber the Hilton Head Resorts until  
14 2019 and the La Paloma Resort until 2028. The SWVP Fund XV, on behalf of the Reorganized  
15 Debtors and Starwood have negotiated amendments to the Management Agreements, including  
16 agreements to perform a substantial PIP at each Resort, copies of which are attached hereto as  
17 Schedule 2 to the Plan. The Reorganized Debtors will each assume their respective Management  
18 Agreements as amended. Also in connection with assumption of the Management Agreements  
19 the Reorganized Debtors will reaffirm and assume the following agreements:

20 (a) “Assignment and Consent, Subordination, Non-Disturbance, and  
21 Attornment Agreement” dated December 5, 2007, between Transwest Tucson Property  
22 L.L.C. and the Senior Lender and Starwood;

23 (b) “Assignment and Consent, Subordination, Non-Disturbance, and  
24 Attornment Agreement” dated December 5, 2007, between Transwest Hilton Head  
25 Property L.L.C. and the Senior Lender and Starwood;

26 13.2 *Golf.* Transwest Tucson Property, L.L.C. is a party to an agreement with Troon  
Golf regarding management operation of its golf courses. Transwest Tucson Property, L.L.C.  
will assume this agreement under the Plan.

13.3 *Restaurant, Spa, and Retail Leases.* Transwest Tucson Property, L.L.C. is a party  
to leases with Wilder Restaurant Group for restaurant and bar space and with Elizabeth Arden  
Red Door Spa for spa space. Transwest Hilton Head Property, L.L.C. is a party to a lease or  
license agreement for retail and kiosk spaces. The Operating Debtors will each assume their  
respective Restaurant, Spa and Retail Leases under the Plan.

13.4 *Country Club Membership Agreements.* Transwest Tucson Property, L.L.C. is a  
party to approximately 355 golf, 91 tennis, 25 fitness, and 136 social membership contracts with  
members of its Country Club. Transwest Tucson Property, L.L.C. will assume its membership  
agreements.

13.5 *Other Executory Contracts.* On the Confirmation Date, except as otherwise  
provided herein, all Executory Contracts of the Debtors will be deemed rejected in accordance  
with the provisions and requirements of Bankruptcy Code §§ 365 and 1123, other than those



1 Executory Contracts that (a) have already been assumed by order of the Bankruptcy Court, (b) are  
2 subject to a motion to assume Executory Contracts that is pending on the Confirmation Date,  
3 (c) are subject to a motion to reject an Executory Contract pursuant to which the requested  
4 effective date of such rejection is after the Confirmation Date, (d) are subject to a stipulation  
5 approved by the Bankruptcy Court on or prior to the Confirmation Date, to defer assumption or  
6 rejection until a date after the Effective Date but for which the Bankruptcy Court has retained  
7 jurisdiction pursuant to the Plan and the Confirmation Order, (e) are identified on Exhibit K to the  
8 “Notice of Filing Documents in Support of ‘Second Amended Plan and Restated Joint Plan of  
9 Reorganization Dated October 4, 2011’” [Dkt. No. 626], or (f) any agreements related to any  
10 property easements so designated by SWVP Fund XV prior to the Effective Date, but only to the  
11 extent deemed executory. Approval of any motions to assume Executory Contracts pending on  
12 the Confirmation Date will be approved by the Bankruptcy Court on or after the Confirmation  
13 Date by a Final Order. Each Executory Contract assumed pursuant to this Article will revest in  
14 and be fully enforceable by the Reorganized Debtors in accordance with its terms, except as such  
15 terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing  
16 and providing for its assumption or applicable law.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
13.6 Claims Based on Rejection of Executory Contracts. Every Claim asserted by a  
Creditor arising from the rejection of an Executory Contract pursuant to the Plan must be filed  
with the Bankruptcy Court no later than the first Business Day which is thirty (30) days after the  
Confirmation Date or the first Business Day that is thirty (30) days after entry of the Final Order  
of the Bankruptcy Court approving rejection, if such Final Order is entered after the Confirmation  
Order. Every such Claim which is timely filed, as and when it becomes an Allowed Claim, will  
be treated under Class 6 of the Plan unless the Creditor qualifies or elects on its Ballot to be  
treated under Class 4 of the Plan. Every such Claim which is not timely filed by the deadline  
stated above will be forever barred, unenforceable, and discharged, and the Creditor holding the  
Claim will not receive or be entitled to any distribution under the Plan on account of such Claim.

#### ARTICLE 14 IMPLEMENTATION OF THE PLAN

14.1 Joint Plan. The Debtors are submitting a joint plan. In light of the ownership  
structure of the Debtors and their respective relationships, it is reasonable and administratively  
convenient to propose a joint plan. The Debtors are not seeking to substantively consolidate for  
purposes of the Plan or otherwise.

14.2 Transactions To Occur Prior To The Effective Date. No less than one (1) Business  
Day prior to the Effective Date, the Operating Debtors must:

(a) Debt Service Reserve Account. The Operating Debtors will open a segregated  
Debt Service Reserve Account. The Reorganized Debtors will fund the Debt Service Reserve  
Accounts immediately after the Effective Date. The Reorganized Debtors must also take such  
steps as are necessary to grant and perfect a lien in favor of the Senior Lender in the Debt Service  
Reserve Account.

(b) Capital Improvement Reserve Account. Each Operating Debtor will open a  
Capital Improvement Reserve Account. Each Reorganized Debtor will fund its Capital  
Improvement Reserve Account immediately after the Effective Date. The Reorganized Debtors  
must also take such steps as are necessary to grant and perfect a lien in favor of the Senior Lender  
in the Capital Improvement Reserve Accounts. Beginning the first day of the calendar month that

1 is at least thirty (30) days after the Effective Date, each Reorganized Debtor will deposit 4% of its  
2 gross income in its respective Capital Improvement Reserve Account on a monthly basis.

3 (c) *Plan Administration Fund.* The Reorganized Debtors will each establish a  
4 separate bank account from which it will make payments to administrative, priority, convenience,  
5 and general unsecured claims pursuant to the Plan. The Reorganized Debtors will fund the Plan  
6 Administration Fund with Cash to establish the Unsecured Creditor Fund and Cash necessary to  
7 pay any other payments required immediately after the Effective Date. The Plan Administration  
8 Fund will hold the reserves established by the Reorganized Debtors related to payment of  
9 Disputed Claims pending resolution of dispute. The amount reserved must be sufficient to make  
10 the disputed payment that would be required to be made if the Disputed Claim is Allowed.

11 (d) *Finalize Plan Documents.* The Operating Debtors will have taken any and all  
12 necessary steps in order to finalize the Plan Documents. On the Effective Date, the Reorganized  
13 Debtors will cause the Plan Documents to be executed by an appropriate officer of the  
14 Reorganized Debtors.

15 14.3 *Continued Existence and Vesting of Assets in Reorganized Debtors.* Subject to the  
16 Plan Documents, each of the Operating Debtors will continue in existence after the Effective Date  
17 as a separate legal entity, with all the powers available to such entity under applicable Delaware  
18 law and pursuant to its organizational documents in effect prior to the Effective Date as such may  
19 be amended by the Plan or any Plan Document, without prejudice to any right to terminate such  
20 existence (whether by merger or otherwise) under applicable law after the Effective Date. Except  
21 as otherwise provided in the Plan or Plan Documents, on and after the Effective Date, all property  
22 of the Operating Debtors' Estates and any property acquired by the Operating Debtors or the  
23 Reorganized Debtors under the Plan will vest in the Reorganized Debtors in accordance with  
24 Section 18.2 below. On and after the Effective Date, the Reorganized Debtors may operate their  
25 businesses and may use, acquire or dispose of property and compromise or settle any Claims or  
26 Membership Interests, without supervision or approval of the Bankruptcy Court and free of any  
restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly  
imposed by the Plan or the Confirmation Order.

17 14.4 *Management of Reorganized Debtors.* From and after the Effective Date, the  
18 Reorganized Debtors will be managed by its sole member, Newco. The organizational documents  
19 of the Operating Debtors will be amended as necessary or appropriate to comply with applicable  
20 state law, the Plan, and the issuance of the New Membership Interests in the Reorganized Debtors  
21 to Newco in accordance with the terms of the Plan. Nothing in this Plan shall limit or restrict  
22 Newco's right to transfer or otherwise deal with its membership interests in the Reorganized  
23 Debtors. Newco will retain Transwest Properties, Inc., to assist it with it with asset management.  
24 Transwest Properties, Inc., may retain Creative Hospitality Investment Consultants.

25 14.5 *Funding on the Effective Date.* All payments under the Plan which are due on the  
26 Effective Date will be funded from the Cash on hand or the New Equity Investment.

