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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In re

USDC Case No. 6:09-cv-06082-HO

STAYTON SW ASSISTED LIVING, L.L.C.
(the Consolidated Sunwest Related Entities),

Bankruptcy Court
Case 08-36637-tmb11
(Reference Withdrawn)

Debtor.

**RECEIVER'S, CRO'S AND DEBTOR'S
SECOND AMENDED DISCLOSURE
STATEMENT (MAY 27, 2010)**

RECEIVER'S, CRO'S AND DEBTOR'S SECOND AMENDED DISCLOSURE STATEMENT
(MAY 27, 2010)

Tonkon Torp LLP
888 SW Fifth Avenue, Suite 1600
Portland, Oregon 97204
503-221-1440

The information contained in this Disclosure Statement is included herein for purposes of soliciting acceptances of the Receiver's, the Chief Restructuring Officer's, and Debtor's Second Amended Joint Plan of Reorganization ("Reorganization Plan") and may not be relied upon for any purpose other than to determine how to vote on the Reorganization Plan. No person may give any information or make any representations, other than the information and representations contained in this Disclosure Statement, regarding the Reorganization Plan or the solicitation of acceptances of the Reorganization Plan. All Claim and Interest holders are advised and encouraged to read this Disclosure Statement and the Reorganization Plan in their entirety before voting to accept or reject the Reorganization Plan. Summaries and statements regarding the Reorganization Plan made in this Disclosure Statement are qualified in their entirety by reference to the Reorganization Plan and the Exhibits annexed to the Reorganization Plan and this Disclosure Statement. The statements contained in this Disclosure Statement are made only as of the date hereof, and there can be no assurance that the statements contained herein will be correct at any time after the date hereof. In the event of any conflict between the description set forth in this Disclosure Statement and the terms of the Reorganization Plan, the terms of the Reorganization Plan shall govern.

This Disclosure Statement has been prepared in accordance with Section 1125 of the United States Bankruptcy Code, and not necessarily in accordance with federal or state securities laws or other non-bankruptcy law. This Disclosure Statement has been neither approved nor disapproved by the Securities and Exchange Commission ("SEC") or any state securities commission, nor has the SEC or any state securities commission passed upon the accuracy or adequacy of the statements contained herein. Persons or entities trading in or otherwise purchasing, selling, or transferring securities or claims of Debtor or Rollover Member LLC should evaluate this Disclosure Statement and the Reorganization Plan in light of the purpose for which they were prepared.

As to contested matters, adversary proceedings, and other actions or threatened actions, this Disclosure Statement shall not constitute or be construed as an admission of any fact or liability, stipulation or waiver, but rather as a statement made in settlement negotiations. This Disclosure Statement shall not be admissible in any non-bankruptcy proceeding, nor shall it be construed to be definitive advice on the tax, securities, or other legal effects of the Reorganization Plan as to holders of claims against, or equity interests in, Debtor in these cases.

IRS Circular 230 Disclosure: Any tax advice contained in this Disclosure Statement is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax-related penalties under the Code. The tax advice contained in this Disclosure Statement was written by a disqualified tax advisor. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

RECEIVER'S, CRO'S AND DEBTOR'S SECOND AMENDED DISCLOSURE STATEMENT
(MAY 27, 2010)

Tonkon Torp LLP
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I. INTRODUCTION AND SUMMARY

A. Introduction

On November 30, 2009, the Receiver, the Chief Restructuring Officer ("CRO"), and Debtor (collectively, the "Proponents") filed their initial Plan of Reorganization and Disclosure Statement with the Court. The initial Plan of Reorganization and Disclosure Statement were amended on April 12, 2010. This Second Amended Disclosure Statement ("Disclosure Statement") supersedes and amends the initial Disclosure Statement and the First Amended Disclosure Statement. A Second Amended Plan of Reorganization ("Reorganization Plan") is being filed with the Court concurrently. A copy of the Reorganization Plan is attached hereto as Exhibit 2.

This Disclosure Statement is filed with respect to the "Sunwest Enterprise," a group of related companies involved in the acquisition, development, design, construction, financing, insuring, and operation of senior living and other properties nationwide. The Sunwest Enterprise includes the assets and liabilities of Sunwest Management, Inc. ("SMI"), its affiliates Senenet (an employee leasing company), Encore Indemnity Management, LLC, Canyon Creek Development (a real estate acquisition and development company), KDA (a construction company), Canyon Creek Financial (a broker-dealer), and several hundred limited liability companies ("LLCs") that held varying degrees of ownership interests in hundreds of senior living, commercial, and other real properties affiliated with the Sunwest Enterprise (together with any other entities over which the Receiver has been appointed to act as a federal equity receiver and the CRO has been appointed to act as Chief Restructuring Officer, the "Receivership Entities").

On March 2, 2009, the United States Securities and Exchange Commission (the "SEC") commenced an action in the United States District Court for the District of Oregon (the "Court") against the Sunwest Enterprise and other Defendants and Relief Defendants for alleged

violations of federal securities laws (the "SEC Enforcement Action"). Also on March 2, 2009, the SEC filed its application for a preliminary injunction and appointment of a receiver for the assets of the Sunwest Enterprise. On March 10, 2009, the Court entered its order granting the injunction and appointing Michael Grassmueck as Receiver and Clyde Hamstreet as Chief Restructuring Officer for the Receivership Entities (the "Receivership Orders").

Pursuant to the Plan of Distribution (the "Distribution Plan") approved in the SEC Enforcement Action on October 2, 2009, the assets and liabilities of the Sunwest Enterprise were consolidated into the bankruptcy estate of *In re Stayton SW Assisted Living, LLC* (the "Bankruptcy Case") filed on December 1, 2008, under Chapter 11 of Title 11 of the United States Bankruptcy Code, and the Receiver and the CRO were authorized and ordered to reorganize the Sunwest Enterprise in the Bankruptcy Case. In response to pleadings filed by the United States Trustee in the Bankruptcy Case, Stayton SW Assisted Living, LLC filed a motion in the Bankruptcy Case to substantively consolidate the Receivership Entities (the "Consolidation Motion"). The Consolidation Motion was granted by an order of the Court on December 22, 2009 (the "Substantive Consolidation Order"). Stayton SW Assisted Living, LLC, including the consolidated assets and liabilities of the Sunwest Enterprise, are referred to herein as the "Debtor."

This Disclosure Statement is being provided to you by Proponents to enable you to make an informed judgment about the Reorganization Plan. This Disclosure Statement has been prepared to disclose information that in Proponents' opinion is material and helpful to evaluate the Reorganization Plan. Among other things, this Disclosure Statement describes the manner in which Claims and Interests will be treated, summarizes the Reorganization Plan, explains how the Reorganization Plan will be implemented, outlines the risks of and alternatives to the Reorganization Plan, and outlines the procedures involved in confirmation of the Reorganization Plan. The description of the Reorganization Plan contained in this Disclosure

Statement is intended as a summary only and is qualified in its entirety by reference to the Reorganization Plan itself. If any inconsistency exists between this Disclosure Statement and the Reorganization Plan, the terms of the Reorganization Plan are controlling. You are urged to review the Reorganization Plan, together with this Disclosure Statement, before voting on the Reorganization Plan. The Proponents encourage and recommend that you to consult with your own counsel regarding this Disclosure Statement and the Reorganization Plan.

Capitalized terms used but not defined in this Disclosure Statement shall have the meanings assigned to such terms in the Glossary attached as Exhibit 1 or in the Bankruptcy Code or Bankruptcy Rules. Factual information contained in this Disclosure Statement is the representation of the Proponents and not their attorneys, accountants or other advisors. The information has been obtained from the books and records of Debtor as well as other sources deemed reliable. Proponents have prepared the information contained herein in good faith, based on information available to Proponents. The information herein concerning the Reorganization Plan has not been subject to audit. No representation concerning Debtor or the Reorganization Plan is authorized by Proponents other than as set forth in this Disclosure Statement.

This Disclosure Statement is submitted in accordance with Bankruptcy Code Section 1125 for the purpose of soliciting acceptances of the Reorganization Plan from holders of certain Claims. The Court has approved this Disclosure Statement as containing information of a kind and in sufficient detail to enable a hypothetical reasonable investor or other typical holder of Claims of relevant classes to make an informed judgment concerning the Reorganization Plan. The Court's approval of this Disclosure Statement, however, does not constitute a recommendation by the Court either for or against the Reorganization Plan.

The Court has scheduled a hearing on confirmation of the Reorganization Plan to commence on July 13, 2010 at 9:30 a.m. Pacific Time. That hearing will be held at the

United States District Court for the District of Oregon, 405 East Eighth Avenue, Eugene, Oregon, 97401, Courtroom 1, before the Honorable Michael R. Hogan. Any objections to confirmation of the Reorganization Plan must be made in writing and filed with the Court and received by counsel for Proponents no later than 4:00 p.m. Pacific Time on July 6, 2010. Unless an objection to confirmation is timely filed and received, it will not be considered by the Court. The hearing on confirmation may be adjourned from time to time by the Court without further notice except for an announcement made at the hearing or any adjournment thereof.

A ballot has been enclosed with each copy of this Disclosure Statement mailed to holders of impaired Claims for use in voting on the Reorganization Plan. **In order to be tabulated for purposes of determining whether the Reorganization Plan has been accepted or rejected, ballots must be received at the address indicated on the ballot no later than 4:00 p.m. Pacific Time on July 6, 2010.** Proponents believe that confirmation of the Reorganization Plan is in the best interests of the holders of Claims and urge holders of Claims entitled to vote to accept the Reorganization Plan.

B. Summary

1. Distribution Plan

The Reorganization Plan implements the Distribution Plan approved by the Court. The Distribution Plan acknowledges that the Sunwest Enterprise failed to observe proper and customary legal distinctions among the various Receivership Entities, which effectively eliminated legal boundaries among the various Receivership Entities such that they were operated as a unitary enterprise. Through the Distribution Plan Substantive Consolidation Order, the assets and liabilities of the Sunwest Enterprise have been consolidated into a single Debtor that can be reorganized through a single bankruptcy case.

2. Assets of Debtor

The assets of Debtor consist primarily of real properties which have been divided into the following three categories: (i) "Holdco Properties," consisting of approximately 140 senior living Facilities to be sold to Acquirer; (ii) "Trustco Properties," consisting of certain real properties and other assets that are expected to be held by Trustco for future sale; and (iii) "Divestco Properties" consisting of certain real properties that were, or will be, sold, surrendered to creditors, or otherwise disposed of on or before the Effective Date. In addition, Debtor has certain legal and equitable rights to recover money from third parties ("Third Party Claims"), including law firms, accountants, lenders, certain brokers, insiders, and others. Other significant assets of Debtor include Encore Indemnity Management, LLC.

3. Reorganization Plan

The Reorganization Plan proposes that Debtor sell the Holdco Properties to a qualified buyer; that the Receiver hold the Trustco Properties for sale when markets recover, and that the Divestco Properties be sold, abandoned to the pre-petition owners or transferred to the Secured Creditors who hold Allowed Secured Claims with respect to such properties by deed-in-lieu of foreclosure.

To facilitate the sale of the Holdco Properties, on January 15, 2010 Debtor entered into an Agreement of Purchase, Sale and Contribution with BRE/SW Portfolio, LLC ("Acquirer"), a Delaware limited liability company comprised of (i) Emeritus Corporation, a Washington corporation engaged in the business of managing senior living facilities, (ii) CPDF II, LLC, a Washington limited liability company affiliated with Columbia Pacific Management Inc., and (iii) BRE/SW Member LLC, a Delaware limited liability company affiliated with The Blackstone Group, a publicly-traded alternative asset manager. The Agreement of Purchase, Sale and Contribution, as amended by Amendment No. 1 dated February 12, 2010 and Amendment No. 2 dated March 25, 2010 are referred to herein as the APA ("APA"). A copy of

the APA is attached to the Reorganization Plan as Exhibit 4. Pursuant to the APA, Acquirer agreed to serve as a "stalking horse" bidder with respect to a sale of the Holdco Properties. Acquirer has deposited with an escrow agent an irrevocable, unconditional letter of credit naming Debtor as the beneficiary in the amount of \$50,000,000. This deposit will be forfeited by Acquirer in the event the purchase of the Holdco Properties in accordance with the APA does not occur as a result of a default by Acquirer.

On March 10, 2010, the Court appointed Bettina Whyte and Bridge Associates, LLC as an expert to assist the Court in comparing any competing bids and future proposals for the sale of Debtor's real properties or recapitalization of Debtor. Following the receipt of a recommendation from Ms. Whyte, the Court approved the APA, thereby making Acquirer the "stalking horse" bidder for the solicitation of other offers with respect to the Holdco Properties.

In accordance with the Court order approving the auction process and bidding procedures (the "Auction Order"), Proponents solicited offers to purchase the Holdco Properties from qualified buyers. Nine interested parties responded to the solicitation and examined the Holdco Properties through a due diligence process after entering into confidentiality agreements with Debtor. No superior offer was submitted prior to the Bid Deadline of May 10, 2010, and consequently, no auction was held. Debtor and Acquirer are obligated to complete the transaction subject to the terms and conditions of the APA.

All proceeds from the sale of the Holdco Properties to Acquirer payable to Debtor and remaining after the payment of (or reservation of funds sufficient to pay) Debtor's obligations under the Reorganization Plan will be paid or distributed pursuant to the Distribution Plan. Such distributions shall be made to Creditors and Investors on a Pari Passu basis regardless of whether Investors elect to receive payment in Cash or to participate in the Rollover Equity Election. For purposes of allocating Allowed Claims between the Rollover Equity Election and distributions of Cash, each dollar of book value distributed through the Rollover Equity Election

shall be equivalent to one dollar distributed in Cash.

The net proceeds for distribution to Claimants are expected to come from three primary sources.

- The sale of Holdco Properties to Acquirer, the disposal of the Divestco Properties and the windup of all business operations are expected to provide a range of recoveries for MIMO claims of 27% to 35% and a range of recovery for Holdco LLC members for their interest in Holdco Properties of 55% to 80%. Those investors electing to participate in the Rollover Equity Election may receive additional recoveries or suffer losses depending upon the success of Acquirer.
- The operation of Trustco and disposition of Trustco Properties are expected to provide an additional range of recoveries for MIMO Claims of 3% to 6%.
- Proceeds from Third Party Claims and Avoidance Action recoveries and settlements will also be distributed to Investors. Those distributions are expected to range between 5% and 9%.

The total range of recoveries for Creditors and Investors could range from 35% to 50% depending upon the outcome of many variables, including the actual amount of MIMO Claims allowed, the number of LLC members with an interest in Holdco Properties that elect to reduce their claims in order to benefit from the Rollover Equity Election, the final recoveries obtained by Trustco from the sale of the Trustco Properties which will depend upon recoveries in the real estate market, the number and amount of liability and workers compensation claims paid out by Encore Indemnity Management, LLC, and the success of the Receiver in recovering or settling Third Party Claims and Avoidance Actions.

It is estimated that 60% to 75% of the payment of proceeds to Claimants will occur in late 2010 or early 2011, with the remainder be paid out in 2011 and 2012.

4. Treatment of Claims

If the Reorganization Plan is approved and a sale is consummated, holders of Administrative Expense Claims, Priority Tax Claims, Other Priority Claims, Employee Benefit Claims and Lien Claims will be paid by Debtor in full in Cash as soon as possible following the later of the Effective Date or entry of an order approving such claim, where required. The net Cash resulting from the sale will be equitably distributed by the Receiver to holders of Class 6 and Class 8 Claims, including Unsecured Creditors and Investors who do not elect to voluntarily contribute their interests to Acquirer or to receive member interests pursuant to the Rollover Equity Election. The hope is that such distributions will occur in 2010, thus maximizing the liquidity of Claimants within the first year. The holders of Class 3 Claims (Personal Property Secured Claims) and Class 4 Claims (Real Property Secured Claims) will retain their security interests and liens in their Collateral, and the loans will be assumed by Acquirer or Trustco. The HFG Parties will receive the treatment set forth in the HFG Settlement or as otherwise determined by the Court.

5. Executory Contracts and Unexpired Leases

The Reorganization Plan provides that all Assumed Executory Contracts and Unexpired Leases and all Resident Contracts relating to Holdco Properties will be assumed by Debtor and assigned to Acquirer pursuant to and subject to the terms and conditions of the APA or assigned to Trustco. Executory Contracts and Unexpired Leases that are not assumed by Acquirer or Trustco will be considered rejected and treated as described in Section X.N.3.

6. Third Party Claims

As sole trustee of the Litigation Trust formed for the administration of Debtor's Third Party Claims, the Receiver will prosecute and settle Debtor's Third Party Claims. Amounts recovered on such Third Party Claims shall be distributable to Claimants under the terms of the Distribution Plan.

II. VOTING PROCEDURES AND CONFIRMATION OF THE REORGANIZATION PLAN

A. Parties Entitled To Vote

Pursuant to Section 1126 of the Bankruptcy Code, each Class of impaired Claims is entitled to vote to accept or reject the Reorganization Plan. Any holder of an Allowed Claim that is in an impaired Class under the Reorganization Plan is entitled to vote. A Class is "impaired" unless the legal, equitable and contractual rights of the holders of Claims in that Class are left unaltered by the Reorganization Plan or unless the Reorganization Plan reinstates the Claims held by members of such Class by (1) curing any defaults, (2) reinstating the maturity of such Claim, (3) compensating the holder of such Claim for damages that result from the reasonable reliance on any contractual provision of law that allows acceleration of such Claim, and (4) otherwise leaving unaltered any legal, equitable or contractual right to which the Claim entitles the holder of such Claim. Because of their favorable treatment, Classes that are not impaired are conclusively presumed to accept the Reorganization Plan. Accordingly, it is not necessary to solicit votes from the holders of Claims in Classes that are not impaired.

Under Proponents' Reorganization Plan, Class 1 (Other Priority Claims), Class 2 (Employee Benefit Claims), Class 5 (Interests), Class 6 (General Unsecured Claims), Class 7 (Lien Claims), Class 8 (Investor Claims) and Class 9 (HFG Party Claims) are not impaired because the Claimants within these classes will receive all rights and payments to which they are entitled under the Distribution Plan. Therefore, Class 1, Class 2, Class 5, Class 6, Class 7, Class 8 and Class 9 are not entitled to vote as they are deemed to have accepted the Reorganization Plan. Class 3 (Personal Property Secured Claims) and Class 4 (Real Property Secured Claims) are impaired under the Reorganization Plan. Accordingly, persons holding Claims in Classes 3 and 4 are entitled to vote to accept or reject the Reorganization Plan.

B. Votes Required for Class Acceptance of the Reorganization Plan

As a condition to confirmation, the Bankruptcy Code requires that each impaired Class

of Claims accept the Reorganization Plan, subject to the exceptions described below in the section entitled "Cram Down" of the Reorganization Plan" (Section II.D.). At least one impaired Class of Claims must accept the Reorganization Plan in order for the Reorganization Plan to be confirmed. Each Secured Creditor is deemed to be a separate subclass under the Reorganization Plan, and each subclass will be considered a separate Class for purposes of voting and for all other purposes related to Confirmation of the Reorganization Plan.

For a Class of Claims to accept the Reorganization Plan, Section 1126 of the Bankruptcy Code requires acceptance by Claimants that hold at least two-thirds in dollar amount and a majority in number of the Allowed Claims of such Class, in both cases counting only those Claims actually voting to accept or reject the Reorganization Plan. The holders of Claims who fail to vote are not counted as either accepting or rejecting the Reorganization Plan. If the Reorganization Plan is confirmed, the Reorganization Plan will be binding with respect to all holders of Claims and Interests in each Class, including Classes and members of Classes that did not vote or that voted to reject the Reorganization Plan.

C. Ballots and Voting Deadline

A ballot to be used for voting to accept or reject the Reorganization Plan is enclosed with each copy of this Disclosure Statement mailed to a Claimant in Classes 3 and 4 and each related subclass. After carefully reviewing this Disclosure Statement and its exhibits, including the Reorganization Plan, each Claimant in Classes 3 and 4 should indicate its acceptance or rejection of the Reorganization Plan by voting in favor or against the Reorganization Plan on the enclosed ballot as directed below.

The Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Reorganization Plan must be received no later than 4:00 p.m. Pacific Time, on July 6, 2010, by Proponents at the following address:

Tonkon Torp LLP
Attention: Spencer Fisher
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204-2167

or via facsimile transmission to Spencer Fisher at 503-972-3867.

Except as discussed below, the holders of each Claim in Classes 3 and 4 and the related subclasses are permitted to vote provided that either Debtor scheduled the Claim or a Proof of Claim was filed with respect to the Claim. If a Proof of Claim has been filed, the vote will be based on the amount of the Proof of Claim. If no Proof of Claim has been filed, then the vote will be based on the amount scheduled by Debtor in its Schedules. The Bankruptcy Code provides that such votes will be counted unless the Claim has been disputed, disallowed, disqualified or suspended prior to computation of the vote on the Reorganization Plan. A Claim to which an objection has been filed is not allowed to vote unless and until the Court rules on the objection. Holders of disputed Claims who have settled their dispute with Debtor are entitled to vote the settled amount of their Claim. The Bankruptcy Code provides that the Court may, if requested to do so by the holder of such Claim, estimate or temporarily allow a disputed Claim for the purposes of voting on the Reorganization Plan.

If a person holds Claims in more than one Class entitled to vote on the Reorganization Plan, such person will be entitled to complete and return a ballot for each Class. If you hold a Claim in Classes 3 or 4 and you did not receive a ballot, require an additional ballot, or if a ballot is damaged or lost, please contact:

Tonkon Torp LLP
Attention: Spencer Fisher
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204-2099
Telephone number: 503-802-2167

When a ballot is signed and timely returned without further instruction regarding acceptance or rejection of the Reorganization Plan, the signed ballot shall be counted as a vote

accepting the Reorganization Plan. When a ballot is timely returned indicating acceptance or rejection of the Reorganization Plan but is unsigned, the unsigned ballot will not be included in any calculation to determine whether parties entitled to vote on the Reorganization Plan have voted to accept or reject the Reorganization Plan. When a ballot is timely returned without indicating the amount of the Claim, the amount shall be as set forth on Debtor's Schedules or any Proof of Claim filed with respect to such Claim.

D. "Cram Down" of the Reorganization Plan

If the Reorganization Plan is not accepted by all of the impaired Classes of Claims for Debtor, the Reorganization Plan may still be confirmed by the Court pursuant to Section 1129(b) of the Bankruptcy Code's "Cram Down" provision if (1) the Reorganization Plan has been accepted by at least one impaired Class of Claims, without counting the acceptances of any Insiders of Debtor; and (2) the Court determines, among other things, that the Reorganization Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each non-accepting impaired Class of Claims. For purposes of determining whether the Reorganization Plan has been accepted by at least one impaired Class of Claims, each subclass of Secured Creditors will be considered its own separate Class.

III. BACKGROUND OF THE SUNWEST ENTERPRISE

A. History of the Business

SMI is a management company providing housing, care, and services to approximately 11,000 elderly residents at numerous Facilities across the United States. SMI is part of the Sunwest Enterprise. Sunwest Facilities were constructed in a manner convenient to the needs of seniors who require varying levels of assistance with activities of daily living. Approximately 29% of Sunwest Facilities were designed for seniors who can live independently; 56% provide assisted living to seniors who need help with activities of daily living such as meals, bathing, and medication; and 15% specialize in Alzheimer's care. The average age of a Sunwest Facility

resident is 85 years.

Prior to 2008, the Sunwest Enterprise operated 290 Facilities and was the fourth largest, and the largest privately-owned, assisted living provider in the country. At its peak in mid-2008, secured debt on Sunwest Facilities totaled approximately \$1,850,000,000 and was held by 90 lenders, not including loan participants. Annual debt service was approximately \$150,000,000.

