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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(Reference Withdrawn)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 JOINT PLAN OF  
REORGANIZATION (MAY 27, 2010)**

RECEIVER'S, CRO'S AND DEBTOR'S SECOND AMENDED JOINT PLAN OF  
REORGANIZATION (MAY 27, 2010)

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Proponents propose the following Joint Plan of Reorganization (the "Plan") pursuant to Section 1121(a) of Title 11 of the United States Code.

## **ARTICLE 1**

### **DEFINITIONS**

Definitions of certain terms used in this Plan are set forth below. Other terms are defined in the text of this Plan, the Distribution Plan, or the text of the Disclosure Statement. In each case, when a defined term is used, the first letter of each word in the defined term is capitalized. Terms used and not defined in this Plan, the Distribution Plan or the Disclosure Statement shall have the meanings given in the Bankruptcy Code or Bankruptcy Rules or otherwise as the context requires. The meanings of all terms shall be equally applicable to both the singular and plural, and masculine and feminine, forms of the terms defined. The words "herein," "hereof," "hereto," "hereunder," and others of similar import, refer to the Reorganization Plan as a whole and not to any particular section, subsection or clause contained in the Plan. Captions and headings to articles, sections and exhibits are inserted for convenience of reference only and are not intended to be part of or to affect the interpretation of the Plan. The rules of construction set forth in Section 102 of the Bankruptcy Code shall apply. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. Any capitalized term that is not defined herein but is defined in the Bankruptcy Code shall have the meaning ascribed to such term in the Bankruptcy Code.

1.1 "Acquirer" means BRE/SW Portfolio, LLC, a Delaware limited liability company.

1.2 "Acquirer LLC Agreement" means the limited liability company agreement to be executed by Rollover Member LLC and the other members of Acquirer on the Effective Date. The Acquirer LLC Agreement shall be in substantially the form and have substantially the content of the LLC Agreement attached to this Plan as Exhibit 6.

1.3 "Administrative Expense Claim" means any Claim entitled to the priority afforded by Sections 503(b) and 507(a)(1) of the Bankruptcy Code.

1.4 "Allowed" means, when used to modify the term Claim, a proof of which has been timely Filed, and as to which no objection to the allowance thereof shall have been Filed, or as to which any objection shall have been so Filed, to the extent (a) such objection is resolved between such claimant and either Debtor or Receiver, (b) such Claim is allowed by a Final Order, or (c) such Claim is allowed by this Plan.

1.5 "Allowed Claim" shall have the meaning ascribed to it in the Distribution Plan.

1.6 "Allowed Lien Claim" means an Allowed Claim that is secured by a statutory lien or a judicial lien on property of Debtor's estate to the extent of the value (as set forth in the Plan or, if no value is specified, as determined in accordance with Section 506(a) of the Bankruptcy Code) of the interest of the holder of such claim in Debtor's interest in such property.

1.7 "Allowed Secured Claim" means an Allowed Claim that is secured by a lien, security interest or other charge against or interest in property in which Debtor has an interest or that is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value (as set forth in the Plan or, if no value is specified, as determined in accordance with Section 506(a) of the Bankruptcy Code or, if applicable, Section 1111(b) of the Bankruptcy Code) of the interest of the holder of such Claim in Debtor's interest in such property or to the extent of the amount subject to setoff, as the case may be.

1.8 "Allowed Unsecured Claim" means an Allowed Claim that is not an Allowed Secured Claim.

1.9 "APA" means the Agreement of Purchase, Sale and Contribution dated as of January 15, 2010 between Debtor and Acquirer, as amended by Amendment No. 1 to Agreement of Purchase and Sale and Amendment No. 2 to Agreement of Purchase, Sale and Contribution, as approved by the Auction Order and the Sale Order (a copy of which, without exhibits or

schedules, is attached to this Plan as Exhibit 4) as such may further be amended prior to the Confirmation Date and approved in the Confirmation Order.