1 14.6 *Funding after the Effective Date.* The funds necessary to ensure continuing  
2 performance under the Plan after the Effective Date will be (or may be) obtained from:

3 (a) any and all remaining Cash retained by the Reorganized Debtors after the  
4 Effective Date;

- 1 (b) Cash generated from the post-Effective Date operations of the Reorganized  
 Debtors;
- 2
- 3 (c) any reserves established by the Debtors or the Reorganized Debtors;
- 4 (d) the proceeds from any sale or refinancing of all or part of the Resorts; and,
- 5 (e) any other contributions or financing (if any) which the Reorganized Debtors  
 may obtain on or after the Effective Date.

6 14.7 Procedure for Determination of Claims.

7 14.7.1 Objections to Claims. Notwithstanding the occurrence of the Effective  
 Date, and except as to any Claim that has been Allowed prior to the Effective Date, the  
 8 Reorganized Debtors may object to the allowance of any Claim against the Debtors or seek  
 estimation thereof on any grounds permitted by the Bankruptcy Code by filing the appropriate  
 9 pleading in the Bankruptcy Court at any time prior to the first Business Day which is thirty (30)  
 days after the Effective Date. All objections will be litigated to Final Order; provided, however,  
 10 that the Reorganized Debtors (within such parameters as may be established by the Reorganized  
Debtors after the Effective Date) will have the authority to file, settle, compromise, or withdraw  
 11 any objections without Bankruptcy Court approval.

12 14.7.2 Disputed Claims. No payments or other distributions will be made to  
 holders of Claims unless and until such Claims are Allowed Claims pursuant to a Final Order. If  
 13 a Claim is not an Allowed Claim as of the Effective Date or when payment is otherwise due  
 under the Plan, payment on such Claim (plus interest, if any, payable under the Plan) will  
 14 commence if and when such Claim becomes an Allowed Claim pursuant to a Final Order after the  
 Effective Date.

15 14.7.3 Treatment of Contingent Claims. Until such time as a Contingent Claim or  
 16 a Contingent portion of an Allowed Claim becomes fixed or absolute or is disallowed, such Claim  
 will be treated as a Disputed Claim for all purposes related to distributions under the Plan. The  
 17 holder of a Contingent Claim will only be entitled to a distribution under the Plan when and if  
 such Contingent Claim becomes an Allowed Claim.

18 14.7.4 Payments Effective Upon Tender. Whenever the Plan requires payment to  
 19 be made, such payment will be deemed made and effective upon tender thereof by the Debtors or  
 the Reorganized Debtors to the Creditor to whom payment is due. If any Creditor refuses a  
 20 tender, the amount tendered and refused will be held by the Debtors or the Reorganized Debtors  
 for the benefit of that Creditor pending final adjudication of the dispute. However, when and if  
 21 the dispute is finally adjudicated and the Creditor receives the funds previously tendered and  
 refused, the Creditor will be obliged to apply the funds in accordance with the Plan as of the date  
 22 of the tender; and while the dispute is pending and after adjudication thereof, the Creditor will not  
 have the right to claim interest or other charges or to exercise any other rights which would be  
 23 enforceable by the Creditor if the Debtors or the Reorganized Debtors failed to pay the tendered  
 payment.

24 14.7.5 Post Effective Date Fees, Costs, and Expenses. After approval by the  
 25 Bankruptcy Court of the final fee applications of the Professionals submitted pursuant to  
 Bankruptcy Code § 330 for services provided and costs incurred during the course of  
 26 administration of the Reorganization Cases and prior to the Confirmation Order, the Professionals

1 will not be required to submit any further fee applications to the Bankruptcy Court. Any Claims  
 2 for fees, costs, and expenses incurred by any Professionals after the Confirmation Date, including,  
 3 without limitation, those fees and expenses incurred in connection with the implementation and  
 4 consummation of the Plan, will be treated as fees and expenses of the Reorganized Debtors and  
 5 paid in the ordinary course of the business of the Reorganized Debtors, without the necessity for  
 6 any approval by the Bankruptcy Court.

7 14.7.6 Objections to Administrative Claims. The Reorganized Debtors will be  
 8 entitled to object to any Administrative Claims that are asserted. Any objections to  
 9 Administrative Claims will be filed and served by the later of: (x) the date forty-five (45) days  
 10 after the Administrative Claims Bar Date, and (y) such other date as may be fixed by the  
 11 Bankruptcy Court, whether fixed before or after the date specified in clause (x) above. All  
 12 objections will be litigated to Final Order; provided, however, that the Reorganized Debtors  
 13 (within such parameters as may be established by the Reorganized Debtors after the Effective  
 14 Date) will have the authority to file, settle, compromise, or withdraw any objections without  
 15 Bankruptcy Court approval, other than with respect to Professional Fees.

16 **ARTICLE 15**  
 17 **CONDITIONS PRECEDENT**

18 15.1 Conditions to Effectiveness. The Plan will not become effective unless and until  
 19 the following conditions will have been satisfied or waived pursuant to Section 15.2 of the Plan:

20 (a) the Confirmation Order, in form and substance acceptable to the Debtors  
 21 will have been entered and will have become a Final Order;

22 (b) the Plan Documents to be entered into by the Debtors or the Reorganized  
 23 Debtor will have been fully executed and delivered and all conditions to the effectiveness  
 24 of each of the Plan Documents have been satisfied;

25 (c) all actions, documents and agreements necessary to implement the Plan,  
 26 including the transactions required by Section 14.2 above, will have been effected or  
 executed;

(d) the Debtors will have received all authorizations, consents, regulatory  
 approvals, rulings, letters, no-action letters, opinions, or documents that are necessary or  
 appropriate to implement the Plan and that are required by law, regulation, or order; and

(e) the New Equity Investment has been funded to the Reorganized Debtor (or  
 to escrow pending the Effective Date).

15.2 Waiver of Conditions. The Debtors, in their sole discretion and to the extent not  
 prohibited by applicable law, may waive one or more of the conditions precedent to effectiveness  
 of the Plan set forth in Section 15.1 of the Plan (other than receipt of the New Equity Investment),  
 in whole or part, without any notice to any parties in interest or the Bankruptcy Court and without  
 a hearing. The failure to satisfy or waive any condition to the Effective Date may be asserted by  
 the Debtors in their sole discretion regardless of the circumstances giving rise to the failure of  
 such conditions to be satisfied (including any action or inaction by the Debtors). The failure of  
 the Debtors to exercise any of the foregoing rights will not be deemed a waiver of any other  
 rights, and each such right will be deemed an ongoing right, which may be asserted at any time.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

15.3 Effect of Non-occurrence of Conditions. If the consummation of the Plan does not occur, the Plan will be null and void in all respects and nothing contained in the Plan or the Disclosure Statement will: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors; (b) prejudice in any manner the rights of the Debtors; or (c) constitute an admission, acknowledgement, offer or undertaking by the Debtors in any respect.

**ARTICLE 16  
PROVISIONS REGARDING VOTING AND DISTRIBUTIONS UNDER THE PLAN**

16.1 Voting of Claims; Classes Subsequently Deemed Unimpaired.

16.1.1 Each holder of an Allowed Claim in an impaired Class that is entitled to vote on the Plan pursuant to Article 1.2 of the Plan will be entitled to vote separately to accept or reject the Plan as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court.

16.1.2 The Debtors may seek an order of the Bankruptcy Court holding that any Class listed in the Plan as impaired is actually unimpaired. Notwithstanding anything to the contrary contained in the Plan, in the event that Debtors obtain an order of the Bankruptcy Court holding that a Class listed in the Plan as impaired is unimpaired (whether before or after soliciting of acceptances for the Plan), such Class will be unimpaired, each holder of an Allowed Claim in such Class will be conclusively presumed to have accepted the Plan and any votes to accept or reject the Plan submitted by holders of Claims in such Class will be null, void, and have no effect.

16.2 Nonconsensual Confirmation. If any impaired Class of Claims entitled to vote does not accept the Plan by the requisite statutory majority provided in Bankruptcy Code § 1126(c), Debtors reserve the right, to amend the Plan or undertake to have the Bankruptcy Court confirm the Plan under Bankruptcy Code § 1129(b) or both. With respect to any impaired Class of Claims or Equity Interests that is deemed to reject the Plan, the Debtors will request that the Bankruptcy Court confirm the Plan pursuant to Bankruptcy Code § 1129(b). To the extent any Class is deemed to reject the Plan by virtue of the treatment provided to such Class, the Plan will be “crammed down” on the claimants within such Class pursuant to Bankruptcy Code § 1129(b).

16.3 Manner of Distributions. Any payment of Cash made by the Reorganized Debtors pursuant to the Plan may, at the Reorganized Debtors’ option, be made by check drawn on a domestic bank or wire transfer.

16.4 Timing of Distributions. In the event that any payment, distribution, or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but will be deemed to have been completed as of the required date.