The principal owners of SMI and other key management entities within the Sunwest Enterprise were founder and Chief Executive Officer Jon Harder, Chief Operating Officer Darryl Fisher, and General Counsel Wallace Gutzler (together the "HFG Parties"). Together or severally, the HFG Parties owned controlling interests in SMI, Senenet, Encore Indemnity Management, LLC, Canyon Creek Development, KDA, Canyon Creek Financial, and several hundred LLCs that held varying degrees of ownership interests in hundreds of senior living, commercial, and other real properties affiliated with the Sunwest Enterprise.

The ownership interests in Sunwest-affiliated properties were held by other Insiders and different classes of private investors who purchased their investments from Canyon Creek Financial or through outside broker-dealers. This group included some 1,200 tenant-in-common ("TIC") Investors and several hundred preferred members ("Preferred Members") and limited liability company members ("LLC Members"). In addition to institutional borrowing from over 100 lenders and the sale of thousands of investments, the Sunwest Enterprise and the HFG Parties also raised funds through non-institutional loans from various sources, which were generally guaranteed by Harder and often Fisher. Most of these loans were unsecured, but some were secured. Harder also sometimes made pledges of his equity interests in return for loans.

Each Sunwest affiliated property purported to have separate ownership, often involving multiple parties in addition to the HFG Parties and, in some cases, other Insiders.

Although the HFG Parties represented that the Sunwest properties were owned by separate

LLCs, the Sunwest Enterprise generally conducted its business as if it were a single corporate entity, with centralized management, personnel administration, marketing services, and cash management. SMI managed nearly all of the affiliated Facilities, and Senenet was the employer of nearly all of the personnel who worked at the affiliated entities. The Sunwest Enterprise routinely aggregated and commingled funds in centralized SMI and Senenet accounts. Funds were typically taken from wherever they were available within the Sunwest Enterprise and used wherever they were needed.

In addition to senior mortgage debt, the Sunwest Enterprise financed the acquisition and development of senior living properties by selling fractional undivided interests in the form of TIC interests in real property and preferred membership investments in LLCs "owning" individual properties. Between 2005 and mid-2008, the Sunwest Enterprise raised approximately \$440,000,000 in cash through 1,800 TIC investments, approximately \$45,000,000 through 280 preferred LLC memberships, and approximately \$85,000,000 from 250 non-institutional loans. The Sunwest Enterprise typically guaranteed TIC Investors and Preferred Members a 10% annual return plus a 2% per annum buyout premium in the event of sale or refinancing.

B. The Sunwest Enterprise in Financial Distress

Early in 2008, the Sunwest Enterprise began facing critical cash flow problems arising from the overleveraging of properties, lower than industry standard occupancy, disruption in the capital markets, and the activities described in Section III below. Many of the Sunwest Facilities could not generate revenues to cover operating expenses, service debt, and make lease payments owed to TIC Investors. Around the same time, the credit markets began to seize up, making it difficult for the Sunwest Enterprise to borrow money or refinance properties as it had in the past.

By the summer of 2008, Sunwest could no longer meet its obligations and ceased

funding almost all Investor payments. Many Investors depended on the income for living expenses. Attracted by a guaranteed 10% rate, some had mortgaged their homes or used cash from their retirement savings to invest in the Sunwest Enterprise. Most of the TICs had exchanged into their properties under Section 1031 of the tax code, which granted a special tax-deferred status. Foreclosures of property threatened their cash investments and triggered their deferred tax liability.

In late November 2008, Sunwest engaged Hamstreet & Associates as a restructuring advisor and Clyde Hamstreet became the CRO of the Sunwest Enterprise. By that time, the Sunwest Enterprise had consumed the cash reserves at the properties it managed completely, and the sale orchestrated by Alvarez & Marsal LLC had not yet closed. Relationships with vendors, including critical suppliers of water, electricity, and food, were strained due to late payments and bounced checks.

C. Foreclosures and Bankruptcy Filings

In late 2008, secured lenders began initiating foreclosure actions and suing to install receivers in Facilities they financed. Investors were suing to cancel SMI's management contracts, enforce personal guarantees, remove SMI and the HFG Parties from control over properties, and establish claims of securities fraud. By the end of January 2009, receivers controlled 30 Facilities, with 15 more added during the month of February. Nine foreclosures had taken place, and 75 more were pending, along with 570 other litigation proceedings across the country against the Sunwest Enterprise or the HFG Parties.

As secured lenders pursued their remedies through receiverships, the imposition of lock boxes, and foreclosures, the Sunwest Enterprise filed bankruptcy petitions for certain Facilities which provided protection from creditors of those Facilities. In the summer of 2008, 10 Chapter 11 cases involving senior living facilities were filed in the Middle District of Tennessee; seven of the Facilities (referred to as the "Carolina 7") were subsequently sold in

Section 363 sales, wiping out the financial interests of the Carolina 7 TIC Investors. In the month of December 2008 and thereafter, the Sunwest Enterprise filed Chapter 11 bankruptcy cases involving 24 more Facilities in the United States Bankruptcy Court for the District of Oregon. Two of the Chapter 11 cases filed in the Middle District of Tennessee, involving Briarwood Retirement and Assisted Living Community, LLC and Century Fields Retirement and Assisted Living Community, LLC, were transferred to the United States Bankruptcy Court for the District of Oregon on February 6, 2009.

On December 31, 2008, Harder sought personal protection under Chapter 11 in the United States Bankruptcy Court for the District of Oregon. Shortly after the filing, Harder and several Sunwest intervenors sought a preliminary injunction from the Court against secured lenders in most of Sunwest's senior living properties. The injunction suit brought limited relief in the form of a temporary restraining order against foreclosures.

In order to raise cash for operations and avoid foreclosures, in January 2009 the Sunwest Enterprise completed what became known as the Lone Star Transaction involving the sale of 45 Facilities for \$364,200,000. The proceeds were used principally to pay secured debt related to the Facilities. The monetization of the remaining assets and liabilities, those not transferred to Lone Star but related to the 45 Facilities, generated additional cash over and above the net sale proceeds. Ultimately, the sale transaction generated proceeds which were available to fund continuing operations.

On February 13, 2009, the Court ruled against the injunction request. Over the next few weeks, foreclosure sales were scheduled at the rate of almost one per day. Foreclosure actions threatened most all Sunwest Facilities, regardless of financial performance. While the Sunwest Enterprise had been able to enter into forbearance agreements with some of its lenders, nearly all Facilities were in default, including Facilities with good cash flow, due to depleted working capital reserves and cross-collateralized loan pools.

On April 29, 2009, during the pendency of the SEC Enforcement Action discussed below, orders were issued withdrawing to the Court all of the cases previously filed by the Sunwest Enterprise in the United States Bankruptcy Court for the District of Oregon.

IV. THE SEC ENFORCEMENT ACTION

On March 2, 2009, the SEC commenced the SEC Enforcement Action against the Sunwest Management and the other Defendants and Relief Defendants.

The SEC's complaint contended that the Defendants, who controlled the Sunwest Enterprise, engaged in a massive fraud that led to losses of hundreds of millions of dollars to Investors who acquired TIC Interests in the real properties of the Sunwest Enterprise and to other Investors and Creditors as well. The SEC further contended that TIC Investors and other Investors were told that they were purchasing ownership interests for a specific real property or entity that would generate enough profit to pay a fixed promised annual return, and that the Sunwest Management had a history of never missing a payment. These representations, according to the SEC, were false and concealed the true nature of the investments and the risk to Investors from the Sunwest Enterprise's precarious financial position.

The SEC further contended that, contrary to representations by Defendants that Investors were obtaining an interest in a specific real property which would generate a steady income stream, Defendants ran the Sunwest Enterprise as an integrated unitary enterprise, commingling Investor and Creditor funds and operational revenue into essentially a single fund, often channeled through the personal bank account of Harder, from which operating expenses and Investor returns were paid. Furthermore, the SEC contended that, contrary to Defendants' representations, including written representations and marketing pitches, the Sunwest Enterprise paid some Investors and some Creditors steady returns on their investments and claims, not from successful management of a particular real property asset, but from Cash generated in the operations of other Facilities, from funds obtained by refinancing other Facilities, from loans

from Harder and certain Harder creditors, and from funds raised through offerings to new Investors. The SEC contended that these facts were not disclosed to, or known by, Investors and constituted securities fraud.

According to the SEC, by June 2008, the Defendants operated Sunwest as a virtual Ponzi scheme: money raised in new offerings was often used to pay earlier Investors their promised payments, pay Creditors their returns, and otherwise fund existing operations and other real property assets. The SEC accused Defendants or Harder individually of reporting income to Investors and Creditors that was partially or wholly fictitious. The SEC also contended that, despite the Sunwest Enterprise's dire financial situation, Harder misappropriated tens of millions of dollars, and certain of the Relief Defendants were the recipients of substantial ill-gotten gains. The SEC contended that as a result of this conduct, as of January 2009, over 100 real properties operated by the Sunwest Enterprise were in jeopardy of foreclosure or of being put under the control of a Rents and Profits Receiver, or were in or headed into bankruptcy cases.

A. Appointment of the Receiver and CRO

Also on March 2, 2009, the SEC filed its application for a preliminary injunction and appointment of a receiver and CRO. On March 3, 2009, the Court entered a temporary restraining order. On March 10, 2009, the Court entered an order that provided for, among other things, the preliminary injunction and appointment of the Receiver and CRO. Since that time, the Court has entered additional Receivership Orders extending the injunction and receiver appointment with respect to additional Receivership Entities.

Pursuant to the Receivership Orders, Michael A. Grassmueck is the Receiver appointed by the Court with respect to the Receivership Estate and Clyde Hamstreet is the Chief Restructuring Officer. The Receivership Orders provide the Receiver with various rights, powers, and duties with respect to the Receivership Estate.

B. The Receiver's Investigation

The Receiver conducted a preliminary investigation of the Receivership Entities and the Sunwest Enterprise that culminated in the filing of the Receiver's First Interim Report. As set forth in the First Interim Report, the Receiver's preliminary investigation revealed that the commingling of funds within the Sunwest Enterprise was rampant. Sunwest management employed a variety of transactions and accounting entries to carry out the cash transfers among entities in the Sunwest Enterprise. Furthermore, it does not appear that it was merely Facilities with positive cash flow propping up those with negative cash flow. Loans and other funds transfers were also made from distressed Facilities to those Facilities that had positive cash flow at times when the former had cash flow and the latter needed cash. Based on the Receiver's investigation, the alleged wrongful conduct described by the SEC appears to have played a significant role in the financial distress of the Sunwest Enterprise and the losses suffered by Investors in the Sunwest Enterprise.

C. Stabilization of the Business

Following the commencement of the SEC Enforcement Action, important operational improvements put in place by the CRO as 2008 ended began to bear fruit. Financial results have improved despite a down economy. For the first quarter of 2010, the Holdco Properties currently operate at 27.7% net operating income margin, with a 79.9% occupancy rate at an average rental of \$3,006 per unit per month. March, 2010 revenue was up 4.1% and net operating income was up 6.9% against March 2009. First quarter 2010 occupancy was virtually flat, up 13 basis points from the first quarter 2009; March occupancy was up 43 basis points from first quarter 2009. First quarter revenue was up 1.8% (\$1.4m) from the first quarter 2009. Total operating expenses for the same period were up 1.0%, while net operating income for the quarter rose 3.9%, or \$800,000. Overall, the financial results of the Sunwest Enterprise continue to exceed the budgets prepared last spring for purposes of debt restructuring.

V. THE DISTRIBUTION PLAN

On August 25, 2009, following many weeks of mediation, the Receiver and the CRO jointly submitted the Distribution Plan to the Court. The Distribution Plan is a product of these mediation sessions. On October 2, 2009, the Court approved the Distribution Plan attached to the Reorganization Plan as Exhibit 1.

The Distribution Plan establishes the process that will be used to determine whether a Claim is an Allowed Claim and the treatment, priority and source of payment of Plan Distributions. The Distribution Plan describes how, when and by what method Plan Distributions will be made in partial or full satisfaction of Allowed Claims. The Distribution Plan contemplates a Claims process that will involve solicitation, review and resolution of Proofs of Claim filed by Claimants. All Claims against any Receivership Entity, Claims against any employee of a Receivership Entity arising from or related to their actions taken in the scope and course of their employment, Claims to any assets of any Receivership Entity, and all Sunwest-related Claims against the HFG Parties will be treated and resolved pursuant to the Distribution Plan.

The Distribution Plan recognizes the Sunwest Enterprise as a unitary enterprise to be consolidated and reorganized as a single debtor in a subsequent single bankruptcy case involving one Reorganization Plan. Immediately following entry of the order approving the Distribution Plan, Debtor filed in the Bankruptcy Case amended schedules and an amended statement of financial affairs which included all of the assets and liabilities of the Sunwest Enterprise. The CRO subsequently filed the Consolidation Motion described above, which the Court granted in the Substantive Consolidation Order.

On October 9, 2009, the Court approved orders including interim use of Cash collateral, use of existing bank accounts, payments to vendors in the ordinary course, payment of prepetition wages, and adequate payment of utility deposits.

The CRO continues to work toward a consensual restructuring of the secured debt of Debtor. To date the CRO has reached agreements to restructure over 85% in amount of the secured debt related to the Holdco Properties, and negotiations are in process with many additional secured lenders.

VI. THE ASSET SALE AND ROLLOVER EQUITY PARTICIPATION

A. Asset Purchase, Sale and Contribution Agreement

The principal terms and conditions of the APA pursuant to which Debtor has agreed to sell or contribute the Holdco Properties are as set forth below. It is likely that the APA will be amended prior to the Confirmation Hearing. It is not anticipated that any of the amendments will alter in any material way the following description:

- The acquisition will take the form of an asset purchase and contribution transaction in which Acquirer will acquire the Holdco Properties and all related personal property, clear of the Excluded Obligations any encumbrances, including TIC Interests, but subject to the liens of the Secured Creditors holding Allowed Secured Claims and specific exceptions to title in accordance with the APA.
- The Closing of the transaction is expected to occur following the satisfaction of certain conditions set forth in the APA, including the entry of an order by the Court approving the sale of the Holdco Properties to Acquirer ("Sale Order"). To accommodate the orderly transfer of operating licenses related to certain properties, the sale and related payment with respect to not more than 20 Holdco Properties, representing not more than 15% of the sales price, may be deferred until Acquirer's Qualified Operator obtains the necessary licensing approvals, but in any event will occur no later than September 30, 2010.
- The unadjusted acquisition price for the Holdco Properties agreed upon with the "stalking horse" bidder is approximately \$285,000,000 in Cash and equity ("Cash/Equity

Portion of the Purchase Price"), plus assumption of the related real property debt in the amount of approximately \$970,151,000 and assumption of the related personal property debt. Acquirer will also assume and perform all future obligations from and after the Closing Date under the Resident Contracts related to the facilities on each of the Holdco Properties and certain other executory contracts and leases which Acquirer has elected to assume. Acquirer does not assume the "Excluded Obligations" (as defined in the APA), and acquires the Holdco Properties free and clear of such obligations.

- The Cash Consideration Amount of the purchase price will be:
 - adjusted to reflect any increase or decrease in the actual principal balance of the assumed real property debt relative to the underwritten amount of approximately \$970,151,000;
 - reduced if the actual net present value of interest on the assumed real property debt exceeds the agreed target present value of such interest by more than \$2,300,000;
 - adjusted to reflect actual balances in resident deposit accounts, certain reserve accounts, certain entrance fee liabilities and other items;
 - reduced to reflect the removal of any one or more real properties from the transaction due to a failure of certain Closing conditions; and
 - increased or decreased by normal pro rations at Closing.
- Affiliates of Acquirer will make additional capital contributions to Acquirer of approximately \$57,000,000.
- If the aggregate adjustments to the Cash Consideration Amount of the purchase price exceed \$33,367,000:
 - Debtor may elect to accept the aggregate adjustments or to terminate the APA and return the deposit of \$50,000,000 to Acquirer.

- Acquirer may void Debtor's termination notice by agreeing to accept the maximum \$33,367,000 adjustment.
- Subject to Section 2.6(f) of the APA, Investors with interests in Holdco Properties may elect to contribute their interests in the Holdco Properties directly to a special purpose Delaware limited liability company, Sunwest Rollover Member LLC ("Rollover Member LLC"), in exchange for the issuance of one or both of the following:
 - (i) Rollover Preferred Interests of Rollover Member LLC ("Rollover Preferred Interests"), or
 - (ii) Rollover Common Interests of Rollover Member LLC ("Rollover Common Interests").¹ Rollover Member LLC will immediately further contribute such interests in the Holdco Properties to Acquirer in exchange for the issuance of one or both of the following: (i) Preferred Interests in Acquirer, or (ii) Common Interests in Acquirer. Investor's voluntary contribution of their interests (the "Rollover Equity Election") is subject to the following limitations:
 - The amount Rollover Member LLC contributes to Acquirer (and consequently the aggregate amount Investors contribute to Rollover Member LLC) in exchange for Preferred Interests cannot exceed \$50,000,000 or be less than \$10,000,000.
 - The amount Rollover Member LLC contributes to Acquirer (and consequently the amount Investors contribute to Rollover Member LLC) in exchange for Common Interest cannot exceed 49% of the Total Equity Capitalization (as defined in the APA) of Acquirer or be less than \$10,000,000.
- Investors who do not choose to participate in the Rollover Equity Election are to receive the payments to which they are entitled under the Distribution Plan in Cash. In the event the amount the Rollover Member LLC proposes to contribute to Acquirer is

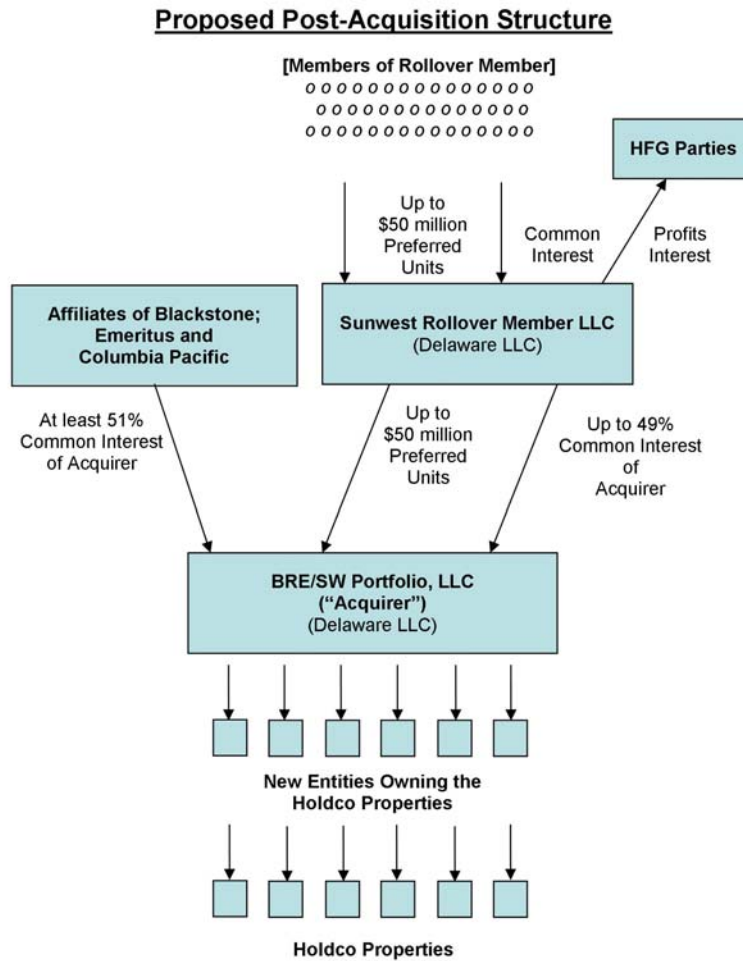
¹ Investors should refer to Section X, Implementation, for a description of their Rollover Equity Election alternatives.

less than \$10,000,000, there will be no Rollover Equity Election and Investors will also receive the payments to which they are entitled under the Distribution Plan in Cash.

- The Closing under the APA is subject to certain conditions. These conditions include requirements that the terms of the real and personal property debt be modified in accordance with criteria set forth in the APA, that Acquirer shall have acquired licenses sufficient to operate at least 114 of the Holdco Properties representing not less than 85% of the allocated purchase price, and that a real estate title insurance company shall be prepared to issue title insurance on the real properties to be acquired by Acquirer subject to certain permitted exceptions. The conditions also include, among other things, the entry by the Court of the TIC Transfer Orders, the Sale Order, and the Confirmation Order. If any of the conditions are not satisfied as of July 15, 2010, Acquirer may not be obligated to complete the sale transaction. This deadline is subject to extension under certain circumstances.
- The Facilities on the real properties acquired by Acquirer will be operated and managed by Acquirer's Qualified Operator. If Acquirer's Qualified Operator has not received all licensing approvals necessary to acquire and operate certain Facilities as of closing then, under certain circumstances, Debtor, Acquirer, and Acquirer's Qualified Operator shall at Acquirer's request, enter into an interim lease and services agreement until the Qualified Operator obtains the necessary licensing approvals.
- The Qualified Operator will offer employment to all of the current facility-level employees at comparable compensation, and Qualified Operator expects to offer employment to some headquarters employees on an interim basis for at least four months. Debtor will pay severance under its plan for headquarters employees terminated within six months. It is anticipated that the Qualified Operator will offer Fisher and Gutzler two-year employment agreements.

- In the event that (i) Debtor willfully fails to close the transactions contemplated by the APA after the Court enters the Sale Order or (ii) the Court, after entry of the Sale Order, confirms a Reorganization Plan that does not include a sale of the Holdco Properties to Acquirer pursuant to the APA, then the APA provides that Debtor will pay a break-up fee to Acquirer equal to \$11,000,000 (the "Break-Up Fee").
- Debtor agrees to indemnify Acquirer and its respective affiliates for tort liabilities arising out of occurrences prior to Closing and for reimbursement obligations with respect to operations prior to Closing. Furthermore, Acquirer is acquiring the Holdco Properties free and clear of the Excluded Obligations (as defined in the APA).
- Rollover Member LLC will incorporate a non-voting profits participation interest pursuant to which the HFG Parties will be entitled to receive distributions from Rollover Member LLC upon the occurrence of certain events.

- The following chart illustrates the proposed structure post-acquisition:



B. Acquirer LLC Agreement

If any Investors choose to participate in the Rollover Equity Election, Rollover Member LLC will (i) exchange all of the contributions it receives from Investors for Preferred Interests and Common Interests of Acquirer in accordance with and subject to the terms of the APA and the Acquirer LLC Agreement, and (ii) become a member of Acquirer subject to the terms of Acquirer's limited liability company agreement (the "Acquirer LLC Agreement"). The Acquirer LLC Agreement generally provides as follows:

- The members of Acquirer will be the Acquirer's affiliates and Rollover Member LLC.
- Acquirer will have two classes of interests, Preferred Interests and Common Interests (not including a special profits allocation in favor of the Administrative Member).
- Acquirer will have a three-member board of managers comprised of two board members chosen by Acquirer's affiliates and one board member chosen by Rollover Member LLC. The initial board member representing Rollover Member LLC will be Ford Elsaesser, an attorney at Elsaesser, Jarzabek, Anderson, Marks & Elliot, a Sandpoint, Idaho law firm which presently serves as counsel for the Unsecured Creditors Committee.
- With the exception of the right of Rollover Member LLC to appoint one board member of the board of managers of Acquirer and such other rights as may be required by law, Rollover Member LLC will have no role, veto, vote, management rights or authority whatsoever with respect to Acquirer.
- From time to time, requests may be made of each common member of Acquirer, including Rollover Member LLC, to contribute Cash to meet the financial obligations of Acquirer in accordance with its pro-rata interest. Capital calls cannot be made for the

purpose of financing new acquisitions unless they are contiguous or adjacent to Holdco Properties. If a common member fails to make a capital contribution, then the other common members may loan the deficiency to the non-contributing common member, or may contribute the deficiency on behalf of itself, in either case by depositing the same into the operating accounts of Acquirer.