16.5 Maximum Distribution. Notwithstanding anything otherwise to the contrary, in no event will a holder of an Allowed Claim which has been Allowed, be entitled to receive consideration which results in a distribution of greater than payment in full with respect to such Allowed Claim (including any interest as provided in the Plan).

1           16.6 *De Minimis Distributions.* Except for claims classified in Class 4 under the Plan,  
2 the Reorganized Debtors will make no distributions of less than \$50 to any Creditor holding an  
3 Allowed Claim. If a Creditor holding an Allowed Claim does not receive a distribution due to the  
4 provisions of this section on any date on which a distribution is to be made to Creditors in the  
5 same Class as the Creditor being entitled to such de minimis payment, then the Claim (so long as  
6 it is an Allowed Claim) will remain eligible for distributions on any subsequent distribution date,  
7 subject to the provisions of this section. In all events, the Creditor holding an Allowed Claim  
8 which has not received a distribution on any previous distribution dates because of this provision,  
9 will receive such distribution on the date that final distribution is made to Creditors in the same  
10 Class as the Creditor being entitled to such de minimis payment.

11           16.7 *Interest on Claims.* Unless otherwise provided in instruments that either take  
12 effect on the Effective Date or remain unaltered by the Plan, interest on any Allowed Claims that  
13 is payable under the Plan will be simple interest and will not be compound interest. In all events,  
14 there will be no default interest payable with respect to any Allowed Claims.

15           16.8 *Withholding Taxes on Distributions.* Any federal, state or local withholding taxes  
16 or other amounts required to be withheld under applicable law will be deducted from distributions  
17 hereunder and no Person will be entitled to any additional distribution as a result of any such  
18 withholding. All Persons holding Claims will be required to provide any information necessary  
19 to effect the withholding of such taxes.

20           16.9 *Disputed Payment of Allowed Claims.* If any dispute arises as to the identity of a  
21 holder of an Allowed Claim who is to receive any distribution, the Reorganized Debtors may, in  
22 lieu of making such distribution to such Person, make such distribution into an escrow account  
23 until the disposition thereof will be determined by Bankruptcy Court order or by written  
24 agreement among the interested parties to such dispute.

25           16.10 *Unclaimed Distributions.* All distributions under the Plan that are unclaimed for a  
26 period of one (1) year after distribution thereof (or an attempt to effect such distribution) in  
accordance with the Plan will be deemed unclaimed property under Bankruptcy Code § 347(b),  
and such unclaimed property will be forfeited by any holder of a Claim originally entitled thereto  
hereunder, whereupon all right, title and interest in and to such unclaimed property will  
immediately and irrevocably be available for future distributions to holders of Allowed Claims  
hereunder in accordance with the terms of the Plan, and the holder of the Allowed Claim  
previously entitled to such unclaimed property will cease to be entitled thereto and any  
entitlement of any holder of any Claim to such distributions will be extinguished and forever  
barred.

## ARTICLE 17 MODIFICATION OF PLAN

Alterations, amendments, or modifications of or to the Plan, including, without  
limitation, to provide for treatment different than that set forth herein with respect to any Class of  
Claims or Equity Interests (including impairment of Classes that are unimpaired hereunder) may  
be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that  
the Plan, as altered, amended, or modified, satisfies the conditions of Bankruptcy Code §§ 1122  
and 1123, and the Debtors will have complied with Bankruptcy Code § 1125. The Plan may be  
altered, amended, or modified at any time after the Confirmation Date and before substantial  
consummation, provided that the Plan, as altered, amended, or modified, satisfies the  
requirements of Bankruptcy Code §§ 1122 and 1123 and the Bankruptcy Court, after notice and a

1 hearing, confirms the Plan, as altered, amended, or modified, under Bankruptcy Code § 1129 and  
 2 the circumstances warrant such alterations, amendments, or modifications. A holder of a Claim  
 3 that has accepted the Plan will be deemed to have accepted the Plan, as altered, amended, or  
 4 modified, if the proposed alteration, amendment, or modification does not materially and  
 5 adversely change the treatment of the Claim of such holder.

**ARTICLE 18**  
**EFFECT OF CONFIRMATION**

6 18.1 *Binding Effect.* From and after the Confirmation Date, the Plan will be binding  
 7 and inure to the benefit of the Debtors, all present and former holders of Claims and Equity  
 8 Interests, and their respective assigns, including the Reorganized Debtors.

9 18.2 *Vesting of Assets.* Upon the Effective Date, pursuant to Bankruptcy Code  
 10 §§ 1141(b) and (c), except to the extent such property is not to be retained by the Reorganized  
 11 Debtors under the Plan, all property of the Estates will vest in the Reorganized Debtors free and  
 12 clear of all claims, liens, encumbrances, charges, and other interests, except as otherwise provided  
 13 in this Plan (including, without limitation, as provided under the Class 1) or in the Confirmation  
 14 Order. From and after the Effective Date, the Reorganized Debtors may operate their businesses  
 15 and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or  
 16 the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or  
 17 provision of the Bankruptcy Code, except as provided herein. Without limiting the foregoing,  
 18 pursuant to Bankruptcy Code § 1123(b)(3), except for any Causes of Action expressly waived by  
 19 the Debtors pursuant to the terms of the Plan, the Reorganized Debtors will retain and will have  
 20 the exclusive right, in its discretion, to enforce against any Person any and all Causes of Action of  
 21 the Debtors.

22 18.3 *Discharge of the Debtors and of Claims, and Termination of Equity Interests.*  
 23 Upon the Effective Date and in consideration of the rights afforded in the Plan and the payments  
 24 and distributions to be made hereunder, except as otherwise provided herein or in the  
 25 Confirmation Order, each holder (as well as any trustees and agents on behalf of each holder) of a  
 26 Claim or Equity Interest and any affiliate of such holder will be deemed to have forever waived,  
 released, and discharged the Debtors, to the fullest extent permitted by Bankruptcy Code § 1141,  
 of and from any and all Claims, Equity Interests, rights, and liabilities that arose prior to the  
 Effective Date of any kind, nature, or description whatsoever. Except as otherwise provided  
 herein, upon the Effective Date, all such holders of Claims and Equity Interests and their affiliates  
 will be forever precluded and enjoined, pursuant to Bankruptcy Code §§ 105, 524, and 1141,  
 from prosecuting or asserting any such discharged Claim against, or terminated Equity Interests  
 in, the Debtors or the Reorganized Debtors, or against any of their assets or properties, any other  
 or further Claim or Equity Interests based upon any act or omission, transaction, or other activity  
 of any kind or nature that occurred prior to the Effective Date, whether or not such holder has  
 filed a Proof of Claim or proof of Equity Interest.

18.4 *Term of Pre-Confirmation Injunctions or Stays.* Unless otherwise provided in the  
 Plan, the Confirmation Order, or a separate order from the Bankruptcy Court, all injunctions or  
 stays arising under or entered during the Reorganization Cases in accordance with Bankruptcy  
 Code §§ 105 or 362, or otherwise, and in existence on the Confirmation Date, will remain in full  
 force and effect until the later of the Effective Date and the date indicated in such applicable  
 order.

1           18.5 Injunction Against Interference with Plan. Upon the entry of the Confirmation  
 2 Order, all holders of Claims and Equity Interests and other parties in interest, along with their  
 3 respective present or former affiliates, employees, agents, officers, directors, or principals, will be  
 enjoined from taking any actions to interfere with the implementation or consummation of the  
 Plan.

4           18.6 Exculpation and Limitation of Liability. None of the Debtors, the Reorganized  
 5 Debtors, SWVP Fund XV, or any of their respective current or former members, partners,  
 6 officers, directors, employees, managers, advisors, professionals, affiliates, or agents of any of the  
 7 foregoing (including any attorneys, financial advisors, investment bankers and other professionals  
 8 retained by such persons, but solely in their capacities as such) will have or incur any liability to  
 9 any holder of any Claim or Equity Interest for any act or omission in connection with, related to,  
 10 or arising out of, without limitation, the Reorganization Cases, the negotiation and execution of  
 the Plan, the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of  
 the Plan, the consummation of the Plan, or the administration of the Plan or the property to be  
 11 distributed under the Plan, including, without limitation, the Plan Documents and any other  
 12 documents ancillary thereto, all decisions, actions, inactions and alleged negligence or  
 13 misconduct relating thereto and all prepetition activities leading to the promulgation and  
 14 confirmation of the Plan, except willful misconduct, fraud, knowing misrepresentation or gross  
 negligence as determined by a Final Order of the Bankruptcy Court. The foregoing parties will  
 be entitled to rely upon the advice of counsel with respect to their duties and responsibilities  
 under the Plan. Nothing in this Section will (i) be construed as a release of any entity's fraud,  
 15 knowing misrepresentation, gross negligence or willful misconduct with respect to matters set  
 16 forth in this Section or (ii) limit the liability of attorneys for the Debtors or the Reorganized  
 Debtors, to their respective clients pursuant to any applicable Code of Professional  
 Responsibility.

17           18.7 Injunction Related to Releases and Exculpation. The Confirmation Order will  
 18 permanently enjoin the commencement or prosecution by any Person or entity, whether directly,  
 19 derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts,  
 20 rights, Causes of Action, or liabilities released pursuant to the Plan.

21           18.8 Termination of Subordination Rights and Settlement of Related Claims.

22           (a) Except as provided herein, the classification and manner of satisfying all  
 23 Claims and Equity Interests and the respective distributions and treatments under the Plan, take  
 24 into account or conform to the relative priority and rights of the Claims and Equity Interests in  
 25 each Class in connection with any contractual, legal, and equitable subordination rights relating  
 26 thereto, whether arising under general principles of equitable subordination, Bankruptcy Code §  
 510(b), or otherwise, and any and all such rights are settled, compromised and released pursuant  
 to the Plan. The Confirmation Order will permanently enjoin, effective as of the Effective Date,  
 all Persons from enforcing or attempting to enforce any such contractual, legal and equitable  
 rights satisfied, compromised, and settled pursuant to this Article.

(b) Pursuant to Bankruptcy Rule 9019 and in consideration of the distributions  
 and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith  
 compromise and settlement of all Claims or controversies relating to the subordination rights that  
 a holder of a Claim or Equity Interest may have or any distribution to be made pursuant to the  
 Plan on account of such Claim or Equity Interest. Entry of the Confirmation Order will constitute  
 the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all  
 such Claims or controversies and the Bankruptcy Court's finding that such compromise or



1 settlement is in the best interests of the Debtors, the Reorganized Debtors, their respective  
2 properties, and holders of Claims and Equity Interests, and is fair, equitable, and reasonable.

3 18.9 Release of Liens. Except as otherwise specifically provided in the Plan, the Plan  
4 Documents, or in any other written contract, instrument, or other written agreement or document  
5 executed in connection with the Plan, (a) each holder of: (i) any Secured Tax Claim; (ii) any  
6 Claim that is purportedly secured; and/or (iii) any judgment, personal property or ad valorem tax,  
7 mechanics' or similar lien Claim, in each case regardless of whether such Claim is an Allowed  
8 Claim, will, on or immediately before the Effective Date and regardless of whether such Claim  
9 has been scheduled or a Proof of Claim with respect to such Claim has been filed: (x) turn over  
10 and release to the Debtors and the Estates or the Reorganized Debtors, as the case may be, any  
11 and all property of the Debtors or the Estates that secures or purportedly secures such Claim, or  
12 such lien and/or Claim will automatically, and without further action by the Debtors, the Estates,  
13 or the Reorganized Debtors, be deemed released; and (y) execute such documents and  
14 instruments as the Reorganized Debtors require to evidence such Claim holder's release of such  
15 property or lien, and if such holder refuses to execute appropriate documents or instruments, the  
16 Debtors, the Estates, or the Reorganized Debtors (as applicable) may, in their discretion, file a  
17 copy of the Confirmation Order in the appropriate recording office, which will serve to release  
18 any Claim holder's rights in such property; and (b) on the Effective Date, all right, title and  
19 interest in such property will revert or be transferred to the Reorganized Debtors free and clear of  
20 all Claims and interests, including, without limitation, liens, escrows, charges, pledges,  
21 encumbrances, and/or security interests of any kind.

22 18.10 Retention of Causes of Action/Reservation of Rights.

23 (a) Except as specifically provided herein, nothing contained in the Plan or the  
24 Confirmation Order will be deemed to be a waiver or the relinquishment of any rights, Claims, or  
25 Causes of Action that the Debtors may have or which a Reorganized Debtor may acquire pursuant  
26 to the Plan or applicable law. A Reorganized Debtor may assert any such retained rights, Claims,  
or Causes of Action, on behalf of the Estates or itself, in accordance with any provision of the  
Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation, (i) any and  
all Claims against any Person, to the extent such Person asserts a crossclaim, counterclaim, and/or  
Claim for setoff, which seeks affirmative relief against the Debtors, the Reorganized Debtors, or  
any of their officers, directors, members, agents, or representatives; (ii) any warranty or similar  
claim, (iii) the avoidance of any transfer by or obligation of the Estates or the Debtors or the  
recovery of the value of such transfer; and (iv) the turnover of any property of the Estates.

(b) Nothing contained in the Plan or the Confirmation Order will be deemed to  
be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or  
equitable right or defense that the Debtors had against or with respect to any Claim left  
unimpaired by the Plan. The Reorganized Debtors will have, retain, reserve, and be entitled to  
assert all such Claims, Causes of Action, rights of setoff, or other legal or equitable rights or  
defenses which the Debtors had immediately prior to the Petition Date as fully as if the  
Reorganization Cases had not been commenced, and all of the Reorganized Debtors' legal and/or  
equitable rights respecting any Claim left unimpaired by the Plan may be asserted after the  
Confirmation Date to the same extent as if the Reorganization Cases had not been commenced.

1 **ARTICLE 19**  
2 **RETENTION OF JURISDICTION**

3 Notwithstanding confirmation of the Plan and the occurrence of the Effective  
4 Date, the Bankruptcy Court will retain jurisdiction for the following purposes:

5 19.1 *In General.* The Bankruptcy Court will retain jurisdiction to determine the  
6 allowance and payment of any Claims upon any objections thereto (or other appropriate  
7 proceedings) by the Debtors, by the Reorganized Debtors, or by any other party in interest  
8 entitled to proceed in that manner. As part of such retained jurisdiction, the Bankruptcy Court  
9 will continue to determine the allowance of Administrative Claims and any request for payment  
10 thereof, including Administrative Claims for Professional Fees.

11 19.2 *Plan Disputes And Enforcement.* The Bankruptcy Court will retain jurisdiction to  
12 determine any dispute which may arise regarding the interpretation of any provision of the Plan.  
13 The Bankruptcy Court also will retain jurisdiction to enforce any provisions of the Plan, the Plan  
14 Documents and any and all other documents relating to the Plan, and the Confirmation Order.  
15 The Bankruptcy Court will also retain jurisdiction over any matter relating to the implementation,  
16 effectuation and/or consummation of the Plan.

17 19.3 *Further Orders.* The Bankruptcy Court will retain jurisdiction to facilitate the  
18 performance of the Plan by entering, consistent with the provisions of the Plan, any further  
19 necessary or appropriate order regarding enforcement of the Plan and any provision thereof. In  
20 addition, the Bankruptcy Court will retain jurisdiction to facilitate or implement the allowance,  
21 disallowance, treatment, cancellation or satisfaction of any Claim or Equity Interest, or any  
22 portion thereof, pursuant to the Plan.

23 19.4 *Governmental Units Or Regulatory Agencies.* The Bankruptcy Court will retain  
24 jurisdiction to adjudicate any dispute or to hear and determine any action taken, proposed, or  
25 threatened by any state, federal, or local governmental regulatory agency or unit having or  
26 asserting jurisdiction or power over the conduct of the business of the Debtors and/or the  
Reorganized Debtors.

19.5 *Final Decree.* The Bankruptcy Court will retain jurisdiction to enter an  
appropriate final decree in the Reorganization Cases.

19.6 *Appeals.* In the event of an appeal of the Confirmation Order or any other kind of  
review or challenge to the Confirmation Order, and provided that no stay of the effectiveness of  
the Confirmation Order has been entered, the Bankruptcy Court will retain jurisdiction to  
implement and enforce the Confirmation Order and the Plan according to their terms, including,  
but not limited to, jurisdiction to enter such orders regarding the Plan or the performance thereof  
as may be necessary to effectuate the reorganization of the Debtors.

19.7 *Executory Contracts.* The Bankruptcy Court will retain jurisdiction to determine  
any and all motions regarding assumption or rejection of Executory Contracts and any and all  
Claims arising therefrom.

19.8 *Claims.* The Bankruptcy Court will retain jurisdiction: (a) to hear and determine  
any Claim or Cause of Action by or against the Debtors; the Debtors' members, managers,  
officers, directors, and employees; the Chapter 11 Professionals and the Reorganized Debtor; and  
(b) to adjudicate any Causes of Action or other proceedings currently pending or otherwise

Quarles & Brady LLP

1 referenced here or elsewhere in the Plan, including, but not limited to, any and all “core  
 2 proceedings” under 28 U.S.C. § 157(b) which may be pertinent to the Reorganization Cases and  
 3 which the Debtors or the Reorganized Debtors may deem appropriate to initiate and prosecute  
 4 before the Court in aid of the implementation of the Plan.

**ARTICLE 20**  
**MISCELLANEOUS PROVISIONS**

5 20.1 *Effectuating Documents and Further Transactions.* Each of the Debtors and the  
 6 Reorganized Debtors is authorized to execute, deliver, file, or record such contracts, instruments,  
 7 releases, indentures, and other agreements or documents and take such actions as may be  
 8 necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan,  
 9 the Plan Documents, and any securities issued pursuant to the Plan.