- If a loan is made to a non-contributing common member of Acquirer, (i) the loan will bear interest at the greater of 20% per annum or the prime rate plus 10% per annum, and (ii) all distributions that would otherwise have been paid to the non-contributing common member will be applied as loan payments until the loan is repaid in full.
- If a capital contribution is made on behalf of a non-contributing common member of Acquirer, the percentage ownership of the non-contributing common member will be reduced proportionally.
- As the holder of Preferred Interests of Acquirer, Rollover Member LLC will have no rights or obligations to make contributions to Acquirer on account of the Preferred Interests. In the event of a liquidation of Acquirer, the Preferred Interests will have first priority over all Common Interests. Commencing on the date 180 days after the fifth anniversary of the Closing Date, Rollover Member LLC will have the right to require Acquirer to redeem all or a portion of the Preferred Interests at the Redemption Price. Commencing on the same date, Acquirer may redeem all or any portion of the Preferred Interests at the Redemption Price. The "Redemption Price" will mean \$100.00 per Preferred Interest, subject to adjustments for any priority tax distributions and/or accrued and unpaid distributions.
- Rollover Member LLC and its members will be prohibited from transferring direct or indirect interests in Acquirer except in accordance with terms set forth in the Acquirer LLC Agreement and the Rollover Member LLC Agreement.

- There can be no assurance that any distributions of Cash will be made to common members of Acquirer, including Rollover Member LLC. Any distributions of Cash will be made according to terms set forth in the Acquirer LLC Agreement.
- The Administrative Member (as defined in the Acquirer LLC Agreement) will have the authority to operate the properties owned by Acquirer, including the Holdco Properties, in the normal course of business. However, the Administrative Member will be required to obtain prior written consent from certain common members of Acquirer for specified major decisions.
- The Acquirer LLC Agreement provides a right of first offer to the Administrative Member that applies to certain real property sales and sales of membership interests.
- After consulting with Rollover Member LLC and considering alternatives for mitigating adverse tax consequences, Acquirer may prepay project financing with respect to the Holdco Properties. The consultation provision shall expire four years after the Closing. Such prepayments could result in material adverse tax consequences to members of the Rollover Member LLC. Acquirer will have no liability in connection with losses or damages sustained as a result of such prepayments.
- The Acquirer LLC Agreement provides that Rollover Member LLC has the right to "tag along" with certain sales of membership interests by selling its interests at the same price and on the same terms. In addition, certain members of Acquirer have a "drag along" right to require Rollover Member LLC to sell a proportional share of its membership interests in Acquirer in connection with certain sales of member interests of Acquirer.

C. Rollover Member LLC

Rollover Member LLC is a Delaware limited liability company that has been formed for the purpose of holding the Preferred Interests of Acquirer and Common Interests of Acquirer on

behalf of Investors. The principal terms and conditions of the Rollover Member LLC Agreement include the following:

- The members of Rollover Member LLC consist of all of the Investors who duly elect to participate in the Rollover Equity Election.
- The Receiver will be appointed as the initial Manager (as defined in the Rollover Member LLC Agreement) of the Rollover Member LLC, to serve until the later of December 31, 2010 or the date on which a board of managers of Rollover Member LLC is elected, qualified and approved by the Court. The compensation of the initial Manager is to be as determined by the Court in the SEC Enforcement Action. The Manager and the board of managers are authorized to retain such professional advisors to Rollover Member LLC as may be necessary or desirable.
- On January 1, 2011, or as soon thereafter as reasonably practicable, the members of Rollover Member LLC will elect a full board of managers, comprised of three persons, a majority of whom will be persons who are not "Interested Persons" of the Rollover Member LLC or Acquirer as defined under the Investment Company Act of 1940.
- Ford Elsaesser, an attorney at Elsaesser, Jarzabek, Anderson, Marks & Elliot, a Sandpoint, Idaho law firm which serves as counsel for the Unsecured Creditors Committee, will serve as the representative of Rollover Member LLC on the board of directors of Acquirer. In the event Ford Elsaesser resigns as representative, or is otherwise unwilling or unable to serve as representative, the board of managers of Rollover Member LLC will select his successor.
- The classes of interests in Rollover Member LLC mirror the economic but not the governance terms of the classes of interests in Acquirer, with the two exceptions described below, and consist of Rollover Preferred Interests and Rollover Common

Interests. *See description of Acquirer Preferred Interests and Common Interests above.*

- The first exception is that Rollover Member LLC has different provisions with respect to contribution requests. Although Rollover Member LLC has a mechanism that allows it to fulfill contribution requests from Acquirer, such capital contribution requests will only initially be passed through proportionally to the members of Rollover Member LLC qualified to make such contributions under applicable securities laws. Thereafter, in the event such initial contribution requests are not fully subscribed, Rollover Member LLC may offer members the opportunity to make contributions to acquire additional Rollover Common Interests, with preference given to holders of Rollover Common Interests. As a result of such sales of Rollover Common Interests, the percentage interest of some members in Rollover Member LLC may be diluted, perhaps significantly.
- The second exception is that Rollover Member LLC includes a non-voting profits participation entitling the HFG Parties in certain events to receive allocations and distributions from Rollover Member LLC. Such profits participation is described in Section VI.E. below.

D. Administration of Rollover Member LLC

As a condition to participation in the Rollover Equity Election, Section 2.6(f) of the APA must be complied with, and Investors are required to execute a copy of the limited liability company agreement for Rollover Member LLC (the "Rollover Member LLC Agreement") and thereby become members of Rollover Member LLC. The principal governance and operational terms of the operating agreement of Rollover Member are expected to include but are not limited to the following:

- The Receiver will serve as the initial manager of Rollover Member LLC until the later of December 31, 2010 or the date on which the board of managers is elected by the

members and approved by the Court.

- Rollover Member LLC will be required to register under the Investment Company Act of 1940 (the "1940 Act"), and comply with certain requirements of the Securities Exchange Act of 1934 (the "1934 Act").
- The board of managers will be comprised of three persons, two of whom are independent as that term is defined in the 1940 Act, and the board will be responsible for the management of Rollover Member LLC.
- Under certain circumstances, Acquirer may make capital contribution requests which, if not met by the members of the Rollover Member LLC, would result in dilution of Rollover Member LLC's interest in Acquirer.
- In order to avoid being treated as a corporation under the Code, Rollover Member LLC will be required to adopt procedures to prohibit, with certain limited exceptions, the transfer of Rollover Preferred Interests and Rollover Common Interests by members.
- The annual cost to operate and comply with regulatory and other requirements for Rollover Member LLC is estimated by the CRO and Receiver to be between \$500,000 and \$1,000,000.
- Acquirer has agreed to reimburse Rollover Member LLC for administrative and compliance costs in an amount up to \$400,000 per year to defray investor reporting expenses. In addition, Debtor has agreed to lend Rollover Member LLC up to an aggregate amount of \$2,000,000 to be applied to future operating and compliance expenses. Such loan, if made, would be due on the third anniversary of the Effective Date and would bear interest at 6% per annum.
- In the event such reimbursements and borrowings are insufficient to cover the operational and compliance expenses of Rollover Member LLC, Rollover Member LLC

would be required to attempt to sell additional equity to its members or otherwise seek financing to continue its existence.

- The Court will retain exclusive jurisdiction over all issues relating to the Rollover Member LLC.

E. HFG Settlement

The terms of the HFG Settlement are set forth in Exhibit 9 to the Distribution Plan and Exhibit 10 to the Reorganization Plan on file in the SEC Enforcement Action. The following is a summary of such terms:

- Rollover Member LLC will incorporate a non-voting profits participation interest pursuant to which the HFG Parties will be entitled to receive distributions from Rollover Member LLC upon the occurrence of certain events.
- The triggering event for distributions related to the profits participation is the distribution to Investors and General Unsecured Creditors from all sources (including distributions of Cash from the Receiver in connection with the sale of the Holdco Properties, the recovery of monies through Third Party Claims, and distributions from Rollover Member LLC to its members) of Cash aggregating in excess of \$500,000,000, as such amount may be increased by any additional capital contributions made by members, but excluding any distributions to Investors or General Unsecured Creditors resulting from any penalties or fines paid to any regulatory agency.
- The amount of any distributions made through the profits participation will be determined in accordance with the schedule attached as Exhibit 3 to this Disclosure Statement.
- To the extent any portion of the distributions made through the profits participation are payable to Harder, it is the CRO's understanding that one-half of the first \$8,400,000 to be received by Harder will instead be paid to the Division of Finance

and Corporate Securities of the Department of Consumer and Business Services of the State of Oregon in settlement of certain claims brought by such Division. After deduction of the expenses of prosecution, the Division has agreed to return any such payments to Debtor for distribution pursuant to the Distribution Plan.

- In the event that distributions to Investors and General Unsecured Creditors from all sources exceed \$1,000,000,000, the HFG Parties will thereafter receive 25% of all future distributions.
- Acquirer, or the operating company associated with Acquirer, is expected to agree to enter into two-year employment agreements with Fisher and Gutzler on terms to be negotiated between them.
- Debtor has agreed to continue to pay Harder \$25,000 per month for six months following the Effective Date, after which he will have no further claims against Debtor.
- The SEC Enforcement Action and related proceedings by the SEC have not been concluded and the SEC is not bound by the provisions of the HFG Settlement described above.
- The Debtor, Receiver and HFG Parties have agreed that they will work together reasonably and in good faith to the extent they can to assist each other in making the HFG Settlement a favorable taxable event for each party.
- Harder, Fisher and Gutzler and their wives and children will receive a bar order in the Federal Receivership Case. The bar order will prevent Claimants from initiating Claims against them.

VII. ASSETS AND LIABILITIES

The Court has (i) ordered all assets and liabilities of the Sunwest Entities to be substantively consolidated into the bankruptcy estate of Debtor, (ii) consolidated equitable title to the real property held by the Sunwest Entities into the bankruptcy estate of Debtor, and

(iii) held that Debtor has the right to convey title to or interests in such real property pursuant to a confirmed plan of reorganization or other order of the Court. Consolidated schedules of assets and liabilities for all of the Receivership Entities have been filed in the Bankruptcy Case. In addition, Debtor has filed over 100 adversary proceedings pursuant to 11 U.S.C. § 363(h) (the "TIC Transfer Proceedings") seeking authorization to sell the various TIC Interests in the Holdco Properties and the Trustco Properties.

Accordingly, all of the assets and liabilities of the Receivership Estate (excluding Third Party Claims) and all of the Claims against the Receivership Estate are deemed consolidated for purposes of determining distributions to Claimants. Management and control of all real and personal property in the Receivership Estate is equitably consolidated under the Receiver and CRO for Debtor, although bare legal title will remain with each respective Receivership Entity and TIC until transferred pursuant to the Reorganization Plan. The equitable consolidation of Receivership Estate assets and liabilities and Claims is for purposes of Claim allowance and Plan Distributions only. In accordance with the principles set forth in IRS Field Service Advice Memorandum No. 199952016 (September 24, 1999), there will not be a new "entity" or other vehicle created for income tax purposes.² Further, the Distribution Plan provides that all of the HFG Parties' Sunwest-related assets have been contributed to the Receivership Estate and all of their Sunwest-related liabilities will be obligations of the Receivership Estate.

The assets of Debtor include claims arising under Chapter 5 of the Bankruptcy Code, including claims for avoidance of preferential transfers, fraudulent conveyances and distributions, and transfers that are recoverable under state corporate and business law. The Reorganization Plan preserves the right of Debtor to pursue such claims. The Receiver and CRO are continuing to investigate the Chapter 5 claims and believe that they are significant.

² See Section XVI and XVII related to tax matters.

Because of the complexities of the Bankruptcy Case, it is premature to estimate the amount of recoveries from avoidance actions.

VIII. CLASSIFICATION OF CLAIMS

The classification of Claims under the Reorganization Plan is described below.

A. Unclassified Claims

Administrative Expense Claims, Priority Tax Claims and Bankruptcy Fee Claims are not classified for purposes of the Reorganization Plan. These unclassified Claims will be treated as set forth below.

1. Administrative Expense Claims

An Administrative Expense Claim is a Claim against Debtor constituting an expense of administration of the Bankruptcy Case allowed under Section 503(b) of the Bankruptcy Code. Administrative Expense Claims include, without limitation, the actual and necessary costs and expenses of preserving the estate and operating Debtor's businesses during the Bankruptcy Case, any indebtedness or obligations, including debtor-in-possession or similar financing, incurred by Debtor during the pendency of the Bankruptcy Case in connection with the rendition of services to Debtor, compensation for legal and other professional services, and reimbursement of expenses.

Each holder of an Administrative Expense Claim shall be paid by Reorganized Company in full in Cash on the later of the Effective Date or the date on which such Claim is approved by order of the Court, unless such holder shall agree to a different treatment of such Claim (including, without limitation, any different treatment that may be provided for in any documentation, statute, regulation or Final Order governing such Claim); provided, however, that Administrative Expense Claims representing obligations incurred in the ordinary course of business by Debtor during the Bankruptcy Case shall be paid by Debtor or Reorganized Company in the ordinary course of business and in accordance with any terms and conditions of

the particular transaction, and any agreements relating thereto.

It is estimated that Administrative Expenses incurred from December 1, 2008 through the end of 2010 in connection with all Sunwest related bankruptcy cases, including Harder's individual case, and the bankruptcy cases filed by certain Sunwest Entities, the SEC Enforcement Action and the Federal Receivership Case will total approximately \$50,000,000. This amount includes the fees and expenses of the CRO and professionals employed by the Debtor and the CRO, the Receiver and professionals employed by the Receiver, professionals employed by the Tenants-in-Common Committee, the Unsecured Creditors Committee, the Management Committee, the HFG Parties, the LLC Member Committee and Spring Pointe. It will also include the services of mediators, investment advisors, court appointed experts, and the noticing agent. All such fees are subject to Court approval. In addition, it is estimated that professional fees incurred by secured lenders will exceed \$11,000,000. A spreadsheet outlining the estimated fees is attached as Exhibit 4.

A pleading has been filed in the Bankruptcy Case indicating that certain Insiders and LLC Members may seek recovery of approximately \$7,000,000 in alleged administrative claims arising from the disposition of certain proceeds of the Lone Star Sale. The CRO, Receiver and Debtor dispute the claims and believe they are without merit. The Debtor and the Receiver also believe that they have avoidance claims and disgorgement claims against the Insiders and LLC Members totaling well in excess of \$7,000,000.

2. Priority Tax Claims

A "Priority Tax Claim" is a Claim of a governmental unit of the kind entitled to priority under Section 507(a)(8) of the Bankruptcy Code or that would otherwise be entitled to priority but for the Secured status of the Claim. Each holder of an Allowed Priority Tax Claim shall be paid by Reorganized Company the full amount of its Allowed Priority Tax Claim in Cash on the later of the Effective Date or the date on which such claim is Allowed. Notwithstanding any

applicable law that entitles the holder of a Priority Tax Claim to demand or receive accelerated payment after the occurrence of a default, Debtor shall not be required to pay unpaid default interest or late charges that have accrued before or after the Petition Date in connection with a Priority Tax Claim.

3. Bankruptcy Fee Claims

A "Bankruptcy Fee Claim" is a Claim payable by Debtor under 28 USC § 1930 to the Clerk of the Court. All Bankruptcy Fee Claims will be paid in full in Cash on the Effective Date. After confirmation, the Reorganized Company or Debtor shall continue to pay quarterly fees of the Office of the United States Trustee and to file quarterly reports with the Office of the United States Trustee until the Bankruptcy Case is closed by the Court, dismissed or converted.

B. Classified Claims

For purposes of the Reorganization Plan, a Claim is classified in a particular Class only to the extent that such Claim qualifies within the description of such Class, and is classified in a different Class to the extent that such Claim qualifies within the description of such different Class.

1. Class 1 (Other Priority Claims)

Class 1 Claims consist of all Allowed Other Priority Claims.

2. Class 2 (Employee Benefit Claims)

Class 2 Claims consist of all Allowed Employee Benefit Claims.

3. Class 3 (Personal Property Secured Claims)

Class 3 Claims consist of Allowed Secured Claims secured solely by Collateral consisting of personal property. Each holder of a Class 3 Claim shall be deemed to be in a separate subclass, all as listed on Exhibit 2 to the Reorganization Plan. For purposes of voting and confirmation, each subclass will be treated as a Class.

4. Class 4 (Real Property Secured Claims)

Class 4 Claims consist of Allowed Secured Claims secured by Collateral consisting, in part or in whole, of real property. Each holder of a Class 4 Claim shall be deemed to be in a separate subclass, all as listed on Exhibit 3 to the Reorganization Plan. For purposes of voting and confirmation, each subclass will be treated as a Class.

5. Class 5 (Interests)

Class 5 consists of the Interests.

6. Class 6 (General Unsecured Claims)

Class 6 Claims consist of all Allowed Unsecured Claims held by Unsecured Creditors not otherwise classified and treated under the Reorganization Plan.

7. Class 7 (Lien Claims)

Class 7 Claims consist of all Allowed Lien Claims. Each holder of a Class 7 Claim shall be deemed to be a separate subclass.

8. Class 8 (Investor Claims)

Class 8 Claims consist of all Allowed Investor Claims.

9. Class 9 (HFG Party Claims and Interests)

Class 9 consists of all Claims and interests of any kind or nature of the HFG Parties, or any of them.

IX. TREATMENT OF CLASSIFIED CLAIMS

Only Claims that are Allowed as provided in the Reorganization Plan, Distribution Plan, Distribution Plan Approval, and related orders entered in the Federal Receivership Case of the Bankruptcy Case, shall be entitled to distributions under the Reorganization Plan.

The treatment of each Class of Claims is described below.

1. Class 1 (Other Priority Claims)

Class 1 Claims are unimpaired. Each Class 1 Claim will be paid or satisfied in full by

Debtor or Reorganized Company and will be paid or satisfied as soon as possible after the later of (a) the Effective Date or (b) the date on which such Claim becomes a Class 1 Claim, unless the holder shall agree or has agreed to a different treatment of such Claim (including any different treatment that may be provided for in any documentation, agreement, contract, lease, statute, law or regulation creating or governing such Claim).

2. Class 2 (Employee Benefit Claims)

Class 2 Claims are unimpaired. Each Class 2 Claim will be paid or satisfied by Reorganized Company. Each holder of a Class 2 Claim will have and retain each and all of their legal, equitable and contractual rights relating to such Claim. All obligations to each holder of a Class 2 Claim relating to such Class 2 Claim will be paid or satisfied as and when due; provided, however, that the rights of holders of Class 2 Claims will be subject to modification or termination as provided by the terms of any applicable plan, fund, agreement, contract or program.

3. Class 3 (Personal Property Secured Claims)

Class 3 Claims are impaired. Unless the holder of a Class 3 Claim is specifically identified and accorded a different treatment, then each such holder of each Class 3 Claim in each subclass shall retain its security interest in its Collateral with the same priority such security interest had as of the Petition Date and shall receive the treatment and summarized below.

Class 3 Claims secured by Collateral used in connection with a Holdco Property or a Trustco Property shall be assumed and paid as provided in the Reorganization Plan by either (a) Acquirer (subject to the terms of the APA), in the event that the Collateral is used in connection with a Holdco Property, or (b) Trustco and the relevant Trustco Subsidiary, in the event the Collateral is used in connection with a Trustco Property. Each such Class 3 Claim shall be paid in full (including unpaid interest accrued at the non-default contract rate) in equal

monthly installments of principal and interest in the original amount commencing on the first day of the first month following the Effective Date and continuing on the first day of each month thereafter until paid in full, with the maturity of the loan being extended if necessary. Trustco, Trustco Subsidiary or Acquirer, as appropriate, shall continue to insure and maintain the Collateral as required in the existing agreements between Debtor and the holder of the Class 3 Claim. Holders of Class 3 Claims and the acquiring entities, if any, of a Holdco Property or Trustco Property, shall execute such other and further documents as are necessary or appropriate to accomplish the transactions contemplated herein.

Each holder of a Class 3 Claim secured by personal property located in and used in connection with a Divestco Property, or that is otherwise identified by Debtor for abandonment, shall, at its option, (a) be delivered its Collateral in full satisfaction of its Class 3 Claim or (b) otherwise realize on its Collateral as allowed by law.

4. Class 4 (Real Property Secured Claims)

Class 4 Claims are impaired, with certain exceptions as set forth in the Reorganization Plan. Unless a Class 4 Claim in a particular subclass is specifically identified and accorded a different treatment, then each such holder of a Class 4 Claim in each subclass shall receive the treatment summarized below.

Each holder of a Class 4 Claim secured by a Holdco Property or a Trustco Property shall retain its security interests in and liens on its Collateral with the same priority such security interests and liens had as of the Petition Date. Each Class 4 Claim will be restructured as provided in the Reorganization Plan and assumed and paid as restructured by either (a) Acquirer (subject to the terms of the APA), with respect to Collateral that is a Holdco Property, or (b) Trustco and the relevant Trustco Subsidiary with respect to any Claim secured by Collateral that is a Trustco Property. Debtor and Reorganized Company will have no further liability for any obligation to or in respect of any Class 4 Claim. Unless specifically identified and

separately treated, each Class 4 Claim shall be paid in full, together with interest at the rate of 4.75% per annum (or such other interest rate as may be set by the Court) as follows: 12 monthly installments of interest only commencing on the first day of the first month following the Effective Date, followed by 48 equal monthly installments of principal and interest based on a 30-year amortization, and a balloon payment of all unpaid principal and interest due and payable on the fifth anniversary of (a) the Closing, with respect to the Holdco Properties, and (b) the Effective Date, with respect to the Trustco Properties. The parties will execute loan and security documents in substantially the form attached as Exhibit 8 of the Reorganization Plan. Pursuant to the Distribution Plan, Class 4 Claims will not include default interest, late fees, penalties, or attorneys fees above a reasonable amount allowed by the Court.

The holder of a Class 4 Claim secured by a Divestco Property shall (a) at its option to be exercised before the Effective Date, be delivered a deed to its Collateral in full satisfaction of its Claim or (b) otherwise realize on its Collateral as allowed by law. Holders of Class 4 Claims secured by a Divestco Property shall realize on their Collateral as allowed by law prior to having an Allowed Unsecured Claim. A holder of a Class 4 Claim may elect to receive a deed to its Collateral in full satisfaction of its claim by delivering notice of such election as provided in Section 11.19 of the Reorganization Plan prior to the Effective Date. Consistent with the Distribution Plan, in the event the holder of a Class 4 Claim secured by a Divestco Property does not exercise its rights to realize on its Collateral as allowed by law, then the holder will be deemed to have waived and released any Claim in the Bankruptcy Case.

Certain Class 4 Claims that have been specifically identified for separate treatment will be treated as described in the Reorganization Plan.

5. Class 5 (Interests)

Class 5 is unimpaired. The Interests are treated as provided in the Distribution Plan and Distribution Plan Approval.

6. Class 6 (General Unsecured Claims)

Class 6 is unimpaired. Each holder of an Allowed Claim in Class 6 shall receive payments and distributions as provided in the Distribution Plan and Distribution Plan Approval. Under the Distribution Plan, Unsecured Creditor Claims will be divided into Tranche A and Tranche B. Tranche A Claims will be determined according to MIMO as defined in the Glossary below. Tranche B Claims will be calculated by deducting the amount of the Tranche A Claim from the total amount a Claimant asserts that it is owed for any reason and is allowed by applicable Federal or state law (a) arising from any agreement, or (b) as damages or other amounts recoverable as a result of application of any Federal or state laws or regulations applicable to investments. To the extent there is a conflict between the descriptions of treatment of the Class 6 Claims in the Reorganization Plan, this Disclosure Statement and the Distribution Plan, the description in the Distribution Plan will supersede any other descriptions.

7. Class 7 (Lien Claims)

Class 7 Claims are unimpaired. Unless a Class 7 Claim in a particular subclass is specifically identified and separately treated, then each holder of a Class 7 Claim shall receive the following treatment.