10 20.2 *Corporate Action.* On the Effective Date, all matters provided for under the Plan  
 11 that would otherwise require approval of the directors, members, managers or partners of one or  
 12 more of the Debtors or Reorganized Debtors, including, without limitation, (i) the authorization to  
 13 issue or cause to be issued the New Membership Interest, (ii) the amendment of the Reorganized  
 14 Debtors’ organizational documents, (iii) the election or appointment, as the case may be, of  
 15 directors, officers or managers of the Reorganized Debtors, and (iv) the qualification of the  
 16 Reorganized Debtors to conduct their businesses from and after the Effective Date, may occur  
 17 without any requirement of further action by the stockholders, directors, members, managers, or  
 18 partners of the Debtors.

19 20.3 *Exemption from Transfer Taxes.* Pursuant to Bankruptcy Code § 1146(c), the  
 20 transactions to occur after entry of the Confirmation Order and on or before the Effective Date or  
 21 otherwise pursuant to the Plan, including, but not limited to, the issuance, transfer, or exchange of  
 22 notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other  
 23 security interest, the making or assignment of any lease or sublease, or the making or delivery of  
 24 any deed or other instrument of transfer under, and any other transfers or transactions in  
 25 furtherance of, or in connection with the Plan, including, without limitation, any merger  
 26 agreements or agreements of consolidation, deeds, bills of sale, assignments or Plan Documents  
 executed in connection with any of the transactions contemplated under the Plan, will constitute a  
 “transfer under a plan” and will not be subject to any stamp, real estate transfer, mortgage  
 recording, or other similar tax. All sale transactions consummated by the Debtors and approved  
 by the Bankruptcy Court on and after the Petition Date, through and including the Effective Date,  
 including, without limitation, the transfers effectuated under the Plan or the Plan Documents, will  
 be deemed to have been made under, in furtherance of, or in connection with the Plan and, thus,  
 will not be subject to any stamp, real estate transfer, mortgage recording, or similar tax.

21 20.4 *Plan Supplement.* Drafts of the Plan Documents will be filed with the Clerk of the  
 22 Bankruptcy Court at least fifteen (15) days prior to the Confirmation Hearing; provided, however,  
 23 that the Debtors may revise any such documents through and including the Effective Date, so  
 24 long as any such amendments are not inconsistent with the Plan.

25 20.5 *Revocation or Withdrawal of the Plan.* The Debtors reserve the right to revoke or  
 26 withdraw the Plan prior to the Effective Date. If the Debtors revoke or withdraw the Plan prior to  
 the Effective Date, then the Plan will be deemed null and void. In such event, nothing contained  
 herein will constitute or be deemed a waiver or release of any Claims or prejudice in any manner  
 the rights of the Debtors or any Person in any further proceedings involving the Debtors. None of  
 the filing of the Plan or the Disclosure Statement, any statement or provision contained herein or

1 therein, or the taking of any action by the Debtors with respect to the Plan will be or will be  
2 deemed to be an admission or waiver of any rights of the Debtors with respect to the holders of  
3 Claims or the Equity Interests or with respect to any matter which is pending before or may come  
before the Bankruptcy Court for determination in the Reorganization Cases.

4 20.6 *Confirmation Order.* The Confirmation Order will, and is hereby deemed to, ratify  
5 all transactions effected by the Debtors during the period commencing on the Petition Date and  
ending on the Effective Date, except for any acts constituting willful misconduct, gross  
negligence, recklessness or fraud.

6 20.7 *Severability.* If, prior to the entry of the Confirmation Order, any term or  
7 provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the  
8 Bankruptcy Court, at the request of the Debtors, will have the power to alter and interpret such  
9 term or provision to make it valid or enforceable to the maximum extent practicable, consistent  
10 with the original purpose of the term or provision held to be invalid, void, or unenforceable, and  
11 such term or provision will then be applicable as altered or interpreted. Notwithstanding any such  
12 holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will  
13 remain in full force and effect and will in no way be affected, impaired, or invalidated by such  
14 holding, alteration, or interpretation. The Confirmation Order will constitute a judicial  
15 determination and will provide that each term and provision of the Plan, as it may have been  
16 altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its  
17 terms.

18 20.8 *Expedited Tax Determination.* The Reorganized Debtors may request an expedited  
19 determination of taxes under Bankruptcy Code § 505(b) for all returns filed for, or on behalf of,  
20 the Debtors or the Reorganized Debtors for all taxable periods through the Effective Date.

21 20.9 *Governing Law.* Except to the extent that the Bankruptcy Code or other federal  
22 law is applicable, or to the extent an exhibit or schedule hereto or the Plan Documents provides  
23 otherwise, the rights, duties, and obligations arising under the Plan will be governed by, and  
24 construed and enforced in accordance with, the laws of the State of Arizona, without giving effect  
25 to any contrary result otherwise required under applicable choice or conflict of law rules.

26 20.10 *Binding Effect.* The Plan will be binding upon and inure to the benefit of the  
Debtors, the holders of Claims and Equity Interests, and their respective successors and assigns,  
including, without limitation, the Reorganized Debtors.

20.11 *Exhibits/Schedules.* All exhibits and schedules to the Plan are incorporated into  
and are a part of the Plan as if set forth in full herein.

20.12 *Payment of Statutory Fees and Filing of Quarterly Reports.* All fees payable  
pursuant to Section 1980 of Title 28 of the United States Code, 28 U.S.C. § 1980, as determined  
by the Bankruptcy Court at or in conjunction with the Confirmation Hearing, will be paid on or  
before the Effective Date and, thereafter, in accordance with applicable bankruptcy law. All  
quarterly reports of disbursements required to be filed by applicable bankruptcy law will be filed  
in accordance with applicable bankruptcy law.

20.13 *No Professional Fees or Expenses.* No professional fees or expenses will be paid  
by the Debtors or the Reorganized Debtors with respect to any Claim except as specified in the  
Plan or as Allowed by a Final Order of the Court.

1 20.14 Headings. The headings of the articles, paragraphs, and sections of the Plan are  
2 inserted for convenience only and will not determine the interpretation of the substantive  
3 provisions of the Plan.

4 **ARTICLE 21**  
**DEFINITIONS AND RULES OF CONSTRUCTION**

5 For purposes of this Plan, except as expressly provided or unless the context  
6 otherwise requires, all capitalized terms not otherwise defined have the meanings ascribed to  
7 them in this Article. A term used in the Plan that is not defined in this Article will have the  
8 meaning ascribed to that term, if any, in the Bankruptcy Code or the Bankruptcy Rules.  
9 Construction of the Plan is governed by Bankruptcy Code § 102.

10 21.1 Adjusted Net Operating Income has the same meaning as “Adjusted Net  
11 Operating Income” has in Summary Operating Statement prepared under the *Uniform System of*  
12 *Accounts for the Lodging Industry*, 10th Edition. Adjusted Net Operating Income is calculated by  
13 taking Total Revenue less Departmental Expense less Undistributed Operating Expense, less  
14 Management Fees less Fixed Charges, less Replacement Reserves.

15 21.2 Administrative Claim means (a) every cost or expense of administration of the  
16 Reorganization Cases which is allowable pursuant to Bankruptcy Code § 503, including any  
17 actual and necessary post-petition expenses of preserving the Estates; (b) any actual and  
18 necessary post-petition expenses of operating the Debtors; (c) all Professional Charges approved  
19 by the Bankruptcy Court pursuant to interim and final allowances in accordance with Bankruptcy  
20 Code §§ 330, 331, and 503(b); and (d) all fees and charges assessed against the Estates under  
21 Chapter 123 of Title 28, United States Code

22 21.3 Administrative Claims Bar Date means the deadline for filing applications for  
23 approval of Administrative Claims which will occur on the first Business Day of the first month  
24 occurring more than sixty (60) days after the Confirmation Order becomes a Final Order and  
25 includes the deadline for Professionals to submit their final fee applications.

26 21.4 Allowed means with respect to any Claim or Administrative Claim allowance for  
purposes of distribution pursuant to Bankruptcy Code §§ 502 or 503. A Claim or Administrative  
Claim may become an Allowed Claim by operation of law if it was scheduled in a liquidated  
amount and not disputed, or if a Proof of Claim was timely filed and was not objected to prior to  
the Claim Objection Deadline or Administrative Claims Bar Date, as applicable. A Claim or  
Administrative Claim may also become an Allowed Claim pursuant to the terms of the Plan or by  
a Final Order entered on an objection to a Proof of Claim or on an application for administrative  
expense; estimated Claims that are Allowed solely for the purpose of voting to accept or reject the  
Plan pursuant to an order of the Bankruptcy Court, will not be considered Allowed Claims  
hereunder. No Disputed Claim will become an Allowed Claim unless and until all such matters  
are resolved or adjudicated fully and finally and a Final Order has been entered.