Each holder of a Class 7 Claim secured by a Holdco Property or a Trustco Property shall be paid in full on the later of (a) the Effective Date, or (b) the date on which the Lien Claim becomes a Class 7 Claim. Notwithstanding any contractual provision or applicable law that entitles the holder of a Class 7 Claim to demand or receive accelerated payment of such Claim after the occurrence of a default, Debtor shall not be required to pay any unpaid default interest or late charges that have accrued before or after the Petition Date in connection with a Class 7 Claim.

Each holder of a Class 7 Claim secured by a Divestco Property shall retain their liens on their Collateral and may realize on their Collateral as allowed by law.

8. Class 8 (Investor Claims)

Class 8 Claims are unimpaired. Except for TICs who have entered into a TIC Settlement Agreement and Members who have entered into a Member Settlement Agreement, each holder of a Class 8 Claim will receive the treatment provided in the Distribution Plan. TICs who have entered into a TIC Settlement Agreement and Members who have entered into a Member Settlement Agreement, will receive the treatment provided in the Settlement Agreement as authorized and approved by Order of the Court. Certain Investors are entitled to make elections described in Section X on Implementation below, which must be made on or before the first date set for filing objections to the Reorganization Plan. These elections are: Rollover Equity Election (Section X.A.1), the Member Value Election (Section X.A.3), and Trustco Subsidiary Member Election (Section X.A.5).

9. Class 9 (HFG Party Claims and Interests)

Class 9 is unimpaired. Each holder of a Class 9 Claim or interest will receive the treatment provided in the HFG Settlement.

10. Disallowance of Claims of Entities Liable to Receivership Estate

Except as otherwise ordered by the Court, no holder of an otherwise Allowed Claim who is liable for Disgorgement of Ill-Gotten Gains, Avoidance Actions or other Third Party Claims shall receive any Plan Distribution until full payment is made by such party to the Receiver in the amount of the liability. To the extent necessary to determine allowance of any Claim, the Court may determine the respective Claimant's liability to the Receivership Estate through Summary Procedures. The Receiver shall maintain sufficient Cash reserves for such Claims pending resolution.

X. IMPLEMENTATION

A. Investor Elections

The following elections are available to certain categories of Investors.

1. Rollover Equity Election

Investors who have not filed an appeal to the Confirmation Order, Substantive Consolidation Order, Sale Order, or TIC Transfer Order ("Rollover Investors") may, subject to Section 2.6(f) of the APA, participate in the Rollover Equity Election by delivering to Receiver and CRO a signed and complete notice of Rollover Equity Election and an executed signature page to the Rollover Member LLC Agreement in the forms attached to the Reorganization Plan. All such notices shall be delivered to the Receiver and the CRO in the manner provided in the Reorganization Plan and must be received by both the Receiver and the CRO on or before 4:00 p.m. Pacific Time on the date first set for filing objections to confirmation of the Reorganization Plan. Any Investor (other than a TIC which has exercised its Rollover Equity Election through a TIC Settlement Agreement, partners in SWP Holdings, LP, a Preferred Member or LLC Member that has exercised its Rollover Equity Election through a Member Settlement Agreement, as described below) that does not timely and properly exercise the Rollover Equity Election shall receive a Cash distribution in respect of its Investor Claim and shall not receive any Rollover Equity Interests.

2. TIC Investors Elections

(a) Holdco Property TIC Investor Elections

TIC Investors that own Holdco Properties may elect one of the following options:

(1) Voluntary Contribution to Rollover Member LLC through the Rollover Equity Election. TICs may elect to enter into a TIC Settlement Agreement with respect to the TIC Transfer Proceeding filed against such TIC, participate in the Rollover Equity Election and voluntarily contribute their TIC Interests to Rollover Member LLC in exchange for Rollover Equity Interests and Cash that is distributed by the Receivership Estate in the future, if any (the "Future Cash").

(2) Voluntarily Sell TIC Interest to Acquirer. TICs may elect to enter into a TIC

Settlement Agreement with respect to the TIC Transfer Proceeding filed against such TIC and voluntarily sell their TIC Interests to Acquirer and receive Cash from Acquirer and Future Cash from the Receivership Estate.

(3) Allow TIC Interest to be Taken Pursuant to TIC Transfer Proceeding and Receive Cash or Rollover Equity Interests. TICs may elect not to enter into a TIC Settlement Agreement with respect to the TIC Transfer Proceeding filed against such TIC, in which case their TIC Interest will be taken pursuant to a TIC Transfer Proceeding. TICs will receive (i) (a) Cash or (b) Rollover Equity Interests (subject to availability from the Receivership Estate) (the “Distributed Estate Property”) and (ii) Future Cash from the Receivership Estate. If TICs that own a Holdco Property do not make any of the elections set forth herein, their TIC Interests will be taken pursuant to a TIC Transfer Proceeding and they will receive Cash and Future Cash.

(b) Trustco Property TIC Investor Elections

TIC Investors that own Trustco Properties will have their TIC Interests taken pursuant to a TIC Transfer Proceeding and the TIC Investors will receive (i) (a) Cash or (b) Rollover Equity Interests (subject to availability from the Receivership Estate) as their Distributed Estate Property and (ii) Future Cash from the Receivership Estate. If TICs that own a Trustco Property do not make any of the elections set forth herein, their TIC Interest will be taken pursuant to a TIC Transfer Proceeding and they will receive Cash and Future Cash.

(c) Divestco Property TIC Investor Elections

TICs that own Divestco Properties may elect (or have elected) according to the following options:

(1) TIC Interest Contributed to SWP Holdings, LP. TICs that contributed their TIC Interests to SWP Holdings, LP or will contribute their TIC Interests to SWP Holdings, LP prior to the Effective Date of the Reorganization Plan received (or will receive) limited partnership

interests in SWP Holdings, LP pursuant to that certain Confidential Private Placement Offering Memorandum of SWP Property Holdings, LP, as amended or supplemented (the “Divestco Properties Offering”). SWP Holdings, LP will contribute its assets to the Rollover Member LLC and will receive Cash and Rollover Common Interests and Rollover Preferred Interests, in the amounts necessary to reflect the elections of the limited partners of SWP Holdings LP (subject to availability). SWP Holdings, LP will liquidate and distribute the Rollover Equity Interests to the TICs who are members of SWP Holdings, LP on a pro rata basis. TICs that own a Divestco Property contributed to SWP Holdings, LP will also have the right to Future Cash. TICs should also consult the Divestco Properties Offering for a discussion of the tax consequences and the risks of the contribution of their TIC Interests to SWP Holdings, LP.

(2) TIC Interests Foreclosed or Deed-in-Lieu Provided to the Lender. Certain Divestco Properties have been or will be foreclosed upon or returned, pursuant to a deed-in-lieu, to the secured lender whose loan is secured by such Divestco Property. Any TIC that owns a TIC Interest in any such Divestco Property will receive (i) (a) Cash or (b) Rollover Equity Interests as their Distributed Estate Property and (ii) Future Cash. If a TIC whose TIC Interest was foreclosed or whose TIC Interest is subject to a deed-in-lieu does not make any of the elections described herein, such TIC will receive Cash as the Distributed Estate Property and Future Cash.

(3) TIC Interest Taken Pursuant to a TIC Transfer Proceeding. Certain Divestco Properties have been or will be sold by the Receivership Estate. TICs that own TIC Interests in such Divestco Properties will have their TIC Interests taken pursuant to a TIC Transfer Proceeding and will receive (i) (a) Cash or (b) Rollover Equity Interests as their Distributed Estate Property and (ii) Future Cash. If a TIC whose TIC Interest was taken pursuant to a TIC transfer proceeding does not make any of the elections described herein, such TIC will receive Cash as the Distributed Estate Property and Future Cash.

(4) TIC Interest Abandoned by Receivership Estate. Certain Divestco Properties that the secured lenders decline to foreclose on, or accept a deed-in-lieu for, may be abandoned by the Receivership Estate and returned to the TICs that own such Divestco Property. Any TIC that owns a TIC Interest in an abandoned Divestco Property will receive (i) (a) Cash or (b) Rollover Equity Interests as their Distributed Estate Property and (ii) Future Cash. If a TIC whose TIC Interest was abandoned by the Receivership Estate does not elect to receive Rollover Equity Interests, such TIC will receive Cash as the Distributed Estate Property and Future Cash.

3. Preferred Member and LLC Member Value Election

Pursuant to the Distribution Plan, each Preferred Member or LLC Member of a Sunwest Entity that holds legal title to a Holdco Property (a "Holdco Entity") may either (a) file a Claim as an Investor and be treated as an Investor, or (b) elect not to be treated as an Investor, waive all Claims and instead receive a distribution in Cash in an amount (the "Member Value") equal to the value attributable to their ownership percentage in such Holdco Entity as of March 2, 2009, plus 55% of any appreciation in value of their respective interest to the Effective Date, all as set forth in Exhibit 7 to the Distribution Plan (the "Member Value Election"). If the Settlement Rollover Opportunity described below is accepted, those Preferred Members and LLC Members who hold an ownership percentage in a Holdco Entity that was of no value, or nominal value, as of March 2, 2009 shall have a minimum Member Value allocated to them.

A Member that exercises the Holdco Member Value Election will not be treated as an Investor and will not be entitled to participate in the Rollover Equity Election or any Pari Passu Plan Distribution distributed in respect of recoveries premised on injuries to Investors, such as, without limitation, securities fraud, fraud in the inducement or other non-derivative claims. Preferred Members and LLC Members that exercise the Member Value Election will be paid in Cash promptly following the determination, whether by agreement or Final Order of the Court, of the value attributable to their ownership percentage in Holdco Entities as provided in the

Distribution Plan.

All Holdco Member Value Elections shall be made by delivering to the Receiver and the CRO a written and signed notice of election identifying the member making the election and the Holdco Entity with respect to which the election is made. The notice of election must be received as required by the Reorganization Plan on or before 4:00 p.m. Pacific Time on July 6, 2010.

4. Settlement Rollover Opportunity

Under the Distribution Plan, a Preferred Member or LLC Member that elects the Holdco Member Value Election does not also have the right to exercise the Rollover Equity Election and contribute its interests to the Rollover Member LLC in exchange for Rollover Equity Interests. Certain Members requested that they be permitted to both exercise the Member Value Election and to receive a combination of Rollover Equity Interests and Cash. In response to this request and because completion of settlements with valuable LLC's would preserve value for the benefit of other Claimants, Proponents are offering Members a settlement opportunity (the "Settlement Rollover Opportunity"). The Settlement Rollover Opportunity is only being offered on an entity-by-entity basis with respect to each Holdco Entity. Allowing every Member to participate individually in the Holdco Settlement Rollover Opportunity would result in numerous legal complications and additional expenses.

To participate in the Holdco Settlement Rollover Opportunity, all Members of a Holdco Entity must agree to the terms of a Member Settlement Agreement, which provides, among other things, that (i) the Members agree to cause the Holdco Entity to contribute and transfer its interest in the Holdco Property to Acquirer in exchange for a specified combination of Cash and Rollover Equity Interests; (ii) the Members authorize Proponents to execute and deliver such documentation as is required to complete the transfer; (iii) each Member agrees that the amount set forth opposite its name on the Member Value Schedule attached to the Member Settlement

Agreement is the Settlement Member Value to which it is entitled pursuant to the Holdco Member Value Election; (iv) the Members agree that distribution of Cash can be no greater than 35% of the Settlement Member Value amount; (v) the Members must agree that the Rollover Equity Interests to be distributed to the Holdco Entity shall be distributed in the same amount as if the Settlement Member Value remaining after any Cash distribution were a MIMO Allowed Claim that had elected to receive Rollover Equity Interests; and (vi) to the extent available, Rollover Equity Interests will be allocated first to Rollover Common Interests and then to Rollover Preferred Interests.

The Settlement Rollover Opportunity shall expire unless a fully executed original of the Member Settlement Agreement is received by the Debtor on or before 4:00 p.m. Pacific Time on July 6, 2010. Members holding interests in Holdco Entities that elect to participate in the Holdco Settlement Rollover Opportunity will not be entitled to receive any Pari Passu Plan Distribution distributed in respect of recoveries premised on injuries to Investors, such as, without limitation, securities fraud, fraud in the inducement or other non-derivative claims. The Settlement Rollover Opportunity will also be conditioned on the acceptance by Holdco Entities having a total Member Value of at least \$30,000,000.

5. Trustco Subsidiary Member Election

Each Preferred Member or LLC Member of a Sunwest Entity that holds legal title to a Trustco Property (a "Trustco Subsidiary") may either (a) file a Claim as an Investor and be treated as an Investor, or (b) elect not to be treated as an Investor, waive all Claims and instead retain their interest in the Trustco Subsidiary (the "Trustco Subsidiary Member Election"). This election must have been made by delivering to the Receiver a notice of election on or before the Claims Bar Date. All electing Members shall be required to execute an amended and restated operating agreement that includes the following provisions with respect to the Member's interest:

- Member will receive no distributions for two years except as necessary to pay taxes on income attributed the Member;
- Distributions to the Member during the third and fourth years following the Effective Date will be limited to a return on the Member's Member Value.
- Members shall have no voting or management rights or authority whatsoever with respect to the Trustco Subsidiary.

Members that make the Trustco Subsidiary Member Election shall not receive any distribution under the Distribution Plan in relation to any Allowed Unsecured Claims related to the relevant Trustco Property. Instead, electing Members shall retain their membership interest in the relevant Trustco Subsidiary.

6. Sale, Exchange or Contribution of TIC Interests in Holdco Properties

Debtor has filed TIC Transfer Proceedings against the TIC Investors seeking authorization from the Court to sell the TIC Investors' interests in the Holdco Properties. On April 12, 2010, Debtor filed a motion for summary judgment in these TIC Transfer Proceedings. Hearings on the motion for summary judgment are currently scheduled for June 21, 2010. On May 10, 2010, the Court entered an order authorizing Debtor to enter into settlements with TICs pursuant to the terms of a "TIC Settlement Agreement."

Each TIC Investor who enters into a TIC Settlement Agreement prior to the Court's ruling on the motion for summary judgment, may elect to either (i) contribute its TIC Interest in the respective Holdco Property to Rollover Member LLC in exchange for Rollover Equity Interests in Rollover Member LLC, or (ii) sell its TIC Interest in the respective Holdco Property to Acquirer for Cash. In order to enter into a TIC Settlement Agreement, a TIC Investor must provide the following, each in the form specified by the CRO: (i) an executed deed with respect to the TIC Investor's interest in the Holdco Property, (ii) a Consent and Power of Attorney authorizing the CRO to sign closing and incidental documents of transfer with respect to the

TIC Investor's interest in the Holdco Property, (iii) a fully completed and executed Incumbency Certificate, (iv) a Stipulation for Entry of Order Granting Motion for Summary Judgment, (v) a fully executed original of the TIC Settlement Agreement, (vi) a subscription agreement, and (vii) all such other documentation as reasonably required by the CRO and/or Acquirer's title companies.

If a TIC Investor does not enter into a TIC Settlement Agreement, the TIC Transfer Proceeding related to the TIC Investor's interest shall continue on through judgment, and such TIC Investor shall continue to be eligible to receive a Cash payment or Rollover Equity Interests with respect to its Allowed Claims, if any, pursuant to the Distribution Plan.

7. Bare Land TIC Election

For any given Bare Land Property, Bare Land TICs holding a minimum of 85% of the TIC Interests in the Bare Land Property may elect (each an "Electing Bare Land TIC") to withdraw the Bare Land Property from Debtor's estate by fulfilling the conditions and procedures set forth in the Reorganization Plan.

B. Rollover Amount and Priority

The Common Interests of Rollover Member LLC in Acquirer shall be valued on a pre-operational basis with the contributions made to Acquirer by other Members, and the Preferred Interests shall be valued at \$100.00 per unit. Under the APA, the amount that can be contributed by Rollover Member LLC to Acquirer in exchange for Preferred Interests is limited to \$50,000,000. Further, the amount that can be contributed to Acquirer by Rollover Member LLC in exchange for Common Interests of Acquirer is limited to 49% of the Total Equity Capitalization of Acquirer. In the event that either the Rollover Common Interests or the Rollover Preferred Interests are over-subscribed as a result of the number of Investors participating in the Rollover Equity Election, then the first level of priority in allocating such interests will be to TICs who have entered into and performed a TIC Settlement Agreement.

The second level of priority in allocating such interests will be to SWP Holdings, LP for the benefit of its limited partners. The third level of priority in allocating such interests will be to Members who have entered into and performed a Member Settlement Agreement. In the event there are insufficient equity interests to allocate in full to any of the foregoing priority groups, the interests will be allocated Pro Rata among the last such priority group for whom interests are available. After allocation of available equity interests to settling TICs, SWP Holdings, LP and the Members who have entered into and performed a Member Settlement Agreement, any remaining Rollover Common Interests and Rollover Preferred Interests available for distribution to Rollover Investors will be allocated Pro Rata among Rollover Investors.

C. Timing of Plan Distributions

The Receiver will make a distribution of the sale proceeds after the Effective Date of the Reorganization Plan. Proponents expect that initial Plan Distributions will be made in 2010.

The Litigation Trust will distribute interim Cash Plan Distributions from time to time after the Effective Date, subject to the Receiver's discretion, when material amounts are available and as far as is reasonably practicable. The Litigation Trust will continue making such Cash distributions until such time as the Federal Receivership Case is closed and the Receiver is discharged.

At such time as all assets of the Receivership Estate have been fully administered, all Claims have been resolved by Final Order of the Court, and after approval of a final report and accounting, the Receiver shall make a final distribution.

D. Treatment of Divestco Properties

Except as may otherwise be provided in a separate order of the Court, each Divestco Property will either (a) at the option, to be exercised prior to the Effective Date, of the Secured Creditor, be transferred to the Secured Creditor holding an Allowed Secured Claim secured by such Divestco Property by delivering to such Secured Creditor a deed-in-lieu of foreclosure in

full satisfaction of the Secured Creditor's Allowed Secured Claim; or (b) be abandoned.

Reorganized Company shall have no liability of any kind or nature with respect to any Divestco Property from and after the Effective Date.

E. Treatment of Trustco Properties

Except as otherwise provided in a separate order of the Court, each Trustco Property will continue to be property of Reorganized Company until transferred to Trustco or a buyer subject to liens and security interests securing the Allowed Secured Claim of any Secured Creditor as provided in the Reorganization Plan.

F. SWP Holdings, LP

SWP Holdings, LP will contribute its assets to Rollover Member LLC in exchange for Cash and Rollover Common Interests and/or Rollover Preferred Interests, which will be distributed in a liquidating distribution to TIC Investors who are members of SWP Holdings, LP.

G. Other Assets

All assets of Debtor other than the Holdco Properties, the Trustco Properties and the Divestco Properties will be liquidated by the Reorganized Debtor or conveyed to the Receiver and the proceeds will be distributed by the Receiver pursuant to the Distribution Plan.

H. Severance Plan

On May 6, 2010, the Court entered an order authorizing Debtor to implement an employee severance plan for corporate employees at Debtor's corporate headquarters. Such plan provides that each headquarters employee will receive a severance payment equal to one month of the employee's base pay for each year of employment with Debtor, up to a maximum of six months of base pay. Debtor estimates that the maximum total amount of severance payments that could potentially be made under the severance plan is approximately \$3,445,000. However, it is anticipated that the actual amount will be significantly less as some headquarters

employees may be offered positions with Acquirer's Qualified Operator and due to normal attrition.

I. Reserves

The Receiver shall set aside appropriate reserves sufficient to allow a Pro Rata distribution to be made on the full Tranche A amount of a disputed Claim or a Claim not entitled to receive a Plan Distribution, until the allowed amount of such Claim or the entitlement to a Plan Distribution is finally determined. The Receiver shall also estimate the administrative, operational and Third Party Claim expenses associated with fully administering the Receivership Estate and set aside appropriate reserves to cover those expenses.

J. Disposition of Unclaimed Property

Any distribution of Cash or securities under the Distribution Plan which is unclaimed after six months following the date of distribution shall be forfeited, and such distribution, together with any interest earned thereon, shall be available for distribution by the Receiver to other holders of Allowed Claims.

K. Corporate Action

Each of the matters provided for under the Distribution Plan, the Reorganization Plan, and the APA involving the corporate structure of Debtor or corporate action to be taken will, as of the Effective Date, be deemed to have occurred and be effective as provided in the Reorganization Plan, and will be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by shareholders, creditors, or directors of either Debtor or the Reorganized Company. On the Effective Date, the CRO will be authorized to execute and deliver all agreements, documents and instruments contemplated by the Reorganization Plan, the APA, or this Disclosure Statement in the name of and on behalf of Debtor, the Reorganized Company, and each Sunwest Entity. The CRO is further authorized to take all actions which, in his discretion, he deems necessary or appropriate

to close the transactions contemplated by the Reorganization Plan and otherwise to cause Debtor and the Reorganized Company to perform their obligations under the Reorganization Plan.

L. The Committees

The Management Committee, Unsecured Creditors Committee and Tenants-in-Common Committee were all recognized in the Receivership Order. Consequently, confirmation of the Reorganization Plan will have no effect on their continued involvement in this Bankruptcy Case and the Federal Receivership Case. Their continued role will be determined in the Federal Receivership Case.

M. Assumed Executory Contracts and Unexpired Leases and Resident Contracts

1. Assumption

Except as may otherwise be provided in a separate order of the Court, the Assumed Executory Contracts and Unexpired Leases and all Resident Contracts will be assumed by Debtor on the Effective Date. The Confirmation Order shall constitute an order authorizing assumption of the Assumed Executory Contracts and Unexpired Leases and all Resident Contracts except those otherwise specifically rejected. Subject to the APA, Debtor shall promptly pay or provide adequate assurance of prompt payment of all amounts required under Section 365 of the Bankruptcy Code to cure any defaults and assume the Assumed Executory Contracts and Unexpired Leases and Resident Contracts.

2. Assignment

Subject to the APA, all Assumed Executory Contracts and Unexpired Leases and Resident Contracts shall be assigned as of the Effective Date to and assumed by Acquirer or, with respect to Assumed Executory Contracts and Unexpired Leases affiliated with Trustco Properties, Reorganized Company. Management contracts will be assigned as provided in the Confirmation Order. The Confirmation Order shall constitute an order authorizing such

assignment and assumption.

3. Rejection

All executory contracts and unexpired leases that are not assumed pursuant to Section 7.1 of the Reorganization Plan or Order of the Court are rejected as of the Effective Date, including, without limitation, any option to purchase a TIC Interest pursuant to any one or more tenant in common agreement, master lease agreement, sponsor purchase option agreement or similar agreement.

Rejection Claims must be Filed pursuant to the Distribution Plan Approval, Distribution Plan or other Final Order entered in the Federal Receivership Case no later than 30 days after the Effective Date. Any such Rejection Claim not Filed within such time shall be forever barred from assertion against the Receivership Estate, Debtor and their property and estates. Each Rejection Claim resulting from such rejection shall constitute a Class 6 Claim.

XI. PROJECTED FINANCIAL INFORMATION

Attached as Exhibit 5 to this Disclosure Statement is projected financial information of Acquirer for the period from January 1, 2011 through December 31, 2013. The projections have been prepared by Acquirer and Alvarez & Marsal LLC and are based on numerous assumptions and estimates, as well as certain information provided by Debtor. These projections are subject to a number of assumptions, risks and uncertainties and contingencies, many of which are and will be beyond the control of Acquirer. Holders of Claims and Interests are cautioned that the projections are solely estimates as of the date made and are not guarantees of future performance. Actual results of developments may differ materially from the estimated results expressed or implied in the projections, and Acquirer undertakes no obligations to update the projections. The projections may not be relied upon as a guaranty or other assurance of the actual results that will occur. The projections are being provided without any express or implied representation or warranty by Acquirer or its affiliates, including, without limitation, as

to (i) the accuracy or completeness of the information contained thereon and (ii) the reasonableness of any projections or the assumptions upon which they are based. In deciding whether to elect to participate in the Rollover Equity Election, to participate in the TIC Settlement, or to vote to accept or reject the Reorganization Plan, holders of Claims or Interests must make their own determination as to the reasonableness of such assumptions and the reliability of the projections.

Additionally, attached as Exhibit 6 to this Disclosure Statement is projected financial information for Trustco for the period January 1, 2010 through December 31, 2012. These projections assume liquidation events prior to December 31, 2012.

XII. SECURITIES LAW MATTERS APPLICABLE TO ROLLOVER MEMBER LLC

In reliance upon Section 1145 of the Bankruptcy Code, the issuance of (a) Rollover Preferred Interests, (b) Rollover Common Interests, and (c) bare legal title, if any, to be issued to holders of Allowed Unsecured Claims or to the Receiver for the benefit of Claimants on the Effective Date, will be exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), and equivalent provisions in state securities laws. Section 1145(a) of the Bankruptcy Code generally exempts from such registration the issuance of securities if the following conditions are satisfied: (a) the securities are issued by a debtor (or its successor) under a plan of reorganization or an affiliate of a debtor participating in a joint plan with the debtor; (b) the recipients of the securities hold a claim against, an interest in, or a claim for an administrative expense against the debtor; and (c) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or are issued principally in such exchange and partly for Cash or property. The Receiver and the CRO believe that the exchange of such securities for claims under the circumstances provided in the Reorganization Plan will satisfy the requirements of Section 1145(a) of the Bankruptcy Code.

The securities to be issued pursuant to the Reorganization Plan on the Effective Date

will be deemed to have been issued in a registered public offering under the Securities Act and, therefore, may be resold by any holder thereof without registration under the Securities Act pursuant to the exemption provided by Section 4(1) thereof, unless the holder is an "underwriter" with respect to such securities, as that term is defined in Section 1145(b)(1) of the Bankruptcy Code. In addition, such securities generally may be resold by the recipients thereof without registration under state securities or "blue sky" laws pursuant to various exemptions provided by the respective laws of the individual states. *However, in order to comply with provisions of the Code and the regulations issued by the Internal Revenue Service thereunder, neither the Rollover Preferred Interests nor the Rollover Common Interests will be transferable except under extremely limited circumstances.* Recipients of securities issued under the Reorganization Plan are advised to consult with their own counsel as to the transferability of such securities under the Code and applicable securities laws.

The Receiver and the CRO believe the securities, if any, to be issued to the HFG Parties under the HFG Settlement under the Reorganization Plan will be exempt from the registration requirements of the Securities Act pursuant to Section 4(2) of the Securities Act as transactions by an issuer not involving any public offering, and equivalent exemptions in state securities laws. Such persons receiving securities under the Reorganization Plan may be deemed to be "restricted holders" and resales by restricted holders would not be exempted by Section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Such restricted holders may, however, be able to sell, at a future time and under certain conditions, securities without registration pursuant to the resale provisions of Rule 144 under the Securities Act.

Any person that is (a) distributed 10% or more of the Rollover Common Interests, (b) is determined by Rollover Member LLC to be an underwriter under Section 1145 of the Bankruptcy Code, (c) is a member of Rollover Member LLC's board of managers, or (d) is an

officer of Rollover Member LLC, may be deemed by Rollover Member LLC to be a restricted holder. Certificates, if any, evidencing securities received by restricted holders or by a holder that Rollover Member LLC determines is an underwriter as defined in Section 1145 of the Bankruptcy Code will bear a legend substantially in the form below:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD, OFFERED FOR SALE OR OTHERWISE TRANSFERRED UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS SUNWEST ROLLOVER MEMBER LLC RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER, WHICH OPINION SHALL BE REASONABLY SATISFACTORY TO SUNWEST ROLLOVER MEMBER LLC, THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED.

Any holder of a certificate evidencing securities bearing such legend may present such certificate to the transfer agent for the securities for exchange for one or more new certificates not bearing such legend or for transfer to a new holder without such legend at such time as (a) such securities are sold pursuant to an effective registration statement under the Securities Act, (b) such holder delivers to Rollover Member LLC an opinion of counsel reasonably satisfactory to Rollover Member LLC to the effect that such securities are no longer subject to the restrictions applicable to "underwriters" under Section 1145 of the Bankruptcy Code, or (c) such holder delivers to Rollover Member LLC an opinion of counsel reasonably satisfactory to Rollover Member LLC to the effect that such securities are no longer subject to the restrictions on transferability pursuant to an exemption under the Securities Act and such securities may be sold without registration under the Securities Act or to the effect that such transfer is exempt from registration under the Securities Act, in which event the certificate issued to the transferee shall not bear such legend.

XIII. FEASIBILITY

The Bankruptcy Code requires that, in order to confirm the Reorganization Plan, the Court must find that confirmation of the Reorganization Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Company, unless contemplated by the Reorganization Plan. This requirement is imposed by Section 1129(a)(11) of the Bankruptcy Code and is referred to as the feasibility requirement. The Proponents believe that Debtor will be able to perform all obligations described in the Reorganization Plan and, therefore, that the Reorganization Plan is feasible. The Proponents believe that the Reorganization Plan satisfies the feasibility requirement of Section 1129(a)(11) of the Bankruptcy Code due to its structure as a sale of the Holdco Properties to a qualified buyer (Acquirer).

XIV. ALTERNATIVES TO CONFIRMATION OF THE REORGANIZATION PLAN

If the Reorganization Plan is not confirmed and consummated, Debtor's alternatives include (i) orderly liquidation of all of the Holdco Properties, Divestco Properties and Trustco Properties under Chapter 7 of the Bankruptcy Code and (ii) the preparation and presentation of an alternative plan or plans of reorganization.

A. Liquidation Under Chapter 7

If no Chapter 11 plan of reorganization is confirmed, the Bankruptcy Case may be converted to a case under Chapter 7 of the Bankruptcy Code in which a trustee would be elected or appointed to liquidate the assets of Debtor. The Cash that would be available for the satisfaction of Claims would consist of (i) the proceeds resulting from the disposition of the assets and properties of Debtor, less payment of the liens and encumbrances which encumber such assets, and (ii) the amount of unencumbered Cash held by Debtor at the time of the commencement of the liquidation case. Such Cash available for distribution to Claimants would be reduced by certain administrative and priority claims and the costs and expenses of

liquidation. Debtor's costs of liquidation under Chapter 7 would include the fees payable to a trustee in bankruptcy, as well as the fees payable to attorneys and other professionals the trustee might engage.

To determine if the Reorganization Plan is in the best interests of each impaired class, the present value of the distributions from the proceeds of a liquidation of Debtor's unencumbered assets and properties, subtracting amounts attributable to priority claims, must be compared with the value of the property offered to such classes of claims under the Reorganization Plan.

After considering the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to Creditors in the Bankruptcy Case, including (i) the increased costs and expenses of a liquidation under Chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (ii) the erosion in value of assets in a Chapter 7 case in the context of the expeditious liquidation required under Chapter 7 and the "forced sale" atmosphere that would prevail, and (iii) the substantial increases in Claims that would be satisfied on a priority basis or on parity with Creditors in the Bankruptcy Case, Proponents have determined that confirmation of the Reorganization Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to the liquidation of Debtor under Chapter 7. For purposes of the best interests test, distributions under a Chapter 11 plan of reorganization that deems the substantive consolidation of Debtor are compared against distributions in a hypothetical Chapter 7 that also deems the substantive consolidation of Debtor.

Proponents believe that the value of any distributions to each Class of Allowed Claims in a Chapter 7 case, including all Secured Claims, would be less than the value of distributions under the Reorganization Plan because such distributions in a Chapter 7 case would not reflect the "going concern" value of Debtor in a sale to a qualified buyer. Moreover, a Chapter 7

liquidation would not be able to be completed for a substantial period of time. It is likely that the liquidation would require at least eight months to complete and that distribution of the proceeds of the liquidation could be delayed after the completion of such liquidation in order to resolve claims and prepare for distributions. In the likely event litigation was necessary to resolve claims asserted in the Chapter 7 case, the delay could be prolonged.

The Liquidation Analysis is attached hereto as Exhibit 7 to this Disclosure Statement. The information set forth in Exhibit 7 provides a summary of the liquidation values of Debtor's assets, assuming a Chapter 7 liquidation in which a trustee appointed by the Court would liquidate the assets of Debtor's estates. The Liquidation Analysis concludes that Unsecured Creditors, including Investors, would recover between 2% and 14% of their claims in an orderly liquidation. Reference should be made to the Liquidation Analysis for a complete discussion and presentation of the Liquidation Analysis. The Liquidation Analysis was prepared by Alvarez & Marsal LLC, with the assistance of Debtor's management and other advisors.

A number of estimates and assumptions underlie the Liquidation Analysis that, although developed and considered reasonable by Debtor's management and their financial advisors, are inherently subject to significant economic and competitive uncertainties and contingencies beyond the control of Debtor and its management. In evaluating the liquidation analysis, particular attention should be given to the assumptions described therein. The Liquidation Analysis also is based on assumptions with regard to liquidation decisions that are subject to change. Accordingly, the values reflected might not be realized if Debtor was, in fact, to undergo such a liquidation. The Chapter 7 liquidation period is assumed to be a period of at least eight months, allowing for, among other things, the discontinuation and wind-down of operations within the first few months, compliance with applicable regulatory requirements, the sale of assets and the collection of receivables.

B. Alternative Plan of Reorganization

If the Reorganization Plan is not confirmed, Proponents or any other party in interest could propose a different plan of reorganization.

XV. EFFECT OF CONFIRMATION

A. Binding Effect

The effect of confirmation will be as set forth in Section 1141 of the Bankruptcy Code. Except as otherwise provided in the Reorganization Plan, the Confirmation Order, or the Distribution Plan, confirmation of the Reorganization Plan will act as a permanent injunction applicable to persons and entities against (a) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against Debtor, any Sunwest Entity, any successor to Debtor, Acquirer, or any other entity acquiring assets from Debtor, that was or could have been commenced against Debtor before the entry of the Confirmation Order, (b) the enforcement against Debtor, any successor to Debtor, Acquirer, or any other entity acquiring assets from Debtor, of a judgment obtained before the Petition Date, and (c) any act to obtain possession of or to exercise control over or to create, perfect, or enforce a lien upon all or any part of the assets of Debtor or the assets of any entity that are acquired from Debtor pursuant to the Reorganization Plan. Nothing in Article 8 of the Reorganization Plan relating to the effect of confirmation shall enjoin or otherwise impair the assertion or enforcement by the SEC, or any other federal or state regulatory agency, of any claim or right against Debtor, any Sunwest Entity, or the HFG Parties.

B. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order, the Court shall retain jurisdiction of this Chapter 11 Case pursuant to and for the purposes set forth in Section 1127(b) of the Bankruptcy Code and to:

- Classify the Claim or Interest of any Creditor or Claimant, re-examine Claims or Interests that have been Allowed for voting purposes, and determine any objections that

may be Filed to Claims or Interests;

- Determine requests for payment of Administrative Expense Claims entitled to priority under Section 507(a)(2) of the Bankruptcy Code;
- Avoid transfers or obligations and to subordinate Claims under Chapter 5 of the Bankruptcy Code;
- Approve the assumption, assignment or rejection of an executory contract or unexpired lease pursuant to the Reorganization Plan;
- Resolve controversies and disputes regarding the interpretation of the Reorganization Plan (other than disputes arising under the Acquirer LLC Agreement);
- Implement the provisions of the Reorganization Plan and enter orders in aid of confirmation, including (a) any necessary or appropriate order relating to the sale or disposition of Trustco Properties, Trustco Subsidiaries, and Divestco Properties, and (b) any order necessary or appropriate to enforce the provisions of Section 11.11 of the Reorganization Plan;
- Adjudicate adversary proceedings and contested matters pending or hereafter commenced in this Chapter 11 Case (other than disputes arising under the Acquirer LLC Agreement);
- Adjudicate any action seeking partition of any real property in which Debtor or Reorganized Company and any TIC have an interest;
- Adjudicate any dispute between or among any holder of a Class 3, Class 4, Class 7 or Class 9 Claim and Reorganized Company arising from or relating to the terms of the Reorganization Plan or the treatment provided in the Reorganization Plan;
- Adjudicate any claim or controversy concerning interests in or governance of the Rollover Member LLC or otherwise arises out of or related to the Rollover Member LLC Agreement;

- Adjudicate any claim or controversy concerning interests in or governance of any Trustco Subsidiary; and
- Enter a final decree closing this Chapter 11 case.

C. Conditions Precedent

The Effective Date will not occur and the Reorganization Plan will not become effective unless and until each of the following conditions has been satisfied or waived by Proponents:

- The Court shall have entered the Confirmation Order in form and substance reasonably acceptable to Proponents which shall, among other things, approve the Reorganization Plan documents required to consummate the transactions contemplated by the Reorganization Plan;
- No stay of the Confirmation Order shall be in effect;
- Licenses and regulatory approvals have been obtained as necessary to allow consummation of the transactions contemplated by the Reorganization Plan;
- Judgments have been entered or settlements reached in the TIC Transfer Proceedings that allow the consummation of the transactions contemplated by the Reorganization Plan; and
- All conditions to Closing have occurred.

XVI. GENERAL FEDERAL INCOME TAX CONSEQUENCES

A. General Considerations

1. Overview

The following is a summary of certain Federal income tax consequences to the TICs, Preferred Members, LLC Members, NH Investors (including NH-RE Investors and NH-HFG Investors), holders of Class 3 Claims and holders of Class 4 Claims. Claimants should not view the following discussion as a substitute for careful tax planning, particularly because the income tax consequences of making the elections described herein, and the consequences thereof, are

uncertain and complex. The tax consequences will not be the same for all Claimants, including those within the same Class. Claimants should be aware that the following discussion necessarily condenses or eliminates many details that might adversely affect some Claimants significantly.

Claimants should be aware that this summary describes the potential Federal tax consequences related to the elections to be made by the Claimants. You should be aware that there are many variables related to these elections, most of which are fact specific. In addition, the applicable law and resulting tax treatment under many of the circumstances is uncertain. Each Claimant should consult with their own tax advisor and review their own factual circumstances before making any of the elections described herein.

This summary is based on an interpretation of the Code, Treasury Regulations promulgated thereunder, published rulings of the Internal Revenue Service and court decisions, as these existed at the time this summary was written. No assurance can be given that the statements set forth herein would be sustained by a court, if contested, or that legislative or administrative changes or court decisions will not be forthcoming that would significantly modify the statements and opinions expressed therein. Any such changes may or may not be retroactive with respect to transactions prior to the date of any such changes. No legal opinion will be obtained and there is no intent to seek a ruling from the Internal Revenue Service as to any of the tax consequences of the Reorganization Plan. Many of the items presented herein are issues of first impression and there is no direct authority regarding their application or treatment by the Internal Revenue Service. As a result, there can be no assurance that the Internal Revenue Service will agree with the positions set forth herein.

This summary does not address the tax consequences to Claimants in the following Classes: Class 1 (Other Priority Claims), Class 2 (Employee Benefit Claims), Class 5 (Interests), Class 6 (General Unsecured Claims), Class 7 (Lien Claims), or Class 9 (HFG

Parties). Holders of Class 1 (Other Priority Claims), Class 2 (Employee Benefit Claims), Class 5 (Interests), Class 6 (General Unsecured Claims), Class 7 (Lien Claims), or Class 9 (HFG Parties) claims should consult their own tax advisors with respect to the tax consequences of the Reorganization Plan to such Claimants.

IRS Circular 230 Disclosure: Any tax advice contained in this Disclosure Statement is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax-related penalties under the Code. The tax advice contained in this Disclosure Statement was written by a disqualified tax advisor. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

2. No Analysis of State Income Tax Consequences

This Disclosure Statement only provides a summary of the potential Federal income tax consequences to certain Claimants relating to the Reorganization Plan. TICs, Preferred Members, LLC Members, NH Investors, holders of Class 3 Claims and holders of Class 4 Claims may be subject to taxes in the state in which the TICs, Preferred Members, LLC Members, NH Investors, holders of Class 3 Claims or holders of Class 4 Claims reside or the state in which the applicable Holdco Property, Trustco Property or Divestco Property is located. There is no assurance that state law will be consistent with the Federal rules with respect to the items described herein except as required by Bankruptcy Code Section 346. Each TIC, Preferred Member, LLC Member, NH Investor, holder of Class 3 Claim and holder of Class 4 Claim should consult their own tax advisor with respect to the state tax treatment of the elections and options described herein in the state in which such TIC, Preferred Member, LLC Member, NH Investor, Class 3 Claim or Class 4 Claim reside and the state in which the applicable Holdco Property, Trustco Property or Divestco Property is located.

3. Information Regarding Reporting and Backup Withholding

Certain payments, including payments in respect of accrued interest or market discount, are generally subject to information reporting by the payer to the Internal Revenue Service. Moreover, such reportable payments are subject to backup withholding under certain circumstances. Under the backup withholding rules in the Code, a Claimant who is a United States person may be subject to backup withholding at the applicable rate with respect to certain distributions or payments pursuant to the Reorganization Plan, unless the Claimant (i) comes within certain exemption categories (which generally include corporations) and, when required, demonstrates their compliance with an exemption or (b) provides a correct United States taxpayer identification number and certifies under penalty of perjury that the Claimant is a United States person, the taxpayer identification number is correct and that the Claimant is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Claimant's United States federal income tax liability, and a Claimant may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the Internal Revenue Service.

B. Unitary Enterprise and Deemed Substantive Consolidation

On December 22, 2009, the Court entered the Order Granting Joint Motion of Debtor, the TIC Committee and the Unsecured Creditors Committee for Substantive Consolidation of Assets and Liabilities of Sunwest Related Entities (the "Substantive Consolidation Order"). Pursuant to the Substantive Consolidation Order, all of the assets and liabilities of the Receivership Entities were substantively consolidated into the Debtor's bankruptcy estate. The Substantive Consolidation Order provides that (i) the Substantive Consolidation Order will not "alter or affect the provisions of the Distribution Plan relating to the income tax treatment of the [Receivership Entities] and shall not be construed as causing a merger or other combination of

the [Receivership Entities] for federal or state income tax purposes prior to the effective date of the Reorganization Plan,” and (ii) “[e]ach of the [Receivership Entities] will file its own income tax return until the effective date of a Reorganization Plan confirmed in this Bankruptcy Case.” The Distribution Plan provides that the equitable consolidation of Receivership Estate assets and liabilities and Claims is for purposes of Claim allowance and Plan Distribution only and that there will not be a new “entity” or other vehicle created for income tax purposes. However, the Substantive Consolidation Order also states that, “[a]lthough bare legal title to real property will remain in each of the [Receivership Entities], equitable title to real property held by all [Receivership Entities] is consolidated in the Debtor’s bankruptcy estate and the Debtor shall have the right to convey title to or interests in real property pursuant to a confirmed plan of reorganization or other order of this Court.” The Debtor interprets the foregoing statement as applying for bankruptcy purposes only and not to override the other tax provisions in the Substantive Consolidation Order.

Although the aggregate assets of the Receivership Entities may be collectively used to satisfy claims in accordance with the Reorganization Plan and the Substantive Consolidation Order, given the statements in the Substantive Consolidation Order, the Substantive Consolidation Order should not cause an actual merger, consolidation, or other combination of the Receivership Entities for Federal income tax purposes prior to the Effective Date of the Reorganization Plan. The Court, in the Findings of Fact that accompanied the Substantive Consolidation Order, indicated that “[i]n accordance with the principles set forth in IRS Field Service Advice Memorandum No. 199952016 (September 24, 1999), substantive consolidation shall not create a new “entity” or any other vehicle for income tax purposes.” IRS Field Service Advice Memorandum No. 199952016 (September 24, 1999) states that the substantive consolidation of a group of related partnerships for purposes of a bankruptcy proceeding does not merge or consolidate the partnerships for any purpose other than the bankruptcy proceeding,

and that a partner in one of the substantively consolidated partnerships is not deemed to be a partner in all of the partnerships. Claimants should be aware that there is no direct authority as to the tax treatment of a unitary enterprise or deemed substantive consolidation where third parties such as the TICs, Preferred Members, LLC Members and NH-RE Investors are part of the combined business and a Field Service Advice Memorandum is not binding authority against the Internal Revenue Service.

If the operation of the Sunwest Enterprise as a unitary enterprise and the Substantive Consolidation Order did not cause a merger, consolidation, or other combination of the Receivership Entities for federal income tax purposes, each Receivership Entity (and, if applicable, the owners thereof) must complete and file their respective tax returns and pay their respective taxes with regard to all tax liabilities associated with their ownership portion of the assets of the Sunwest Enterprise for all periods prior to the Effective Date of the Reorganization Plan. However, TICs may be able to claim a theft or taking of their TIC Interests pursuant to Section 1033 of the Code which will impact the timeframe they owned their TIC Interest for tax purposes.

Notwithstanding the above, as a result of the commingling activities of the Sunwest Enterprise prior to the Bankruptcy Case, it is possible that the Internal Revenue Service could take the position that the combined business has already become a partnership for Federal income tax purposes, in which case the tax consequences to the Claimants would be significantly different than the tax consequences described herein. The following summary assumes that there was not an actual consolidation of the Receivership Entities for tax purposes. If the Substantive Consolidation Order were determined to have created an actual merger of the Receivership Entities or if the commingling activities of the Sunwest enterprise created a tax partnership, the TICs will not have the ability to take advantage of several of the tax deferred options described herein.

XVII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE REORGANIZATION PLAN

A. Background

Pursuant to the terms of the Reorganization Plan, Acquirer is a newly formed limited liability company which will acquire the Holdco Properties. Acquirer's purchase price for the Holdco Properties will be paid in a combination of (i) Cash and (ii) the sum of (a) up to 49% of the Common Interests of Acquirer and (b) up to \$50,000,000 of Preferred Interests in Acquirer. The Rollover Member LLC, a newly formed limited liability company, has been formed. The Rollover Member LLC Agreement provides for common interests (the "Rollover Common Interests") and preferred interests (the "Rollover Preferred Interests") which mirror the rights and obligations of the Common Interests and Preferred Interests, as applicable, in Acquirer. Investors may elect to receive (i) Cash, (ii) Rollover Common Interests or (iii) Rollover Preferred Interests. Rollover Common Interests or Rollover Preferred Interests will be referred to herein as the "Rollover Equity Interests." All property acquired by the Rollover Member LLC will be contributed to Acquirer by the Rollover Member LLC in exchange for Common Interests and Preferred Interests in Acquirer.

B. TICs

1. Elections

(a) Holdco Properties

TICs that own Holdco Properties may elect one of the following options:

- (1) Voluntary Contribution to Rollover Member LLC. TICs may elect to enter into a TIC Settlement Agreement with respect to the TIC Transfer Proceeding filed against such TIC and voluntarily contribute their TIC Interests to Rollover Member LLC in exchange for Rollover Common Interests or Rollover Preferred Interests and any Cash that is distributed by the Receivership Estate in the future, if any (the "Future Cash").
- (2) Voluntarily Sell TIC Interest to Acquirer. TICs may elect to enter into a TIC

Settlement Agreement with respect to the TIC Transfer Proceeding filed against such TIC and voluntarily sell their TIC Interests to Acquirer and receive Cash from Acquirer and Future Cash from the Receivership Estate.

(3) Allow TIC Interest to be Taken Pursuant to TIC Transfer Proceeding and Receive Cash or Rollover Equity Interest. TICs may elect not to enter into a TIC Settlement Agreement with respect to the TIC Transfer Proceeding filed against such TIC, in which case their TIC Interest will be taken pursuant to a TIC Transfer Proceeding. TICs may elect to receive (i) (a) Cash or (b) Rollover Common Interests or Rollover Preferred Interests (subject to availability from the Receivership Estate) (the “Distributed Estate Property”) and (ii) Future Cash from the Receivership Estate. If a TIC in a Holdco Property does not make any of the elections set forth herein, their TIC Interest will be taken pursuant to a TIC Transfer Proceeding and they will receive Cash and Future Cash.