21.5 Arizona Deed of Trust means that certain “Deed of Trust Assignment of Leases  
and Rents, Security Agreement and Fixture Filing” encumbering the La Paloma Resort that was  
recorded on December 5, 2007, in the Office of the Pima County Recorder at Docket 13195 and  
Page 1621.

21.6 Bankruptcy Code means Title 11 of the United States Code 11 U.S.C. §§ 101, et  
seq., including any amendments thereto, which are in effect during the Reorganization Cases.

1           21.7    **Bankruptcy Court** means the United States Bankruptcy Court for the District of  
 2    Arizona.

3           21.8    **Bankruptcy Rule** means a rule under the Federal Rules of Bankruptcy Procedure  
 4    which are in effect during the Reorganization Cases.

5           21.9    **Business Day** means every day except Saturdays, Sundays, and federal holidays.

6           21.10 **Capital Improvement Reserve Account** means the Reserve Account established  
 7    by the Reorganized Debtors for purposes of making capital improvements to the Resorts pursuant  
 8    to the Plan and any Property Improvement Plan agreed to with the Management Company.

9           21.11 **Cash** means cash, cash equivalents, bank deposits, and negotiable instruments  
 10   payable on demand.

11           21.12 **Cash Collateral** has the same meaning as “Cash Collateral” in the “Second  
 12   Interim Order Authorizing Transwest Tucson Property, L.L.C.’s and Transwest Hilton Head  
 13   Property, L.L.C.’s Use Of Cash Collateral” (Docket No. 169) and the “Supplemental Order to  
 14   Second Interim Order Authorizing Transwest Tucson Property, L.L.C.’s and Transwest Hilton  
 15   Head Property, L.L.C.’s Use Of Cash Collateral” (Docket No. 269).

16           21.13 **Cause of Action** means a legal and factual theory that gives rise to a Claim.

17           21.14 **Claim Objection Deadline** means the deadline for filing objections to Claims,  
 18   which is the first Business Day of the first calendar month at least 90 days after the Confirmation  
 19   Order becomes a Final Order.

20           21.15 **Claim Payment Date** means the later of the first Business Day after the Effective  
 21   Date and the date at least 15 days after entry of an order Allowing a Claim in whole or in part.

22           21.16 **Class** means each of the classifications of Claims and Equity Interests described in  
 23   Article 1 of the Plan.

24           21.17 **Class 6 Membership Appreciation and Cash Flow Certificate or Class 6**  
 25   **Certificate** means the certificates given to the holders of Allowed Class 6 Claims under Section  
 26   8.2(b) of the Plan entitling the holder to a pro rata right to share in the post-confirmation cash  
 27   flow of the Reorganized Debtors and the appreciation in the New Membership Interests in the  
 28   Reorganized Debtors to the extent provided in Section 8.2(b). The Class 6 Membership  
 29   Appreciation and Cash Flow Certificates are not intended to nor will they be deemed to confer on  
 30   the Class 6 holder any interest as a member or holder of any type of equity interest in the  
 31   Reorganized Debtors nor will issuance of such Class 6 Certificates impose any additional duties  
 32   or obligations on the Reorganized Debtors to the holders of the Class 6 Certificates other than as a  
 33   debtor and creditor.

34           21.18 **Class 7 Junior Membership Appreciation and Cash Flow Certificate or**  
 35   **Class 7 Certificate** means the certificate given to the holders of Allowed Class 7 Claims under  
 36   Section 9.2 of the Plan entitling the holder to a pro rata right to share in the post-confirmation  
 37   cash flow of the Reorganized Debtors and the appreciation in the New Membership Interests in  
 38   the Reorganized Debtors to the extent provided in Section 9.2. The Class 7 Junior Membership  
 39   Appreciation and Cash Flow Certificates are not intended to nor will they be deemed to confer on  
 40   the Class 7 holder any interest as a member or holder of any type of equity interest in the

1 Reorganized Debtors nor will issuance of such Class 7 Certificates impose any additional duties  
 2 or obligations on the Reorganized Debtors to the holders of the Class 7 Certificates other than as a  
 debtor and creditor.

3 21.19 **Collateral** means property that is subject to a creditor's lien.

4 21.20 **Confirmation Date** means the date the Confirmation Order is entered by the  
 5 Bankruptcy Court.

6 21.21 **Confirmation Hearing** means the hearing held by the Bankruptcy Court regarding  
 confirmation of the Plan, as such may be continued from time to time.

7 21.22 **Confirmation Order** means the order of the Bankruptcy Court confirming the  
 8 Plan pursuant to Bankruptcy Code § 1129.

9 21.23 **Contingent** means, with reference to a Claim, a Claim that has not accrued or is  
 not otherwise payable and the accrual of which or the obligation to make payment on which, is  
 10 dependent upon a future event that may or may not occur.

11 21.24 **Country Club** means the country club at the La Paloma Resort.

12 21.25 **Debtors** means Transwest Resort Properties, Inc. (Case No. 4:10-bk-37134-  
 EWH), Transwest Tucson Property, L.L.C. (Case No. 4:10-bk-37160-EWH), Transwest Hilton  
 13 Head Property, L.L.C. (Case No. 4:10-bk-37170-EWH), Transwest Tucson II, L.L.C. (Case  
 No. 4:10-bk-37151-EWH), and Transwest Hilton Head II, L.L.C. (Case No. 4:10-bk-37145-  
 14 EWH), collectively.

15 21.26 **Debt Service Coverage Ratio** means the ratio of the Resorts' Adjusted Net  
 Operating Income for a month to the monthly payment required under a loan.

16 21.27 **Debt Service Reserve Account** means the account established by the Reorganized  
 17 Debtors to make monthly payments to the Senior Lender as provided in Article 3 of the Plan.

18 21.28 **Disclosure Statement** means the Disclosure Statement presented pursuant to  
 Bankruptcy Code § 1125 by the Debtors with respect to the Plan, including, but not limited to,  
 any restatements, amendments, modifications, and additional disclosures (if any) provided by the  
 19 Debtors to comply with Bankruptcy Code § 1127 or orders of the Bankruptcy Court, as approved  
 by the Bankruptcy Court.

20 21.29 **Disputed Claim** means a Claim scheduled by a Debtor as disputed, or a Claim as  
 21 to which a Proof of Claim was filed and a timely objection has been filed.

22 21.30 **Effective Date** means of the first Business Day that is at least fifteen (15) days  
 23 after the Confirmation Date and when all of the conditions to the occurrence of the Effective Date  
 are satisfied.

24 21.31 **Equity** or **Equity Interests** means the ownership interests in the Debtors.

25 21.32 **Estate** means the bankruptcy estate of a Debtor created under Bankruptcy Code  
 26 § 541. "Estates" will referred to the Estates of all of the Debtors.

1           21.33 **Executory Contract** means every unexpired lease and other contract which is  
 2 subject to being assumed or rejected by the Debtors under Bankruptcy Code § 365, pursuant to  
 the Plan or pursuant to separate motion.

3           21.34 **Final Order** means any judgment or order of the Bankruptcy Court or any other  
 4 court of competent jurisdiction as to which the time to appeal, petition for certiorari, or move for  
 5 reargument or rehearing has expired, and as to which no appeal, petition for certiorari, or other  
 6 proceedings for reargument or rehearing will then be pending, or as to which any right to appeal,  
 7 petition for certiorari, reargue or rehear will have been waived in writing, in form and substance  
 8 satisfactory to the Debtors or, on and after the Effective Date, in form and substance satisfactory  
 9 to the Reorganized Debtors, or in the event that an appeal, writ of certiorari, reargument or  
 10 rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court  
 of competent jurisdiction will have been determined by the highest court to which such order was  
 appealed, or certiorari, reargument or rehearing will have been denied, and the time to take any  
 further appeal, petition for certiorari or move for reargument or rehearing will have expired  
 provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal  
 Rules of Civil Procedure or any analogous rule under the Bankruptcy Rules or applicable state  
 court rules of civil procedure, may be filed with respect to such order or judgment, will not cause  
 such order or judgment not to be a Final Order.

11           21.35 **Hilton Head Resort** means the Westin Hilton Head Island Resort and Spa located  
 12 at 2 Grasslawn Avenue on Hilton Head Island in South Carolina.

13           21.36 **Holder** means the owner of a Claim against, or Equity Interest in, the Debtors (or  
 14 any of them).

15           21.37 **Key Money** means cash contributed to the Reorganized Debtors by a replacement  
 16 management company in connection with the Replacement Management Agreements. The Key  
 17 Money must be used for specified capital improvements in accordance with the terms of the  
 Replacement Management Agreements.