(b) **Trustco Properties**

TIC Investors that own Trustco Properties will have their TIC Interests taken pursuant to a TIC Transfer Proceeding and the TIC Investors will receive Distributed Estate Property and Future Cash.

(c) **Divestco Properties**

TICs that own Divestco Properties may elect (or have elected) one of the following options:

(1) TIC Interest Contributed to SWP Holdings, LP. TICs that contributed their TIC Interests to SWP Holdings, LP or will contribute their TIC Interests to SWP Holdings, LP prior to the Effective Date of the Reorganization Plan received (or will receive) limited partnership interests in SWP Holdings, LP pursuant to that certain Confidential Private Placement Offering Memorandum of SWP Property Holdings, LP, as amended or supplemented (the “Divestco Properties Offering”). SWP Holdings, LP will contribute its assets to the Rollover Member

LLC and will receive Rollover Common Interests and Rollover Preferred Interests, in the amounts necessary to reflect the elections of the limited partners of SWP Holdings LP (subject to availability). SWP Holdings, LP will liquidate and distribute the Rollover Common Interests or Rollover Preferred Interests to the TICs who are members of SWP Holdings, LP on a pro rata basis. TICs in a Divestco Properties will also have the right to Future Cash. TICs should also consult the Divestco Properties Offering for a discussion of the tax consequences and the risks of the contribution of their TIC Interests to SWP Holdings, LP.

(2) TIC Interests Foreclosed or Deed-in-Lieu Provided to the Lender and Receive Distributed Estate Property. Certain Divestco Properties will be foreclosed upon or returned to the secured lender whose loan is secured by such Divestco Property pursuant to a deed-in-lieu. Any TIC that owns a TIC Interest in any such Divestco Property may elect to receive either Cash or Rollover Equity Interests as their Distributed Estate Property and Future Cash. If a TIC whose TIC Interest was foreclosed or whose TIC Interest is subject to a deed-in-lieu does not make any of the elections described herein, such TIC will receive Cash as the Distributed Estate Property and Future Cash.

(3) TIC Interest Taken Pursuant to a TIC Transfer Proceeding and Receive Distributed Estate Property. Certain Divestco Properties will be sold by the Receivership Estate. TICs that own TIC Interests in such Divestco Properties will have their TIC Interests taken pursuant to a TIC Transfer Proceeding and will receive Distributed Estate Property.

(4) TIC Interest Abandoned by Receivership Estate and Receive Distributed Estate Property. Certain Divestco Properties that the secured lenders decline to foreclose on, or accept a deed-in-lieu for, will be abandoned by the Receivership Estate and returned to the TICs that own such Divestco Property. Any TIC that owns a TIC Interest may elect to receive either Cash or Rollover Equity Interests as their Distributed Estate Property and Future Cash. If a TIC whose TIC Interest was abandoned by the Receivership Estate does elect to receive Rollover

Equity Interests, such TIC will receive Cash as the Distributed Estate Property and Future Cash.

2. Section 1033 of the Code

Section 1033(a) of the Code provides that if property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation) is compulsorily or involuntarily converted into money or other property not similar or related in service or use to the converted property, the taxpayer may avoid recognizing gain if appropriate replacement property is acquired. There are two possible alternatives that may apply to certain TICs.

(a) Theft

Section 1033 of the Code applies to property that is the subject of a theft. The term “theft” is not defined in the Code. However, Treasury Regulations Section 1.165-8(d) states that “theft” shall be deemed to include, but shall not necessarily be limited to, larceny, embezzlement and robbery. The Fifth Circuit Court of Appeals, in *Edwards v. Bromberg*, 232 F.2d 107, 110 (5th Cir. 1956) concluded that “theft,” as used in the Code, is not a technical word of art with a narrow definition. Rather, it was intended to cover any criminal appropriation of another’s property to the use of the taker, including theft by swindling, false pretenses and any other form of guile. The Internal Revenue Service agreed with this position in Revenue Ruling 72-112, 1972-1 C.B. 60, stating that to qualify as “theft” loss within the meaning of Section 165(c)(3) of the Code, the taxpayer needs only to prove that his loss resulted from a taking of property that is illegal under the law of the state where it occurred and that the taking was done with criminal intent. The Internal Revenue Service followed this interpretation in Revenue Ruling 2009-9, 2009-14 I.R.B. 735, when it stated that a Ponzi scheme constituted theft for purpose of Section 165 of the Code. The facts in Revenue Ruling 2009-9 involved a scheme whereby investors made an investment in an investment account, the investors received income purportedly derived from such investment but which was, in fact, wholly or partially fictitious and distributions of which were made, at least in part, from amounts that other

investors invested, the actions of the lead figure in the scheme constituted fraud or embezzlement under the law of the jurisdiction where the transactions occurred, the investors did not know that the lead figure engaged in the fraudulent scheme and the scheme was not a tax shelter. Pursuant to Revenue Procedure 2009-20, the Internal Revenue Service established a safe harbor for investors that were claiming a theft based on a Ponzi scheme argument.

To fall within the safe harbor, the following factors must be met: (i) there must be a fraudulent arrangement that is an arrangement in which a party receives Cash or property from investors; purports to earn income for the investors; reports income amounts to the investors that are partially or wholly fictitious; makes payments, if any, of purported income or principal to some investors from amounts that other investors invested in the fraudulent arrangement and appropriates some or all of the investors' Cash or property, (ii) there is a qualified loss resulting from a specified fraudulent arrangement in which, as a result of the conduct that caused the loss, the lead figure was charged by indictment with the commission of fraud, embezzlement or similar crime or a criminal complaint was filed alleging such crime, and the lead figure admitted the crime or a receiver was appointed with respect to the arrangement, and (iii) the investor is a "qualified investor," which is an investor who qualifies to deduct losses under Section 165 of the Code, did not have actual knowledge of the fraud, invested in an arrangement that was not a tax shelter and actually invested in the fraudulent arrangement. As of the date of this Disclosure Statement, there has not been an indictment or criminal complaint filed against the Defendants. As a result, the Sunwest Enterprise would not fall within the safe harbor of Revenue Procedure 2009-20. Thus, a TIC claiming a theft will be required to meet the general requirements relating to whether a theft occurred which require that any TIC claiming a theft loss must demonstrate that the TIC's loss resulted from a taking of the TIC's property that was illegal under the law of the jurisdiction in which it occurred and was done with criminal intent.

In the SEC Enforcement Action, the SEC alleged that the Sunwest Enterprise was

operated as a virtual Ponzi scheme and that the Defendants ran the Sunwest Enterprise as an integrated unitary enterprise, commingling investor and creditor funds and operational revenue essentially into a single fund, often funneled through the personal bank accounts of Harder. The SEC further alleged that the fact that the commingling was not disclosed to potential investors constitutes securities fraud. The Court found that “the control and use of cash inconsistent with the legal restrictions and separateness that were contained in the TIC documents did deprive the TICs of the benefits of real property ownership to which they were entitled.” In order for a TIC to take advantage of Section 1033 of the Code, the TIC must show that, under the law of the state in which the applicable Holdco Property, Trustco Property or Divestco Property was located, the real estate purported to be owned by the TIC (and not simply the funds generated from operation of the real property) was stolen by the Defendants. The Defendants have denied that this occurred. Further, the Internal Revenue Service could take the position that only the income from the TIC’s property was stolen. In such case, there would not be a theft of the real property under Section 1033 of the Code.

One of the TICs applied to the Internal Revenue Service for a private letter ruling that the TIC’s TIC Interest was involuntarily converted because it had been stolen by the Defendants. The Internal Revenue Service declined to issue a private letter ruling because it determined that any determination regarding whether a theft had occurred was primarily one of fact and that the Internal Revenue Service was not the proper agency to make the factual determination. The Internal Revenue Service did not make a legal finding with respect to the application of Section 1033 of the Code.

The ability of a TIC to claim a theft is subject to the requirements and risks described herein and there can be no assurance that any TIC would be successful in claiming a theft.

(b) **Taking**

Section 1033 of the Code also applies to property that is the subject of a taking. To be

considered a “taking” for purposes of Section 1033 of the Code, two elements must be satisfied: (i) the taking of property must be by a government authority that has the power to do so against the will of the owner, and (ii) the taking must be for public use. Not all forced sales of property, including those made by court order, will satisfy the “public use” requirement. For example, in Revenue Ruling 79-269, 1972-2 C.B. 297, a trustee in a bankruptcy sold stock held in a taxpayer’s margin account with a bankrupt brokerage firm. Notwithstanding that the sale was involuntary as to the taxpayer, the Internal Revenue Service concluded that the stock was not taken for public use because the individuals who benefited were the bankrupt company’s customers and creditors. The Court has determined that, unless an election is made by a TIC to contribute its TIC Interest to the Rollover Member LLC (with respect to Holdco Properties only), voluntarily sell its TIC Interest to Acquirer (with respect to Holdco Properties only) or contribute its TIC Interest to SWP Holdings, LP (with respect to certain Divestco Properties only) that the Holdco Properties will be taken, and Trustco Properties will be taken, and used for the benefit of the Claimants. Consequently, the IRS could take the position that the taking was not for a public use.

However, the term “public use” has been found to include the advancement of a “public purpose” by a transfer of ownership of privately-held property to (i) a government entity or (ii) a private enterprise, provided that in each case there is an advancement of the “broader and more natural interpretation of public use as public purpose.” *Kelo v. City of New London*, 125 S.Ct. 2655 (2005). The Court has determined that it “will effect a non-voluntary taking on the Effective Date of the Reorganization Plan of the real property interests of the TICs,” and that “such taking is for the public purpose of (i) ensuring the orderly and equitable administration of the Receivership Estate in furtherance of the public purpose underlying the appointment of the Receiver at the behest of the SEC, and (ii) assisting the SEC to protect the investing public redress the wrongs causing the investing public to suffer losses, and therefore, the takings are to

be recognized as being for a public purpose.” Thus, based on the Court’s finding of the existence of a “public use,” the TICs may be able to elect Section 1033 treatment as a result of the taking of the TIC Interest. TICs will be able to utilize Section 1033 of the Code for a taking if the TIC’s TIC Interest is taken pursuant to a TIC Transfer Proceeding.

The ability of a TIC to claim a taking is subject to the requirements and risks described herein and there can be no assurance that any TIC would be successful in claiming a taking.

(c) Real Estate or Partnership Interest

In order to individually utilize Section 1033 of the Code, the acquisition by the TICs of the TIC Interests would have to initially have been real property acquired by the individual TIC which was either (i) stolen by the Defendants or (ii) taken by the Court as described above. However, if the original structure of a TIC’s TIC Interest upon acquisition did not qualify as real property but was, in fact, a partnership interest for tax purposes, then there could not be a theft or taking of a TIC’s TIC Interest because the TIC did not hold a real property interest. In the alternative, however, there could be (i) a theft by the Defendants of the applicable Holdco Property, Trustco Property or Divestco Property from the “tax partnership” that was created or (ii) a taking by the Court of the applicable Holdco Property, Trustco Property or Divestco Property from the “tax partnership” that was previously created. In either case, the “tax partnership” must make the election to utilize Section 1033 of the Code and acquire the replacement property, which will not occur. In such case, the TICs could not claim a theft or taking of the real property because the real property would have been stolen or taken from the “tax partnership” and not from the TIC.

(d) Application of Section 1033 of the Code

In order to take advantage of Section 1033 of the Code, TICs need not make an affirmative election under Section 1033 of the Code but need only exclude the gain on their tax returns. TICs will receive (or have received) “other property” (i.e. Rollover Equity Interests,

Cash, limited partnership interests in SWP Holdings, LP (for certain TICs that own Divestco Properties only), Future Cash and any assumption of debt, as applicable) from the Receivership Estate in exchange for their involuntarily converted TIC Interests (either as a result of theft or as a result of a taking, if applicable). In order to complete a Section 1033 exchange, TICs will be required to acquire sufficient qualified replacement property within certain applicable time frames, as described below.

If a TIC's TIC Interest is converted pursuant to a theft, Section 1033(a)(2)(b) of the Code provides that the time period for acquisition of the replacement property begins on the conversion and ends two years after the close of the first taxable year in which any part of the gain upon the conversion is realized.³

Pursuant to Section 1033(g)(4), if a TIC's TIC Interest is converted pursuant to a taking and the TIC Interest was real property (which does not include stock in trade or other property held primarily for sale) held for productive use in a trade or business or for investment, the time period begins on the conversion and ends three years after the close of the first taxable year in which any part of the gain upon the conversion is realized.

In order to avoid the recognition of gain under Section 1033 of the Code, a taxpayer must acquire, in the time frames described above, qualified replacement property (as described below) that exceeds the cost of the "other property" received by the taxpayer. Thus, any TIC that elects Section 1033 treatment will be required to acquire replacement property in an amount that exceeds the fair market value of the sum of any Rollover Equity Interests, Cash, limited partnership interests in SWP Holdings, LP (for certain TICs that own Divestco Properties only)

³ Pursuant to Section 1033(a)(2)(B)(ii) of the Code, a taxpayer may apply to have the close of the replacement time frame extended. Treasury Regulations Section 1.1033(a)-2(c)(3) requires that the application be made prior to the expiration of the two year period after the close of the first taxable year in which any part of the gain from the conversion is realized unless the taxpayer can show (i) reasonable cause for not having filed the application within such time and (ii) the filing of the application was made within a reasonable time. The taxpayer must show reasonable cause for not being able to replace the converted property within the required time.

or Future Cash, as applicable, received by the TIC and the amount of debt assumed. If the TIC's TIC Interest was converted because of a theft, the replacement property must be similar or related in service or use to the TIC Interest converted. In the case of a taking, the replacement property can also qualify if it is like-kind to the TIC Interest converted.

It is anticipated that the TICs will receive (or have received) Rollover Equity Interests, Cash, limited partnership interests in SWP Holdings, LP (with respect to certain TICs who own Divestco Properties only), Future Cash or debt assumption, as applicable, all of which will be considered "other property" that is not similar or related in service or use, or is like-kind, to the converted TIC Interests. Consequently, TICs will be required to utilize Cash from other sources to acquire the qualified replacement property in order to complete an exchange under Section 1033 of the Code. In addition, it is likely that the total amount of "other property" (including Rollover Equity Interests, Cash, limited partnership interests in SWP Holdings, LP (with respect to certain TICs who own Divestco Properties only), Future Cash and debt assumed, as applicable) to be received by the TIC will not be known for several years after the Effective Date of the Reorganization Plan. No valuation of the distributed property is anticipated to be made as of the time of distribution. Thus, the TIC will not know how much replacement property they will need to acquire for purposes of Section 1033 of the Code. The TIC may be able to wait to acquire replacement property until the amount of the "other property" received is known. However, the time frames described above may expire prior to the final determination of the value of the "other property" to be received by the TICs. In such case, the TICs may be able to apply to the Internal Revenue Service for an extension of time to purchase replacement property which will be in the discretion of the Internal Revenue Service to grant. TICs could estimate the value of the "other property" to be received and acquire replacement property based on such estimated valuation. If the estimated value is lower than the amount actually received, the TIC may recognize gain on the difference between the estimated value and the

actual value.

(e) TIC Elections Section 1033 of the Code Treatment

If there was a theft or a taking under Section 1033 of the Code of a TIC's TIC Interest (as described above), the TIC's TIC Interest should be viewed as being involuntarily converted into Distributed Estate Property, limited partnership interests in SWP Holdings, LP (for certain Divestco Properties only), Future Cash and the amount of debt assumed or taken subject to. The transfer of the TIC Interest pursuant to the theft or taking would result in the TIC realizing gain or loss in an amount equal to the difference between (i) value of the Distributed Estate Property or limited partnership interests in SWP Holdings, LP (for certain Divestco Properties only) received and the amount of debt assumed or taken subject to and (ii) the TIC's adjusted basis in the TIC Interest converted. If the TIC makes a valid Section 1033 election, the TIC's realized gain (but not loss) would not be recognized and the TIC will recognize gain only to the extent that the cost of the replacement property is less than the fair market value of the sum of (i) the Distributed Estate Property or limited partnership interests in SWP Holdings LP (for certain Divestco Properties only) received, (ii) any Future Cash received and (iii) the amount of debt assumed or taken subject to. The TIC's basis in any property received, will be equal to the fair market value of the property received. The TIC's basis in the replacement property acquired will be equal to the TIC's adjusted basis in the TIC Interest converted (i) decreased by the fair market value of the property and any Cash received, which is not utilized by the TIC to acquire replacement property, (ii) increased by the gain recognized by the TIC with respect to the TIC Interest converted and (iii) decreased by the amount of loss recognized by the TIC with respect to the TIC Interest converted.

(f) TIC Elects Out of Section 1033 of the Code

If the TIC elects out of the provisions of Section 1033 of the Code, the likely treatment is that the theft or taking of the TIC's TIC Interest and receipt of Distributed Estate Property or

limited partnership interests in SWP Holdings, LP (for certain Divestco Properties only), the receipt of the Future Cash (if any) and the debt assumed or taken subject to will result in a taxable transaction and the TIC will recognize gain or loss equal to the difference between (i) the sum of the fair market value of the property received, any Cash received (if any) and the amount of debt assumed taken subject to and (ii) the adjusted basis in the TIC Interest stolen or taken. The above transaction is subject to the application of the installment sales provisions. See Section XVII.B.3(d) below for a description of the tax consequences of an installment sale.

(g) Relationship of Section 1033 of the Code to Section 721 of the Code and Section 1031 of the Code

In the event that Section 1033 of the Code applies to a TIC's TIC Interests for either a theft or a taking, such TIC's ability to contribute their TIC Interest to the Rollover Member LLC (for TICs that own Holdco Properties only), voluntarily sell their TIC Interest to Acquirer (for TICs that own Holdco Properties only) or contribute their TIC Interests to SWP Holdings, LP (for certain TICs that own Divestco Properties only) will be impacted. If Section 1033 of the Code applies, the TIC Interests of the TICs will have been taken from the TIC for income tax purposes and the TIC will not have property to contribute or sell. As a result, a tax free transfer to the Rollover Member LLC under Section 721 of the Code or a sale pursuant to Section 1031 of the Code to Acquirer are incompatible with a prior taking and, consequently, will likely not be available to the TICs.

(h) Internal Revenue Service Application of Section 1033 to All Claimants

The determination of whether a theft or a taking has occurred is fact specific and each TIC should make its own determination with reference to its own circumstances. However, it is possible that the Internal Revenue Service will determine that all of the TICs should be treated similarly with respect to the applicability of Section 1033 of the Code. Thus, it is possible that, regardless of the determination by any individual TIC, the Internal Revenue Service may

attempt to apply Section 1033 of the Code or decline to apply Section 1033 of the Code to all of the TICs. Because the determination of whether Section 1033 of the Code applies is largely a factual determination, given the facts and circumstances related to the Sunwest Enterprise and the TIC Interests, there is significant uncertainty regarding the application of Section 1033 of the Code.

The remaining portions of Section XVII.B assume that Section 1033 of the Code does not apply. If Section 1033 of the Code applies, the tax consequences described above will apply. Any TIC that settles their TIC Transfer Proceeding will only be able to utilize Section 1033 of the Code for a theft, and not for a taking, because their TIC Interests will not be taken pursuant to a TIC Transfer Proceeding.

3. Holdco Properties – Election to Contribute TIC Interests to the Rollover Member LLC if Section 1033 of the Code Does Not Apply

TICs that own Holdco Properties may elect to contribute their TIC Interests to the Rollover Member LLC and, in exchange, will receive either Rollover Common Interests or Rollover Preferred Interests and Future Cash. Section 721(a) of the Code provides generally that no gain or loss will be recognized either to a partnership or any of its partners upon a contribution of property in exchange for an interest in the partnership. Thus, the contribution of the TIC Interests to the Rollover Member LLC should not result in a taxable transaction, subject to certain exceptions described below. The receipt of the Future Cash will likely be a taxable sale, as described below. Acquirer has imposed a restriction that no more than 49% of Common Interests in Acquirer can be owned by the Rollover Member LLC and not more than \$50,000,000 of Preferred Interests in Acquirer will be issued. Consequently, there can be no assurance that any TIC will be able to participate in a contribution to the Rollover Member LLC. If the total elections by all Investors would result in the Rollover Member LLC owning more than 49% of the Common Interests in Acquirer, a priority will be given to TICs that have entered into a TIC Settlement Agreement. If the total elections by all Investors would result in

the issuance of more than \$50,000,000 in Preferred Interests in Acquirer, a priority will be given to the following Investors in the following order (i) TICs that have enter into a TIC Settlement Agreement, (ii) SWP Holdings, LP, (iii) Preferred Members and LLC Members that have settled their Claims and (iv) any other eligible Investor.

(a) **Section 721 Contribution and Related Considerations**

Disguised Sale. Pursuant to Treasury Regulations Section 1.707-3, if a transaction is determined to be a disguised sale, the non-recognition treatment described above does not apply, in whole or in part, to the contribution of property to a partnership. A disguised sale can occur when a partner contributes property to a partnership and the partnership distributes other property (or money) to such contributing partner. Generally, if a partner contributes property to a partnership and within two years of the contribution, a partner receives a distribution of other property, including money, from the partnership, the transaction is presumed to be a disguised sale. If the partner receives a distribution from the partnership after two years, there is a presumption that the transaction was not a disguised sale. Certain distributions from a partnership, including distributions of partner's share of partnership net income, are presumed not to be part of a disguised sale transaction. Neither Acquirer nor the Rollover Member LLC are anticipated to make distributions to their respective members in excess of their net income within two years from the date of the contributions by the TICs. Consequently, the contribution of the TIC Interests to Rollover Member LLC should not be viewed as a disguised sale. However, see the discussion below regarding the receipt of the potential Future Cash by the TIC.

Investment Company. Section 721(b) of the Code provides that the non-recognition provisions of Section 721(a) of the Code will not apply to any contributions of property made to an "investment company," as defined in Section 351 of the Code. Pursuant to Section 351 of the Code, an investment company is an entity (i) that is a real estate investment trust, (ii) that is

a regulated investment company or (iii) where, at the time of the transfer or at the time of any future change in circumstances that were contemplated at the time of the transfer, 80% or more of the value of the company's assets are held for investment and consist of certain types of stocks or securities (including money, stock and equity interest in corporations, evidences of indebtedness, options, forward or future contracts, notional principal contracts, derivatives, foreign currency, interests in real estate investment trusts, interests in regulated investment companies, interests in publicly traded partnerships, interests in precious metals or interests in entities that own the foregoing items (collectively the "Investment Company Securities")). Pursuant to Section 721(b) of the Code, a partnership will be considered an investment company if the partnership would be considered an investment company under Section 351 of the Code if the partnership were a corporation. The determination of whether a partnership is an investment company is made immediately following the transfer, but also considers any plan in existence at the time of the transfer. Rollover Member LLC will not be either a real estate investment trust or a regulated investment company because the partnership will not meet the requirements to elect treatment as a real estate investment trust or a regulated investment company. The sole asset of the Rollover Member LLC is anticipated the membership interests in Acquirer. Thus, it is anticipated that 80% of the assets held by Rollover Member LLC will not consist of Investment Company Securities. As a result, Rollover Member LLC should not be considered to be an investment company for purposes of Section 721(b) of the Code.

Allocation of Partnership Liabilities. Pursuant to Section 752(a) of the Code, any increase in a partner's individual liabilities by reason of the assumption by such partner of partnership liabilities will be treated as a contribution of money by such partner to the partnership. Further, pursuant to Section 752(b) of the Code, any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities will be treated as a distribution of money to the partner by the partnership. The Rollover

Member LLC will assume the pro rata portion of the obligations under the debt secured by the TIC Interests contributed to the Rollover Member LLC by the TICs. Thus, each contributing TIC will be treated as receiving a distribution of money from the Rollover Member LLC which will result in a corresponding reduction in the contributing TIC's basis in the Rollover Member LLC. Each TIC, as a member of the Rollover Member LLC, will be allocated nonrecourse liabilities equal to the sum of (i) the member's share of partnership minimum gain, (ii) the amount of taxable gain that would be allocated to the TIC, as a member of the Rollover Member LLC under Section 704(c) of the Code if the Rollover Member LLC disposed of all partnership property subject to one or more nonrecourse liabilities of the Rollover Member LLC in full satisfaction of the liabilities and for no other consideration, (iii) excess nonrecourse liabilities in an amount up to the amount of built-in gain allocable to the TIC, as a member of the Rollover Member LLC, pursuant to Section 704(c) of the Code to the extent such built-in gain exceeds the gain described in (ii) above, and (iv) the TIC's, as a member of the Rollover Member LLC, share of the remaining excess nonrecourse liabilities as determined in accordance with the TIC's share of partnership profits (which will be equal to the member's percentage interest in the Rollover Member LLC). Each TIC, as a member of the Rollover Member LLC, will also be allocated recourse liabilities equal to the portion of the recourse liability for which the member (or related person) bears the economic risk of loss. Thus, if the adjustments described above reduce the TIC's tax basis below zero, the TIC will realize gain to the extent of such excess.⁴ The adjustments described above will depend on the TIC Interests contributed to the Rollover Member LLC and the liabilities assumed by the Rollover Member LLC with respect to such TIC Interest. Thus, the total adjustments will not be able to be determined until all of the TIC Interests have been contributed. The final determination of allocations and adjustments for the

⁴ The Acquirer LLC Agreement and the Rollover Member LLC Agreement will provide that TICs may enter into bottom guaranties, if possible, if the TIC requires additional debt to avoid recognition of income.

members of the Rollover Member LLC are not anticipated to be made until December 2010. The allocations and adjustments described above should similarly pass-through to the Rollover Member LLC upon contribution of the Rollover Member LLC's assets to Acquirer.

At Risk. If any contributing TIC is an individual or a closely held corporation owned by individuals, pursuant to Section 465 of the Code, such TIC must maintain its "at risk" amount with respect to its investment. In the event that the TIC's "at risk" amount is not maintained, the TIC may be subject to certain recapture rules with respect to the deduction of losses related to the investment.

Partnership Basis. Section 722 of the Code provides that a contributing partner's basis in the partnership is equal to the sum of (i) the amount of any money contributed, (ii) the contributing partner's adjusted basis of the property contributed (including the adjustments pursuant to Section 752 of the Code described above) and (iii) the amount of gain, if any, recognized by the contributing partner pursuant to Section 721(b) of the Code.

Recognition of Gain. TICs should be aware that, in the event that the TIC Interest contributed to the Rollover Member LLC by the TIC, and which the Rollover Member LLC then contributes to Acquirer, is sold by Acquirer in a taxable transaction, the TIC will recognize in the year of sale the built-in gain (as adjusted) that existed at the time of contribution attributable to the TIC Interest contributed at the time of contribution.

(b) Capital Shift

It is possible that, because the value of the TIC Interests contributed to the Rollover Member LLC will be based on a MIMO calculation rather than being based on the TIC's pro rata portion of the actual fair market value of the entire Holdco Property valued without consideration of the Bankruptcy Case, the Internal Revenue Service could take the position that there was a either a capital shift between the members of the Rollover Member LLC once the property was contributed to the Rollover Member LLC or that there was some type of other

taxable exchange between TICs before the contribution of the TIC Interests to the Rollover Member LLC. However, because the TIC Interests are subject to the Bankruptcy Case, the value of the TIC Interests assigned by the Court should reflect the actual fair market value of these TIC Interests at the time of contribution. In addition, certain TICs may be selling their TIC Interests for Cash at the same value. Thus, there should be no partnership capital shift with respect to the contributed TIC Interests. Further, there is unlikely to be any other taxable transaction because the TICs have not transferred or otherwise assigned their TIC Interests to the other Claimants in a taxable exchange even though the Bankruptcy Case may have affected the value of their TIC Interests.

(c) **Receipt of Future Cash**

TICs that contribute their TIC Interests to the Rollover Member LLC may also receive Future Cash.⁵ The amount of Future Cash provided, if any, is unknown and no estimates will be provided. The Internal Revenue Service is likely to take the position that any Future Cash received from the Receivership Estate would constitute a partial sale of the TIC Interest and a partial contribution of the TIC Interest to the Rollover Member LLC for a Rollover Equity Interest. Under this approach, the TIC will be deemed to have sold a portion of the TIC Interest for the Future Cash received, if any, and the assignment of a pro rata portion of the debt secured by the TIC Interest and made a contribution of the remaining portion of the TIC Interest (subject to applicable debt) for Rollover Equity Interests. The TIC will realize gain or loss equal to the difference between the Future Cash received and debt transferred and the adjusted basis of the proportionate TIC Interest deemed to have been sold. Thus, even if a TIC elects to contribute

⁵ It is possible that the Internal Revenue Service could take the position that receipt of Future Cash was from the Rollover Member LLC and not the Sunwest Enterprise. As such, it is likely that this receipt of Future Cash would be deemed a disguised sale as described above. In such case, there would be a partial sale of the TIC's TIC Interest and the consequences to the TIC would be similar to the consequences described herein.

their TIC Interest to the Rollover Member LLC and receive a Rollover Equity Interest on a tax-free basis, such TIC will still have gain recognized as a result of Future Cash received.

(d) **Installment Sale**

It is likely that the TICs will receive the Future Cash over several years following the Effective Date of the Reorganization Plan (or, if distributed in 2010, potentially after the close of a TIC's tax year if the TIC does not use the calendar year as the TIC's tax year). In such case, the exchange of TIC Interests for Future Cash should be viewed as an installment sale for purposes of Section 453 of the Code. An installment sale means a disposition of property where at least one payment is to be received after the close of the taxable year in which the disposition occurs. An installment sale does not include any (i) dealer disposition (which applies to persons in the business of selling personal or real property) and (ii) inventory. In addition, the amount of the Future Cash that may be distributed over the next several years is not currently known. Consequently, the total purchase price for the portion of the TIC Interest sold for the Future Cash will not be known in the year of sale. Pursuant to Section 453 of the code, if the purchase price for real property cannot be determined by the close of the taxable year in which the sale occurs, the sale will be considered to be a "contingent payment sale" for income tax purposes and will be treated as an installment sale. Unless a taxpayer elects out of the provisions of Section 453 of the Code (as described below), income received from the sale of real property from an installment sale is reported under the "installment method." Because the partial sale of the TIC Interest is a "contingent payment sale," pursuant to the "installment method," the TICs will be required to recover their basis in their TIC Interests over a 15 year period which will create certain disadvantageous tax consequences to the TICs.

TICs may also elect out of the provisions of Section 453 of the Code which would result in the immediate recognition of all gain and loss from the portion of the TIC Interest deemed to be sold for the Future Cash. In such case, the TIC would be required to place a value of the

property to be received. If the actual value is different from the value assumed by the TIC, additional gain or loss may be recognized in subsequent years.

In the alternative to treating the partial sale as an installment sale, TICs may be able to utilize the open transaction doctrine which would permit the TIC to apply amounts received from the partial sale of their TIC Interests first to recover their tax basis. The open transaction doctrine is available only in rare and extraordinary circumstances and it is possible that the Internal Revenue Service could take the position that the open transaction doctrine is not available to TICs.

In addition, because the TICs will have the right to future, contingent payments, pursuant to Section 483 of the Code (or if the contingent payment is considered a debt instrument, pursuant to Section 1274 and Section 1275 of the Code), a portion of the Future Cash would be treated as interest on such payments. The amount treated as interest will be ordinary income to the TICs.

(e) Deemed Tax Partnership Prior to Contribution

It is possible that, based on (i) the structure of the original transactions, (ii) the commingling activities of the Defendants or (iii) the substantive consolidation of the TIC Interests pursuant to the Substantive Consolidation Order, the TIC Interests held by the TICs may already be considered as an interest in a partnership for Federal income tax purposes. In such event, the TIC would be deemed to be contributing the TIC's partnership interest in the "tax partnership" to the Rollover Member LLC in exchange for Rollover Equity Interest. The contribution of the deemed partnership interest held by the TICs in the "tax partnership" to the Rollover Member LLC in exchange for Rollover Equity Interests should not be a taxable transaction pursuant to Section 721(a) of the Code. However, the contribution will be subject to the basis adjustments and "at risk" considerations described above. In the event that the TIC Interests were previously converted to partnership interests for Federal income tax purposes,

similar adjustments and computations would have also occurred at the time that the “tax partnership” was created. The prior discussion regarding a “capital shift” in Section XVII.B.3(b) is also applicable to the contribution of a partnership interest to the Rollover Member LLC.

(f) **Single Transaction Doctrine**

It is possible that, even if there was a theft and Section 1033 of the Code applies, the TIC may be able to take the position that, if the TIC elects out of Section 1033 of the Code, non-recognition treatment under Section 721 of the Code applies because, if all aspects of the transaction are viewed as together after the transaction, the TIC’s real estate is owned by the Rollover Member LLC (before its contribution to Acquirer) and the TIC received the Rollover Equity Interests. This alternative is more aggressive than the alternative described above. However, if this approach were adopted by the Internal Revenue Service, the TIC would be viewed as contributing his or her TIC Interest in exchange for a Rollover Equity Interest and the consequences described in Section XVII.B.3 would apply.

4. Holdco Properties – Election to Voluntarily Sell TIC Interests to Acquirer if Section 1033 of the Code Does Not Apply

TICs that own Holdco Properties may elect to voluntarily sell their TIC Interests to Acquirer and receive Cash from Acquirer and Future Cash from the Receivership Estate. If a TIC voluntarily sells its TIC Interest to Acquirer, the TIC will realize gain or loss in an amount equal to the difference between (i) the amount of sale proceeds (Cash and Future Cash) received by the TIC (adjusted for certain sales costs) and debt assumed in the sale and (ii) the TIC’s adjusted basis in the TIC Interest. It is anticipated that Future Cash will be distributed by the Receivership Estate. As a result, the TIC would determine its gain or loss from the sale including the amount of Future Cash to be received, if any. The above transaction is subject to the application of the installment sales provisions. See Section XVII.B.3(d) above for a description of the tax consequences of an installment sale.

TICs that voluntarily sell their TIC Interests to Acquirer may be able to complete a partial tax-deferred exchange pursuant to Section 1031 of the Code. However, TICs must meet the requirements of Section 1031 of the Code including involving a qualified intermediary, identifying a replacement property within 45 days of the close of the sale of the TIC Interest and completing the purchase of the replacement property within 180 days of the close of the sale of the TIC Interest. It is likely that there will not be any Cash available to the TICs immediately upon the sale of the TIC Interests. Thus, it is likely that the TIC will be required to use funds from other sources in order to complete a Section 1031 deferred exchange within 180 days. It is possible that TICs will receive Future Cash from the Receivership Estate. Because the Future Cash will be funded from the Receivership Estate and not from Acquirer, any Future Cash should be treated similar to “boot” in a Section 1031 deferred exchange, the amount of which will depend on the TIC’s tax basis in the TIC Interest, and will result in taxable income. If a TIC is able to complete a Section 1031 deferred exchange, the TIC would not recognize gain or loss from the sale of the TIC Interest to the extent that the replacement property qualifies under Section 1031 of the Code. TICs that elect to voluntarily sell their TIC Interests to Acquirer and complete a Section 1031 exchange will still have taxable income to the extent of Future Cash received to the extent of the TIC’s gain.

The ability of the TIC to utilize Section 1031 of the Code is subject to the limitations described above regarding whether the TIC Interest initially acquired by the TIC was an interest in real estate or a partnership interest. See Section XVII.B.3(e). If a TIC does not complete a Section 1031 deferred exchange, the TIC will recognize all of the TIC’s realized gain or loss as a result of the sale of the TIC Interest.

5. Holdco Properties – Allow TIC Interest to be Taken Pursuant to TIC Transfer Proceeding if Section 1033 Does Not Apply

TICs that own Holdco Properties can elect not to enter into a settlement for their Claim with the Debtor in which case their TIC Interests will be taken pursuant to a TIC Transfer

Proceeding. The TIC can elect to receive Cash or a Rollover Equity Interest (which will constitute the Distributed Estate Property to such TIC) and Future Cash from the Receivership Estate. If a TIC does not make any election, the TIC will receive Cash and Future Cash which will be the Distributed Estate Property. The receipt of Distributed Estate Property and Future Cash in exchange for the TIC Interest will be a taxable transaction and the TIC will recognize gain or loss equal to the difference between (i) the sum of the value of the Distributed Estate Property received, the amount of Future Cash received and the amount of any debt assumed or taken subject to and (ii) the TIC's adjusted basis in the TIC Interest.

The above transaction is subject to the application of the installment sales provisions. See Section XVII.B.3(d) above for a description of the tax consequences of an installment sale.

6. Trustco Properties – If Section 1033 of the Code Does Not Apply

TICs that own Trustco Properties will have their TIC Interests taken pursuant to a TIC Transfer Proceeding. The TIC can elect to receive Cash or a Rollover Equity Interests (which will constitute the Distributed Estate Property to such TIC) and Future Cash from the Receivership Estate. If a TIC does not make any election, the TIC will receive Cash and Future Cash which will be the Distributed Estate Property. The receipt of Distributed Estate Property and Future Cash in exchange for the TIC Interest will be a taxable transaction and the TIC will recognize gain or loss equal to the difference between (i) the sum of the value of the Distributed Estate Property received, the amount of Future Cash received and the amount of any debt assumed or taken subject to and (ii) the TIC's adjusted basis in the TIC Interest.

The above transaction is subject to the application of the installment sales provisions. See Section XVII.B.3(d) above for a description of the tax consequences of an installment sale.

7. Divestco Properties – Contribution to SWP Holdings, LP

TICs that contributed their TIC Interest to SWP Holdings, LP or will contribute their TIC Interest to SWP Holdings, LP prior to the Effective Date of the Reorganization Plan

received (or will receive) limited partnership interests in SWP Holdings, LP pursuant to the Divestco Properties Offering. TICs should also consult the Divestco Properties Offering for a discussion of additional tax consequences of the contribution of their TIC Interest to SWP Holdings, LP.

SWP Holdings, LP will contribute its assets to the Rollover Member LLC and will receive Rollover Common Interests and Rollover Preferred Interests. The contribution should not result in a taxable transaction pursuant to Section 721 of the Code. The contribution will be subject to the same adjustments for debt allocation and other items as set forth in Section XVII.B.3 above. It is anticipated that SWP Holdings, LP will liquidate and will distribute its Rollover Common Interests and Rollover Preferred Interests to its partners. It is anticipated that, pursuant to Section 731 of the Code, the limited partners of SWP Holdings, LP will not recognize gain or loss upon such distribution.

8. Divestco Properties – TIC Interests Foreclosed or Deed-in-Lieu if Section 1033 Does Not Apply

Certain Divestco Properties will be foreclosed upon by, a deed-in-lieu provided to, the lenders that have security interests in the applicable Divestco Properties prior to the Effective Date of the Reorganization Plan. The foreclosure of the TIC Interest, or deed-in-lieu transfer of the TIC Interest, will result (or has resulted) in a taxable transaction and such TIC will recognize gain or loss equal to the sum of (i) the sale price of the foreclosed or conveyed property (which is equal to the amount of the outstanding debt secured by the property) and (ii) the value of the Distributed Estate Property and Future Cash and the TIC's adjusted basis in such TIC Interest. TICs that have had their TIC Interests foreclosed should review Section XVII.B.2 above with respect to a theft.

Foreclosure/Deed-in-Lieu and Section 1031 of the Code Not Utilized. It is not entirely clear, but it is likely that the foreclosure/deed-in-lieu and the receipt of the Distributed Estate Property and Future Cash would be treated by the Internal Revenue Service as one transaction.

As a result, the TIC would determine its gain or loss from the foreclosure or deed-in-lieu transfer including the value of the Distributed Estate Property, the Future Cash and the debt assumed or taken subject to. It is likely that this would constitute an installment sale for tax purposes. See Section XVII.B.3(d) above for a description of the tax consequences of an installment sale.

In the alternative, although there is no direct authority, TICs may be able to treat the foreclosure or deed-in-lieu transfer as a transaction separate from the receipt of Distributed Estate Property and the Future Cash. If they are treated as separate transactions, the TIC would recognize gain or loss from the foreclosure without regard to the receipt of the Distributed Estate Property and the Future Cash. In such case, the TIC would receive the Distributed Estate Property and the Future Cash in full or partial satisfaction of the TIC's Claim and thus, would have subsequent gain as the Distributed Estate Property and the Future Cash are received.

The foregoing discussion assumes that the debt secured by the TIC Interest is nonrecourse debt.

Foreclosure and Section 1031 of the Code Utilized. If a TIC's TIC Interest is foreclosed, the TIC may be able to complete a deferred exchange pursuant to Section 1031 of the Code. However, TICs must meet the requirements of Section 1031 of the Code including involving a qualified intermediary, identifying a replacement property within 45 days of the close of the foreclosure of the TIC Interest and completing the purchase of the replacement property within 180 days of the close of the sale (foreclosure) of the TIC Interest. It is likely that there will not be any Cash available to the TICs upon foreclosure. Thus, it is likely that the TIC will be required to use funds from other sources in order to complete the Section 1031 deferred exchange within 180 days. If a TIC is able to complete a Section 1031 exchange, the TIC would not recognize gain or loss from the sale of the TIC Interest to the extent that the replacement property qualifies under Section 1031 of the Code. It is possible that TICs will

receive Future Cash from the Receivership Estate. Because the Future Cash will be funded from the Receivership Estate and not from Acquirer, any Future Cash should be treated similar to “boot” in a Section 1031 deferred exchange, the amount of which will depend on the TIC’s tax basis in the TIC Interest, and will result in taxable income. There is uncertainty regarding the ability of a taxpayer to take advantage of Section 1031 of the Code when property is foreclosed. Each TIC should consult its own tax advisor. The ability of the TIC complete a deferred exchange pursuant to Section 1031 of the code is subject to the limitations described above regarding whether the TIC Interest initially acquired by the TIC as an interest in real estate or a partnership interest.

9. Divestco Properties – TIC Interests Taken Pursuant to Adversary Proceeding if Section 1033 of the Code Does Not Apply

TICs that own certain Divestco Properties (which the Receivership Estate has elected to hold for later sale) will have their TIC Interests taken pursuant to a TIC Adversary Proceeding. The TIC can elect to receive Cash or a Rollover Equity Interest (which will constitute the Distributed Estate Property to such TIC) and Future Cash from the Receivership Estate. If a TIC does not make any election, the TIC will receive Cash (which will be the Distributed Estate Property) and Future Cash. The receipt of Distributed Estate Property and Future Cash in exchange for the TIC Interest will be a taxable transaction and the TIC will recognize gain or loss equal to the difference between (i) the sum of the value of the Distributed Estate Property received, the amount of Future Cash received and the amount of any debt assumed or taken subject to and (ii) the TIC’s adjusted basis in the TIC Interest.

The above transaction is subject to the application of the installment sales provisions. See Section XVII.B.3(d) above for a description of the tax consequences of an installment sale.

10. Divestco Properties – TIC Interests Abandoned if Section 1033 of the Code Does Not Apply

Certain Divestco Properties may be abandoned by the Receivership Estate and returned

to the TICs. There should not be any tax consequences to the abandonment of the Divestco Property to the TICs. TICs will also receive Distributed Estate Property and Future Cash. The receipt of Distributed Estate Property and Future Cash will constitute taxable income to the TIC. The TIC's basis in the Rollover Member LLC, if applicable, will be the fair market value of the Rollover Equity Interest received. If the Divestco Property is subsequently foreclosed, it would result in a taxable transaction and such TIC will recognize gain or loss equal to the sum of (i) the sale price of the foreclosed property (which is equal to the amount of the outstanding debt secured by the property) and (ii) the value of the Distributed Estate Property and Future Cash and the TIC's adjusted basis in such TIC Interest.

C. Preferred Members and LLC Members

1. Elections

(a) Holdco Properties

Preferred Members and LLC Members that own Preferred Member Interests or LLC Member Interests in the LLCs that own Holdco Properties may elect any one of the following options:

(1) MIMO Claim and Receipt of Distributed Estate Property and Future Cash. A Preferred Member or LLC Member that owns a Holdco Property may elect to receive a MIMO claim and receive Cash or Rollover Equity Interests from the Receivership Estate in a taxable transaction. Any Preferred Member or LLC Member that elects a MIMO claim will also retain their right to receive Future Cash. Any Preferred Member or LLC Member that fails to make any of the elections described herein will receive a MIMO claim and will receive Cash as the Distributed Estate Property and Future Cash.

(2) Member Value Election. A Preferred Member or a LLC Member that owns a Holdco Property may elect to receive its Member Value Election and will receive Cash. Any such electing Preferred Member or LLC Member will waive any right to Future Cash.

(3) Settlement Rollover Opportunity. In the event that (i) all of the Preferred Members and LLC Members of an LLC make the Member Value Election and (ii) all of such Preferred Members and LLC Members elect the Settlement Rollover Opportunity, then the LLC will contribute a portion of the property owned by the LLC to the Rollover Member LLC and receive up to 35% of the Member Value Election value in Cash pursuant to a sale of the property to Acquirer. Any Preferred Members and LLC Members electing the Settlement Rollover Opportunity will waive any right to Future Cash.

(b) **Trustco Properties**

(1) Elect to Retain Interest in LLC. Each Preferred Member or LLC Member may elect to retain their ownership interest in the applicable LLC subject to modification of the allocation of income for the LLC to (i) zero percent for the first two years after the Effective Date, (ii) 2.65% over the Bank of America published five-year certificate of deposit rate on the first Business Day of year three after the Effective Date divided by two for the third and fourth years after the Effective Date and (iii) their pro rata portion of cash flow thereafter. Any Preferred Member or LLC Member that elects to retain their interest in the applicable LLC will waive any right to Future Cash.

(2) MIMO Claim and Receipt of Distributed Estate Property and Future Cash. Each Preferred Member and LLC Member may elect to receive their MIMO claim and receive Cash or Rollover Equity Interests as Distributed Estate Property and Future Cash from the Receivership Estate in a taxable transaction. Any Preferred Member or LLC Member that does not make any of the elections described herein will receive their MIMO claim and will receive Cash as the Distributed Estate Property and Future Cash.

(c) **Divestco Properties**

Preferred Members and LLC Members that own Preferred Member Interests or LLC Member Interests in the LLCs will receive Distributed Estate Property and Future Cash in

satisfaction of their Claim.

2. Holdco Properties – MIMO Claim and Receipt of Distributed Estate Property and Future Cash

A Preferred Member or LLC Member may elect to file a Claim and receive Cash or Rollover Equity Interests as the Distributed Estate Property and Future Cash from the Receivership Estate in a taxable transaction. Any Preferred Member or LLC Member that does not make any election, will have their Claim valued based upon a MIMO calculation and will receive Cash as Distributed Estate Property and Future Cash. The receipt of Distributed Estate Property from the Receivership Estate and Future Cash will result in a taxable transaction and the Preferred Member or LLC Member will recognize gain or loss in an amount equal to the difference between (i) the amount of Distributed Estate Property and Future Cash received and (ii) the Preferred Member's or LLC Member's basis in their Preferred Member Interest or LLC Member Interest. The installment sale provisions will be applicable to this transaction. See Section XVII.B.3(d) above.

3. Holdco Properties – Member Value Election and Receive Cash

A Preferred Member or LLC Member may elect to receive their Member Value Election and receive Cash. In such case, the Preferred Member or LLC Member will waive their right to Future Cash. The receipt of Cash will result in a taxable transaction and the Preferred Member or LLC Member will recognize gain or loss in an amount equal to the difference between (i) the amount of Cash received and (ii) the Preferred Member's or LLC Member's basis in their Preferred Member Interest or LLC Member Interest.