18           21.38 **La Paloma Resort** or **La Paloma** mean the Westin La Paloma Resort and Country  
 19 Club located at 3800 East Sunrise Drive in Tucson, Arizona.

20           21.39 **Level II Debtors** mean Transwest Tucson II, L.L.C., and Transwest Hilton Head  
 21 II L.L.C., collectively.

22           21.40 **LTV Ratio** means the ratio of the principal amount of a Secured Claim to the  
 23 value of the collateral securing that claim (with the value of the Resorts for this purpose  
 24 calculated by dividing the trailing 12 month Adjusted Net Operating Income of the Resorts by  
 25 8.5%).

26           21.41 **Management Agreements** mean, collectively, that certain Management  
 Agreement dated as of October 31, 1988, between Transwest Tucson Property, L.L.C. and  
 Starwood governing the operation of the La Paloma Resort, and that certain Management  
 Agreement dated as of October 6, 1988, between Transwest Hilton Head Property, L.L.C. and  
 Starwood governing the operation of the Hilton Head Resort.

          21.42 **Membership Appreciation Amount** means the value (as calculated below) of the  
 New Membership Interests as of the applicable redemption date over and above repayment of



1 paid in capital (including, but not limited to, the New Equity Investment) plus a 13% per annum  
 2 preferred return on the New Equity Investment through the applicable redemption date.

3 (a) In the event of a redemption on the  
 4 sale of the Resorts, the value of the New Membership Interests at that time for purposes of  
 5 calculating the Membership Appreciation Amount is based on the net sales proceeds (after costs  
 6 of sale) after full repayment of all liens or obligations of any type of the Reorganized Debtors,  
 including, but not limited to, all amounts owing to Senior Lender and other Creditors under the  
 Plan, and after repayment of all paid in capital (including, but not limited to, the New Equity  
 Investment) plus a 13% per annum preferred return to the New Equity Investment through the  
 date of redemption.

7 (b) In the event of a redemption at the  
 8 expiration of the term, the value of the New Membership Interests at that time for purposes of  
 9 calculating the Membership Appreciation Amount is based on the then current “as is” appraised  
 10 value of the Resorts under appraisals obtained by the Reorganized Debtors, less the amount of all  
 11 liens or obligations of any type then owing by the Reorganized Debtors, including, but not limited  
 to, all amounts owing to Senior Lender and other Creditors under the Plan, and less the amount  
 required to repay all paid in capital (including, but not limited to, the New Equity Investment)  
 plus a 13% per annum preferred return to the New Equity Investment through the date of  
 redemption.

12 21.43 **Mezzanine Lender** means the Holder of the Mezzanine Loan.

13 21.44 **Mezzanine Loan** means that certain \$21,500,000 mezzanine loan evidenced by  
 14 that certain Mezzanine Loan Agreement dated December 5, 2007 between Ashford Hospitality  
 Finance LP, on the one hand, and the Level II Debtors on the other hand.

15 21.45 **Mortgage Loan** means the \$209,000,000 loan evidenced by that certain Loan  
 16 Agreement dated December 5, 2007, between J.P. Morgan Chase Bank, N.A. on the one hand and  
 Operating Debtors, on the other hand; and further evidenced by, among other things, the  
 Mortgage Notes, the Arizona Deed of Trust and the South Carolina Mortgage.

17 21.46 **Mortgage Loan Documents** means all of the documents evidencing and  
 18 pertaining to the Mortgage Loan.

19 21.47 **Mortgage Notes** mean, collectively, those certain two promissory notes  
 20 evidencing the Mortgage Loan co-made by the Operating Debtors and dated December 5, 2007—  
 one note in the original principal amount of \$105,000,000 (the “A-1 Note”) and one in the  
 original principal amount of \$104,000,000 (the “A-2 Note”).

21 21.48 **Newco** means the newly formed limited liability company that will be the sole  
 22 member of the Reorganized Debtors, and that will make the New Equity Investment in the  
 Reorganized Debtors on the Effective Date.

23 21.49 **New Membership Interests** means the equity interests in the Reorganized  
 24 Property Debtors issued to Newco on the Effective Date upon payment of the New Equity  
 Investment.

25 21.50 **New Equity Investment** means the capital contribution of not less than  
 26 \$30,000,000 made by Newco to acquire the New Membership Interests.

1           21.51 **Operating Accounts** mean the bank accounts established by Starwood Hyatt for  
 2 the benefit of the Reorganized Debtors for purposes of operating the Resorts.

3           21.52 **Operating Debtors** means Transwest Tucson Property, L.L.C., and Transwest  
 4 Hilton Head Property, L.L.C.

5           21.53 **Penalty Claim** means any Claim, whether Secured or Unsecured, for any fine,  
 6 penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the Petition  
 7 Date, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual  
 pecuniary loss suffered by the holder of such Claim, including the pre-petition default interest and  
 prepayment premium the Senior Lender contends is owing under the Mortgage Loan or  
 Mezzanine Lender contends is owing under the Mezzanine Loan, or penalty interest owed to a  
 governmental entity on a tax claim.

8           21.54 **Petition Date** means November 17, 2010, the date the Debtors filed voluntary  
 9 petitions for protection under Chapter 11 of the Bankruptcy Code commencing the  
 Reorganization Cases.

10          21.55 **Plan** means this Joint Plan of Reorganization proposed by the Debtors and dated  
 11 October 4, 2011.

12          21.56 **Plan Administration Fund** means the separate bank accounts created by the  
 13 Reorganized Debtors from which each debtor will make payments to administrative, priority,  
 convenience, and general unsecured claims pursuant to the Plan.

- 14          21.57 **Plan Documents** means documents necessary to carry out the Plan including:
- 15           (a) Replacement Notes
  - 16           (b) Amendments to the Mortgage Loan Agreement, the Arizona Deed of Trust, the  
 17 South Carolina Mortgage, and other Mortgage Loan Documents consistent with the treatment of  
 the Senior Lender Secured Claim under this Plan
  - 18           (c) Membership Certificates in the Reorganized Debtors
  - 19           (d) Class 6 Membership Appreciation and Cash Flow Certificates
  - 20           (e) Class 7 Membership Appreciation and Cash Flow Certificates
  - 21           (f) Amended Management Agreement for the La Paloma Resort
  - 22           (g) Amended Management Agreement for the Hilton Head Resort.
  - 23           (h) Any other documents necessary to effectuate the Plan.

24          21.58 **Priority Tax Claim** means an Unsecured Claim owed by a Debtor, other than  
 TRP, or portion thereof that is entitled to priority under Bankruptcy Code § 507(a)(8).

25          21.59 **Priority Unsecured Claim** means an Unsecured Claim owed by a Debtor, other  
 26 than TRP, or portion thereof that is entitled to priority under Bankruptcy Code § 507(a), other  
 than Administrative Claims or Priority Tax Claims.

1           21.60 **Professional** means an attorney, accountant, broker or other professional service  
2 firm.

3           21.61 **Professional Fees** means the fees charged by professionals.

4           21.62 **Proof of Claim** has the same meaning as proof of claim in Bankruptcy Code § 501  
5 and Bankruptcy Rule 3003.

6           21.63 **Priority Tax Claims** means every Unsecured Claim owed to a governmental unit  
7 by a Debtor, other than TRP, or portion thereof that is entitled to priority under Bankruptcy Code  
8 § 507(a)(8).

9           21.64 **Reorganized Debtors** means Transwest Tucson Property, L.L.C., and Transwest  
10 Hilton Head Property, L.L.C. from and after the Effective Date, as reorganized pursuant to this  
11 Plan.

12           21.65 **Reorganization Cases** means the jointly administered Chapter 11 cases filed in  
13 the Bankruptcy Court by Transwest Resort Properties, Inc. (Case No. 4:10-bk-37134-EWH),  
14 Transwest Tucson Property, L.L.C. (Case No. 4:10-bk-37160-EWH), Transwest Hilton Head  
15 Property, L.L.C. (Case No. 4:10-bk-37170-EWH), Transwest Tucson II, L.L.C. (Case No. 4:10-  
16 bk-37151-EWH), and Transwest Hilton Head II, L.L.C. (Case No. 4:10-bk-37145-EWH).

17           21.66 **Replacement Management Agreement** means an agreement between the  
18 reorganized Transwest Tucson Property, L.L.C. or Transwest Hilton Head Property, L.L.C. on the  
19 one hand and Starwood, Hyatt or a replacement management company (as approved in the  
20 Confirmation Order), on the other hand, governing the management of a Resort from and after the  
21 Effective Date.

22           21.67 **Replacement Notes** mean the promissory notes issued by the Reorganized  
23 Debtors to the Senior Lender on the Effective Date pursuant to section 3.2.2(a) of the Plan.