4. Holdco Properties – Settlement Rollover Opportunity

In the event that (i) all of the Preferred Members and LLC Members of an LLC make the Member Value Election and (ii) all of such Preferred Members and LLC Members elect the Settlement Rollover Opportunity, then the LLC will contribute a portion of the property owned by the LLC to the Rollover Member LLC and receive up to 35% of the Member Value Election

value in Cash pursuant to a sale of the property to Acquirer. The Preferred Members and LLC Members will waive their rights to Future Cash. Pursuant to Section 721(a) of the Code, generally, no gain or loss will be recognized either to a partnership or any of its partners upon a contribution of property in exchange for an interest in the partnership. The contribution will be subject to the limitations regarding debt allocation and other items as set forth above. See Section XVII.B.3 above. The receipt of Cash will likely constitute as a partial sale of the LLC's property. Thus, applicable LLC will likely be treated as having a partial contribution of property and a partial sale of the property. Under this approach the LLC will be deemed to have sold a portion of the property for the Cash received and an assignment of the debt secured thereby and made a contribution of the remaining portion of the property (subject to applicable debt) for Rollover Equity Interests. The Preferred Members and LLC Members will realize gain or loss equal to the difference between the Cash received and debt transferred and the adjusted basis in the Preferred Members or LLC Members pro rata portion of the LLC property deemed to have been sold.

5. Trustco Properties- Elect to Retain Interest in LLC

The Preferred Members and LLC Members that own interests in LLCs that own Trustco Properties may elect to retain their Preferred Member Interest or LLC Member Interest in such LLC subject to certain modifications. The allocations of income of the applicable LLC will be modified so that the Preferred Members and LLC Members will receive allocations equal to (i) zero percent for the first two years after the Effective Date, (ii) 2.65% over the Bank of America published five-year certificate of deposit rate on the first Business Day of year three after the Effective Date divided by two for the third and fourth years after the Effective Date and (iii) their pro rata portion of cash flow thereafter. The change in the profits allocations may result in each Preferred Member or LLC Member having a reduced share of LLC liabilities. As a result, the Preferred Members and LLC Members may have a corresponding reduction in the

basis of their Preferred Member Interest or LLC Member Interest. Thus, if the adjustments described above result in a reduction in basis in excess of the Preferred Member's or LLC Member's tax basis in the Preferred Member Interest or LLC Member Interest, the Preferred Member or LLC Member will recognize gain up to such excess. Any Preferred Member or LLC Member electing to retain their Preferred Member Interest or LLC Member Interest will waive any right to Future Cash.

6. Trustco Properties- MIMO Claim and Receive Distributed Estate Property and Future Cash

A Preferred Member or LLC Member may elect to file a Claim and receive Cash or Rollover Equity Interests as the Distributed Estate Property and Future Cash from the Receivership Estate in a taxable transaction. Any Preferred Member or LLC Member that does not make any election, will have their Claim valued based upon a MIMO calculation and will receive Cash as Distributed Estate Property and Future Cash. The receipt of Distributed Estate Property from the Receivership Estate and Future Cash will result in a taxable transaction and the Preferred Member or LLC Member will recognize gain or loss in an amount equal to the difference between (i) the amount of Distributed Estate Property and Future Cash received and (ii) the Preferred Member's or LLC Member's basis in their Preferred Member Interest or LLC Member Interest. The installment sale provisions will be applicable to this transaction. See Section XVII.B.3(d) above.

7. Divestco Properties

Preferred Members and LLC Members that own Preferred Member Interests or LLC Member Interests in the LLCs will receive Distributed Estate Property and Future Cash in satisfaction of their Claim. The receipt of the Distributed Estate Property and the Future Cash in exchange for their Claim will be a taxable transaction and the Preferred Member or LLC Member will recognize gain or loss equal to the difference between (i) the sum of the value of the Distributed Estate Property received, the amount of Future Cash received and the amount of

any debt assumed or taken subject to and (ii) the Preferred Members or LLC Members adjusted basis in the applicable LLC.

The above transaction is subject to the application of the installment sales provisions. See Section XVII.B.3(d) above for a description of the tax consequences of an installment sale.

D. NH Investors

NH Investors can elect to receive either (i) Cash or (ii) Rollover Preferred Interests or Rollover Common Interests (which will constitute the Distributed Estate Property) and Future Cash in exchange for the notes held by the NH Investor in satisfaction of their Claims. If a NH Investor does not make any election, the NH Investor will receive Cash and Future Cash. The receipt of Distributed Estate Property and Future Cash by the NH Investors will be a taxable transaction and the NH Investors will recognize gain or loss in an amount equal to the difference between (i) the sum of the value of the Distributed Estate Property and Future Cash received and (ii) the NH Investor's basis in the note exchanged. To the extent that any Cash basis NH Investor's original note was subject to accrued, but unpaid interest at the time that such NH Investor receives the Distributed Estate Property and Future Cash, a proportionate amount of such Distributed Estate Property and Future Cash received will be deemed to be used to pay such accrued but unpaid interest. Thus, the portion of Distributed Estate Property and Future Cash attributable to accrued interest will be treated as taxable income and not as an adjustment to basis. If the NH Investor is an accrual basis taxpayer, the NH Investor would have accrued income as the interest under the note accrued. As a result, any accrual NH Investor would not be subject to the above described provision.

The above transaction is subject to the application of the installment sales provisions. See Section XVII.B.3(d) above for a description of the tax consequences of an installment sale.

E. Class 3 Claims

1. Options Imposed by Reorganization Plan

The following options will be imposed on Class 3 Claims holders:

(1) Holdco Properties and Trustco Properties. Holders of Class 3 Claims with respect to Holdco Properties and Trustco Properties will be required to modify their loans. The terms of such modification are not currently known, but it is anticipated that the loans will be repaid over a set number of months after the Effective Date of the Reorganization Plan.

(2) Divestco Properties. It is anticipated that holders of Class 3 Claims with respect to personal property used at Divestco Properties will foreclose upon such personal property or such personal property will be abandoned by the Receivership Estate.

The Class 3 Claims will not include default interest, late fees, penalties, or attorneys' fees in excess of such reasonable amount as the Court may determine. However, those amounts will be allowed as Unsecured Claims.

2. Holdco Properties and Trustco Properties

Generally, each holder of a Class 3 Claim secured by personal property used at a Holdco Property or a Trustco Property will be required to modify their loan, the terms of which are currently not known. If the required modifications differ significantly (as determined pursuant to Treasury Regulations Section 1001-3(e)(2)(ii)) from the terms of the holder's existing loan ("Personal Property Existing Loan"), the modifications will be considered an "exchange" of the Existing Loan for a new loan (the "Personal Property Restated Loan") for purposes of Section 1001 of the Code, causing the holder to realize gain or loss, if any.

The amount realized by a holder of a Class 3 Claim from the exchange of its Personal Property Existing Loan for the Personal Property Restated Loan would be the issue price of the Personal Property Restated Loan determined under Treasury Regulations 1.1273-2 and 1.1274-2. If that amount were greater than the holder's adjusted basis in its Personal Property

Existing Loan, the excess of the amount realized over that basis would constitute gain to the holder. Under Sections 1273 and 1274 of the Code, the “issue price” will be the stated principal amount if the note provides for interest at or above the Applicable Federal Rate. As of the June 1, 2010, the Applicable Federal Rate with respect to loans similar to Personal Property Restated Loans and requiring monthly payments of interest was 2.06%. Thus, as long as the Applicable Federal Rate is less than the interest rate of the Personal Property Restated Loan at the time of issue, the issuance price should be equal to the stated principal amount.

To the extent that any Cash basis Class 3 Claims holder’s Personal Property Existing Loan was subject to accrued, but unpaid interest at the time that such holder receives the Personal Property Restated Loan, a portion of such Personal Property Restated Loan may be allocated to the payment of such accrued but unpaid interest on the Personal Property Existing Loan. Thus, a portion of the Personal Property Restated Loan attributable to such accrued interest but unpaid interest will be treated as taxable income. If the holder of the Class 3 Claims is an accrual basis taxpayer, such holder would have accrued income as the interest under the Personal Property Existing Loan as it accrued. As a result, any accrual Class 3 Claims holder would not be subject to the above provision.

3. Divestco Properties

It is anticipated that holders of Class 3 Claims with respect to personal property used at a Divestco Properties will foreclose upon their loans or the property will be abandoned by the Receivership Estate. Holders of Class 3 Claims who foreclose on personal property used at a Divestco Property will be treated as set forth below, except to the extent that Code Section 1271 applies and the foreclosure is treated as an exchange.

The consequences of a foreclosure sale to a lender depend on whether the loan is recourse or nonrecourse. For recourse loans, the amount realized by the lender would be the proceeds of the foreclosure sale plus the amount of any deficiency collected. If no deficiency is

collected, the lender could recognize a bad debt loss equal to the excess of the loan balance over the foreclosure sale proceeds, plus any deductible foreclosure related expenses and accrued but unpaid interest previously reported as income.

For nonrecourse loans, the amount realized would be the proceeds of the foreclosure sale, resulting in a bad debt loss equal to the excess of the loan balance over the proceeds, plus any deductible foreclosure related expenses and accrued but unpaid interest previously reported as income. The amount realized by the lender on receipt of a deed-in-lieu of foreclosure of a nonrecourse loan would be the fair market value of the property. Incidental expenses of the transaction could reduce the amount realized or be considered deductible against ordinary income.

If the lender bids for and purchases the property in a foreclosure sale, the lender could take a bad debt loss equal to the excess of the uncollectible lien (i.e., the adjusted basis) over the sale proceeds less expenses (i.e., the amount realized). The lender would also realize gain or loss equal to any difference between the bid price and the property's fair market value. The bid price is presumed to be the property's fair market value in the absence of clear and convincing proof to the contrary. Under the tax benefit doctrine, immediate gain resulting from a showing that the fair market value of the property exceeded the bid price would be ordinary income to the extent of the bad debt deduction. The holder's basis in collateral acquired by foreclosure will be the fair market value of the property.

The tax treatment of each holder of Class 3 Claims may differ, and certain lenders' claims are treated separately under the Reorganization Plan. You should consult with your tax advisor.

F. Class 4 Claims

1. Options Imposed by Reorganization Plan

The following options will be imposed on the Class 4 Claims holders:

(1) Holdco Properties and Trustco Properties. Holders of Class 4 Claims with respect to Holdco Properties and Trustco Properties will be required to modify their loans.

(2) Divestco Properties. It is anticipated that holders of Class 4 Claims with respect to Divestco Properties will foreclose upon the Divestco Property that secures their loan or the Divestco Property will be abandoned by the Receivership Estate.

The Class 4 Claims will not include default interest, late fees, penalties, or attorneys' fees in excess such reasonable amount as the Court may determine. However, those amounts will be allowed as Unsecured Claims.

2. Holdco Properties and Trustco Properties

Generally, each holder of a Class 4 Claim secured by a Holdco Property or a Trustco Property will be required to modify their loan so that it has a five year term beginning on the Effective Date and the interest rate on the loan will be modified to be 4.75% per annum (or such other interest rate as may be set by the Court). Generally, payments will be made on the following schedule: 12 monthly installments of interest only, commencing on the first day of the first month to commence after the Effective Date, followed by 48 equal monthly installments consisting of principal and interest, based on a 30-year amortization of the principal amount of the claim. If the required modifications described above differ significantly (as determined pursuant to Treasury Regulations Section 1001-3(e)(2)(ii)) from the terms of the holder's existing loan ("Real Property Existing Loan"), the modifications will be considered an "exchange" of the Existing Loan for a new loan (the "Real Property Restated Loan") for purposes of Section 1001 of the Code, causing the holder to realize gain or loss, if any.

The amount realized by a holder of a Class 4 Claim from the exchange of its Real Property Existing Loan for the Real Property Restated Loan would be the issue price of the Real Property Restated Loan determined under Treasury Regulations 1.1273-2 and 1.1274-2. If that amount were greater than the holder's adjusted basis in its Real Property Existing Loan, the

excess of the amount realized over that basis would constitute gain to the holder. Under Sections 1273 and 1274 of the Code, the “issue price” will be the stated principal amount if the note provides for interest at or above the Applicable Federal Rate. As of the June 1, 2010, the Applicable Federal Rate with respect to loans similar to Real Property Restated Loans and requiring monthly payments of interest was 2.06%. Thus, as long as the Applicable Federal Rate is less than the interest rate of the Real Property Restated Loan, the issue price should be equal to the stated principal amount.

To the extent that any Cash basis Class 4 Claims holder’s Real Property Existing Loan was subject to accrued, but unpaid interest at the time that such holder receives the Real Property Restated Loan, a portion of such Real Property Restated Loan allocated to the payment of such accrued but unpaid interest on the Real Property Existing Loan. Thus, a portion of the Real Property Restated Loan attributable to such accrued interest but unpaid interest will be treated as taxable income. If the holder of the Class 4 Claims is an accrual basis taxpayer, such holder would have accrued income as the interest under the Real Property Existing Loan as it accrued. As a result, any accrual Class 4 Claims holder would not be subject to the above provision.

3. Divestco Properties

It is anticipated that holders of Class 4 Claims with respect to Divestco Properties will foreclose upon their loans. Holders of Class 4 Claims with respect to Divestco Properties who foreclose upon their loans will be treated as set forth below, except to the extent that Code Section 1271 applies and the foreclosure is treated as an exchange.

The consequences of a foreclosure sale to a lender depend on whether the loan is recourse or nonrecourse. For recourse loans, the amount realized by the lender would be the proceeds of the foreclosure sale plus the amount of any deficiency collected. If no deficiency is collected, the lender could recognize a bad debt loss equal to the excess of the loan balance over

the foreclosure sale proceeds, plus any deductible foreclosure related expenses and accrued but unpaid interest previously reported as income.

For nonrecourse loans, the amount realized would be the proceeds of the foreclosure sale, resulting in a bad debt loss equal to the excess of the loan balance over the proceeds, plus any deductible foreclosure related expenses and accrued but unpaid interest previously reported as income. The amount realized by the lender on receipt of a deed-in-lieu of foreclosure would be the fair market value of the property. Incidental expenses of the transaction could reduce the amount realized or be considered deductible against ordinary income.

If the lender bid for and purchased the property in a foreclosure sale, the lender could take a bad debt loss equal to the excess of the uncollectible mortgage (i.e., the adjusted basis) over the sale proceeds less expenses (i.e., the amount realized). The lender would also realize gain or loss equal to any difference between the bid price and the property's fair market value. The bid price is presumed to be the property's fair market value in the absence of clear and convincing proof to the contrary. Under the tax benefit doctrine, immediate gain resulting from a showing that the fair market value of the property exceeded the bid price would be ordinary income to the extent of the bad debt deduction. In the case of either foreclosure or acceptance of a deed-in-lieu of foreclosure, the amount of a holder's bad debt deduction may be affected by its receipt of any amount in respect of its Unsecured Claim for default interest, late fees, and attorneys' fees not included in its Class 4 Claim. The holder's basis in collateral acquired by foreclosure will be the fair market value of the property.

The tax treatment of each holder of Class 4 Claims may differ, and certain lenders' claims are treated separately under the Reorganization Plan. You should consult with your tax advisor.

XVIII. RISK FACTORS

Holders of Claims against, and Interests in, Debtor should read and consider carefully

the risk factors set forth below, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Reorganization Plan or choosing to participate in the Rollover Equity Election. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Reorganization Plan and its implementation.

A. General Risks

1. The Proponents may be unable to close a transaction.

Although the Closing provided for in the definitive documentation entered into with Acquirer will be subject only to limited conditions, there are factors outside the parties' control, such as governmental approvals, that may prevent such transaction from closing. Moreover, it is possible that Debtor may not be able to meet various Closing conditions or that Acquirer will default on its obligations under such definitive documentation. Consequently, the Proponents can provide no assurance that they will be successful in consummating a transaction.

2. Certain orders of the Court may be reversed on appeal.

Certain Secured Creditors have expressed concern about risks relating to the pending appeals to the Substantive Consolidation Order. Proponents do not believe there are any significant risks in this regard for several reasons. First, Proponents do not believe the appeals are likely to be successful because they are without merit. The equitable remedy of substantive consolidation is clearly supported by the record in this case. Second, the primary basis for the Court's jurisdiction in this case is the Distribution Plan and Distribution Plan Approval entered in the Federal Receivership Case. The appeals from the Receivership Order have been denied and no appeal is pending. Attempts to appeal the Approval Order have also been denied. The Approval Order and the Distribution Plan provided for the equitable consolidation of all assets and liabilities of the Sunwest Enterprise into Debtor's bankruptcy estate to be reorganized in Debtor's Bankruptcy Case. Consequently, the reversal of the Consolidation Order would have

no material effect on the Reorganization Plan.

3. Debtor may not be able to secure confirmation of the Reorganization Plan.

There can be no assurance that the requisite acceptances to confirm the Reorganization Plan will be received. To confirm the Reorganization Plan, an impaired Class must vote to accept the Reorganization Plan, and there is no guarantee of such a result. Even if the requisite acceptances are received, there can be no assurance that the Court will confirm the Reorganization Plan. A non-accepting creditor or equity holder of Debtor might challenge the adequacy of this Disclosure Statement or the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Court determined that this Disclosure Statement and the balloting procedures and results were appropriate, the Court could still decline to confirm the Reorganization Plan if it found that any of the statutory requirements for confirmation had not been met, including that the terms of the Reorganization Plan are fair and equitable to non-accepting classes.

4. The Effective Date may not occur.

The APA provides, subject to exceptions, that it may be terminated if the Closing does not occur by July 15, 2010, and the Proponents anticipate closing on or prior to such date. There can be no assurance as to such timing, however, if the Closing does not occur by July 15, 2010, Acquirer will no longer have any obligation to complete the transaction.

B. Risks to Participants in the Rollover Equity Election

1. The tax consequences to holders of Claims electing to rollover their investment are uncertain.

Many of the tax consequences summarized under "General Federal Income Tax Consequences" in this Disclosure Statement raise complex and unsettled legal issues, and also involve various factual determinations that raise additional uncertainties. The Internal Revenue Service could challenge various positions Debtor, Acquirer or Investors have taken or intend to

take with respect to their tax treatment, and a court could sustain such a challenge or objection by the IRS. In addition, no assurance can be given that future legislative, judicial or administrative changes, either on a prospective or retroactive basis, would not adversely affect tax positions taken by a holder of interests in Rollover Member LLC. The results for any individual Claimant will depend on the facts applicable to such Claimant, including the grounds for such Claimant's historical tax positions, and the tax consequences for such Claimant may be significantly different. The tax consequences to Claimants who receive Distributed Estate Property or Future Cash are also uncertain.

2. The projected financial results included in this Disclosure Statement may not be achieved.

The financial projections included in this Disclosure Statement are subject to a number of risks, assumptions, contingencies and uncertainties, including, without limitation, confirmation and consummation of the Reorganization Plan in accordance with its terms, assumptions relating to the anticipated future performance of Acquirer, industry performance, certain assumptions with respect to competitors of Acquirer, general business, competitive and economic conditions and other matters, many of which are beyond the control of Acquirer. In addition, unanticipated events and circumstances occurring subsequent to the preparation of the projections may affect the actual financial results of Acquirer. Although Debtor believes that the projections are reasonably attainable, variations between the actual financial results and those projected may occur and could be material.

3. The administrative costs of Rollover Member LLC may exceed its available resources.

Rollover Member LLC will incur significant operational and administrative costs. Such costs may exceed its available financial resources, in which case it will need to seek to raise additional capital. Such financing may not be available to it on acceptable terms or at all, in which case it may not be able to continue operation.

4. There may be no distributions from Acquirer to Rollover Member LLC and in turn no distributions from Rollover Member LLC to its members.

Acquirer has the sole right to determine whether there will be any distributions of Cash from Acquirer to its members, including Rollover Member LLC, and may elect to reinvest any Cash generated by Acquirer, resulting in no Cash distributions to members of Acquirer, including no distributions with which to pay taxes on any income that may be attributed to Rollover Member LLC or in turn to its members.

5. The membership interests in Rollover Member LLC are non-transferable.

The members of Rollover Member LLC are expected to be prohibited from transferring their interests in Rollover Member LLC other than in extremely limited circumstances, resulting in significant illiquidity of such membership interests. There will therefore be no market in which to sell such membership interests and members of Rollover Member LLC will be required to wait until Acquirer is liquidated or sold to realize a return on their rollover investment, which event is totally within the discretion of Acquirer.

6. The failure to accept opportunities to acquire additional equity in Rollover Member LLC may result in dilution to members.

The Acquirer LLC Agreement provides that Common Members of Acquirer, including Rollover Member LLC, may be requested from time-to-time to contribute Cash to meet the future financial obligations of Acquirer. The timing and amounts of such capital calls are unknown. While there are some limitations on the ability to make such requests, the failure to make a required capital contribution by Rollover Member LLC may result in dilution of Rollover Member LLC's interest in Acquirer, and in turn the interest of the members of Rollover Member LLC in Acquirer. In addition, the inability to make contributions by some members of Rollover Member LLC not qualified to make such contributions under applicable securities laws may also result in dilution of some Rollover Members' interests in Rollover

Member LLC.

7. Management decisions made by Acquirer or Acquirer's Manager may cause adverse tax consequences to members of Rollover Member LLC.

Acquirer may, in its sole discretion, cause Acquirer to prepay financing obtained by Acquirer with respect to Holdco Properties or sell Holdco Properties. Such prepayments or sales could result in material adverse tax consequences to Rollover Member LLC and in turn its members. Acquirer has no liability in connection with any losses sustained by Rollover Member LLC or its members as a result of prepayments.

8. Rollover Member LLC will have no management rights regarding Acquirer.

With the exception of the right of Rollover Member LLC to appoint one of three board members of Acquirer and such other rights as may be required by law, the Rollover Member LLC will not have any role, veto, vote, management rights or authority whatsoever with respect to Acquirer. In addition, Acquirer's affiliates have disclaimed any fiduciary obligation to manage Acquirer in the best interests of Rollover Member LLC or other members of Acquirer.

9. Rollover Member LLC is subject to certain "drag along" rights regarding its interests in Acquirer.

If Acquirer elects to sell all or a portion of its membership interest in Acquirer, Acquirer has the right to require the Rollover Member LLC to sell a pro rata portion of its membership interest at the price and on the same terms as Acquirer, which may result in adverse tax consequences to Rollover Member LLC and its members.

10. The election to contribute to the Rollover Member LLC will subject Investors to the general risks of investment in real estate.

The financial results of an investment in the Rollover Member LLC are dependent on the financial success of Acquirer and are subject to the risks typically associated with an investment in real estate. Fluctuations in occupancy rates, rent schedules, operating expenses, population trends, interest rates, government regulation, zoning laws, competition and similar

factors can adversely affect operating results or render the sale or refinancing of the Holdco Properties difficult or unattractive, reducing or eliminating returns to Rollover Member LLC and the members of the Rollover Member LLC.

XIX. CONCLUSION

Proponents believe that confirmation and implementation of the Reorganization Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of Allowed Claims. Proponents believe that any alternative to confirmation of the Reorganization Plan, such as liquidation or attempts by another party in interest to file a plan of reorganization, could result in significant delays, litigation, and additional costs. Consequently, Proponents urge all holders of Claims in Classes 3 and 4 to vote to accept the Reorganization Plan and to evidence their acceptance by duly completing and returning their Ballots so that they will be received on or before 4:00 p.m., Pacific Time, on July 6, 2010.

DATED this 27th day of May, 2010.

Respectfully submitted,

CLYDE HAMSTREET, IN HIS CAPACITY AS CHIEF
RESTRUCTURING OFFICER FOR DEBTOR AND THE
RECEIVERSHIP ENTITIES

By /s/ Clyde A. Hamstreet
Clyde A. Hamstreet, CRO

RECEIVER FOR THE RECEIVERSHIP ENTITIES
PURSUANT TO THE RECEIVERSHIP ORDER

By /s/ Michael A. Grassmueck
Michael A. Grassmueck, Receiver

TONKON TORP LLP

By /s/ Albert N. Kennedy

Albert N. Kennedy, OSB No. 82142
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ALLEN MATKINS LECK GAMBLE MALLORY

By /s/ David Zaro

David Zaro
Of Attorneys for Receiver