24           21.68 **Reserves** or **Reserve Accounts** mean an account established by the Reorganized  
25 Debtors (as to each) which is segregated from all other accounts used by the Reorganized Debtors  
26 in the operation of their respective businesses and which will be utilized, in part, to fund the  
Reorganized Debtors obligations under the Plan, for anticipated future payments by the  
Reorganized Debtors and for such other purposes as the Reorganized Debtors deem necessary or  
appropriate. Notwithstanding anything contained in any of the Senior Lender's Mortgage Loan  
Documents, neither the Senior Lender nor any other Creditor will have a security interest in any  
of the Reserve Accounts.

          21.69 **Resorts** means the La Paloma Resort and the Hilton Head Resort, collectively,  
including related real and personal property other than Cash.

          21.70 **Restaurant, Spa and Retail Lease** means a contracts that either of the Operating  
Debtors has entered into with a third party for use of space at a Resorts for restaurant, spa or retail  
purposes.

          21.71 **Section 1111(b)(2) Election** means the election by a holder of a Secured Claim as  
provided for in Bankruptcy Code § 1111(b)(2).

1           21.72 **Secured** means with respect to a Claim, an assurance repayment of the Claim by a  
 2 security interest or lien in property that arises by agreement or by statute.

3           21.73 **Senior Lender** means the holder of the Mortgage Loan, JPMCC 2007-C1  
 4 Grasslawn Lodging L.L.C.

5           21.74 **Senior Lender Secured Claim** means that portion of the Senior Lender’s Claim  
 6 that is Allowed as a Secured Claim based on the value of the Resorts, as determined by the  
 7 Bankruptcy Court or agreed between the Operating Debtors and the Senior Lender, and the  
 8 related Cash Collateral.

9           21.75 **South Carolina Mortgage** means that certain “Mortgage, Assignment of Leases  
 10 and Rents, Security Agreement and Fixture Filing” encumbering the Hilton Head Resort and  
 11 recorded in the office of the Beaufort County, South Carolina Recorder’s Office at Book 02658  
 12 and Pages 2310-2337.

13           21.76 **Starwood** means Starwood Hotels and Resorts Worldwide, Inc.

14           21.77 **Statutory Interest** means the interest on a Claim of a governmental entity  
 15 provided by applicable municipal, state or federal statute.

16           21.78 **Stipulated Value** means \$92,250,000.00, as stipulated to by the Debtors and the  
 17 Senior Lender, and approved by the Bankruptcy Court pursuant to the “Stipulated Order  
 18 Resolving Motion for Valuation” dated October 26, 2011 [Dkt. No. 587].

19           21.79 **Subject Insider Claims** means the Claims of Transwest Copley Square,  
 20 Transwest Resort Properties, Inc., Transwest Partners L.L.C., and other affiliate entities arising  
 21 from the contribution of approximately \$3.6 million of cash to the Operating Debtors in 2008  
 22 which was used to pay the Senior Lender and the Mezzanine Lender.

23           21.80 **Surplus Cash Flow** means, for any calendar year commencing after the Effective  
 24 Date and on a cash basis, the net operating revenues collected by the Reorganized Debtors from  
 25 the operations of the Resorts during that calendar year, less all the payments during that calendar  
 26 year for operating expenses, debt service, taxes, management fees, rent, other expenses, capital  
 expenditures, and payments or distributions under the Plan, and less funding for the Resorts so  
 that the Working Capital Reserve Amount is maintained by each Resort, the Capital Improvement  
 Reserve Accounts, other Reserves and Reserve Accounts, and any payments or reserves required  
 under the amended Mortgage Loan Documents or the Replacement Management Agreements.

          21.81 **SWVP Fund XV** means Southwest Value Partners Fund XV, LP, a Delaware  
 limited partnership that will be the sole member of Newco.

          21.82 **Tax** means a charge levied by a governmental entity for its support or for specific  
 facilities or services.

          21.83 **Transwest Partners** means Transwest Partners and related companies in the  
 business of a real estate development and investment and owned and controlled by Michael J.  
 Hanson and Randal G. Dix.

          21.84 **Troon Golf** means Troon Golf, L.L.C. the company with whom Transwest Tucson  
 Property, L.L.C. has contracted to manage the golf courses at the La Paloma Resort.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

21.85 **Unencumbered Funds** means the Cash in the Operating Debtors’ possession that is the proceeds of the Settlement Agreement and Release (the “Agreement”), entered into between the Operating Debtors and the Senior Lender to fully and finally settle all potential avoidance actions the Operating Debtors may have under 11 U.S.C. § 544 against the Senior Lender that was approved by the court under “Order Approving Settlement And Compromise Between Debtors And JPMCC 2007-C1 Grasslawn Lodging, L.L.C. Under Fed. R. Bankr. P. 9019 dated March 27, 2011” at Docket No. 210 and segregated from the Cash Collateral.

21.86 **Unrestricted Cash Accounts** means the bank accounts of the Reorganized Debtors or Newco or a holding company that are separate from the Operating Accounts and other Reserve Accounts created to hold Cash that may be used or reserved for any purpose, including but not limited to, payment of debt service, payment of preferred returns, returns on Class 6 Membership Appreciation and Cash Flow Certificate, or Class 7 Certificates, and other distributions provided under the Plan.

21.87 **Unsecured** means, with respect to a Claim, that there is no repayment assurance from a security interest or lien arising by statute or agreement.

21.88 **Unsecured Creditor Fund** means the fund created using \$2,000,000 Cash from the New Equity Investment for purposes of paying the pro rata claims of Class 6 Unsecured Creditors pursuant to Section 7.2(a).

21.89 **Unsecured Trade Claim** means an Unsecured Claim owing by an Operating Debtor to a creditor for providing goods or services to the La Paloma Resort or the Hilton Head Resort in the ordinary course of business, excluding, however, (i) any Claims for damages from the rejection of any executory contract or unexpired lease, (ii) any Administrative Claims, and (iii) for the avoidance of doubt, any Claims by Senior Lender.

21.90 **Working Capital Reserve Amount** means a Cash reserve for each respective Resort in the minimum amount of \$1,750,000 which must be maintained before a Reorganized Debtor may make cash flow distributions to holders of Class 6 Certificates, Class 7 Certificates, Newco or SWVP Fund XV.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

1 DATED November 17, 2011

2 TRANSWEST RESORT PROPERTIES, INC., an Arizona corporation

3  
4 By: /s/ Michael J. Hanson  
5 Name: Michael J. Hanson  
6 Its: President

7 TRANSWEST TUCSON PROPERTY, L.L.C., a Delaware limited liability company

8 By: Transwest Tucson II, L.L.C., a Delaware limited liability company  
9 Its: Sole Member

10 By: Transwest Tucson Holdco, L.L.C., a Delaware limited liability company  
11 Its: Manager and Member

12 By: CPHR Mezzco, L.L.C., a Delaware limited liability company  
13 Its: Manager and Member

14 By: Transwest Resort Properties, Inc., an Arizona corporation  
15 Its: Sole Member

16 By: /s/ Michael J. Hanson  
17 Name: Michael J. Hanson  
18 Its: President

19 TRANSWEST HILTON HEAD PROPERTY, L.L.C., a Delaware limited liability company

20 By: Transwest Hilton Head II, L.L.C., a Delaware limited liability company  
21 Its: Sole Member

22 By: Transwest Hilton Head Holdco, L.L.C., a Delaware limited liability company  
23 Its: Manager and Member

24 By: CPHR Mezzco, L.L.C., a Delaware limited liability company  
25 Its: Manager and Member

26 By: Transwest Resort Properties, Inc., an Arizona corporation  
Its: Sole Member

By: /s/ Michael J. Hanson  
Name: Michael J. Hanson  
Its: President

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

TRANSWEST TUCSON II, L.L.C., a Delaware limited liability company  
By: Transwest Tucson Holdco, L.L.C., a Delaware limited liability company  
Its: Manager and Member  
By: CPHR Mezzco, L.L.C., a Delaware limited liability company  
Its: Manager and Member  
By: Transwest Resort Properties, Inc., an Arizona corporation  
Its: Sole Member  
By: /s/ Michael J. Hanson  
Name: Michael J. Hanson  
Its: President

TRANSWEST HILTON HEAD II, L.L.C., a Delaware limited liability company  
By: Transwest Hilton Head Holdco, L.L.C., a Delaware limited liability company  
Its: Manager and Member  
By: CPHR Mezzco, L.L.C., a Delaware limited liability company  
Its: Manager and Member  
By: Transwest Resort Properties, Inc., an Arizona corporation  
Its: Sole Member  
By: /s/ Michael J. Hanson  
Name: Michael J. Hanson  
Its: President

SUBMITTED this 17th day of November, 2011.

QUARLES & BRADY LLP  
One South Church Avenue, Suite 1700  
Tucson, Arizona 85701

By /s/ Kasey C. Nye  
Susan G. Boswell  
Kasey C. Nye  
Elizabeth S. Fella

Attorneys for Debtors