1.10 "Assumed Executory Contracts and Unexpired Leases" means the executory contracts and leases listed on Exhibit 5 to this Plan. Exhibit 5-1 lists the Assumed Holdco Executory Contracts and Unexpired Leases. Exhibit 5-2 lists the Assumed Trustco Executory Contracts and Unexpired Leases.

1.11 "Auction" means the auction held pursuant to the Auction Order.

1.12 "Auction Order" means the Order Approving Auction Process, Bidding Procedures, Overbid Protection, Break-Up Fee and Expense Reimbursement, and Approving Form and Manner of Notice and Scheduling a Hearing for Final Approval of the Sale entered in this Bankruptcy Case on March 29, 2010.

1.13 "Bankruptcy Case" means this Case under Chapter 11 of the Bankruptcy Code with respect to Debtor, pending in the United States District Court for the District of Oregon.

1.14 "Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended from time to time, set forth in Sections 101 et seq. of Title 11 of the United States Code.

1.15 "Bankruptcy Court" means the United States District Court for the District of Oregon.

1.16 "Bankruptcy Rules" means, collectively, the Federal Rules of Bankruptcy Procedure, as amended and promulgated under Section 2075, Title 28, of the United States Code, and the local rules and standing orders of the Bankruptcy Court.

1.17 "Bare Land Property" means a property in which Debtor has an interest that is a bare land asset with no substantial improvements in a stage of entitlement or development as listed on either Exhibit 4 or Exhibit 6 to the Distribution Plan.

1.18 "Bare Land TIC" means a TIC with a TIC interest in a Bare Land Property.

1.19 "Bare Land TIC Election" means the election to withdraw a Bare Land Property from Debtor's estate pursuant to Section 4.8.3 of this Plan and the Order Approving Bare Land

Election Terms of the Distribution Plan of Receiver and Chief Restructuring Officer for Sunwest Enterprise entered in the SEC Enforcement Action on April 28, 2010.

1.20 "Business Day" means a day other than a Saturday, Sunday or other day on which banks in Portland, Oregon are authorized or required by law to be closed.

1.21 "Case" means this bankruptcy case.

1.22 "Cash" means lawful currency of the United States of America.

1.23 "Cash/Equity Portion of Purchase Price" shall have the meaning assigned to it in Section 2.2(a) of the APA.

1.24 "Claim" means (a) any right to payment from Debtor arising before the Effective Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy against Debtor arising before the Effective Date for breach of performance if such breach gives rise to a right of payment from Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.25 "Claimant" shall have the meaning assigned to it in the Distribution Plan.

1.26 "Claims Bar Date" means April 30, 2010.

1.27 "Class" means one of the classes of Claims defined in Article 3 hereof.

1.28 "Closing" means the performance and satisfaction by Debtor and Reorganized Company of all obligations and conditions necessary to accomplish the transactions contemplated by the APA.

1.29 "Collateral" means any property in which Debtor has an interest that is subject to a lien or security interest securing the payment of an Allowed Secured Claim or an Allowed Lien Claim.

1.30 "Common Interests" shall have the meaning assigned to them in the Acquirer LLC Agreement.

1.31 "Common Rollover Election" means the rights of Investors to elect to contribute their interests in property or Claims in exchange for the issuance of common interests in Rollover Member LLC, which will, in turn, contribute such property interests to Acquirer as provided in this Plan and the APA.

1.32 "Confirmation Date" means the date on which the Confirmation Order is entered on the docket by the Clerk of the Bankruptcy Court.

1.33 "Confirmation Order" means the order of the Bankruptcy Court confirming the Reorganization Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code and that conforms to the definition of "Sale Approval Order" as defined in the APA.

1.34 "Court" means the United States District Court for the District of Oregon. The terms Court and Bankruptcy Court as used herein will have the same meaning.

1.35 "Creditor" means any entity holding a Claim against Debtor.

1.36 "CRO" means Clyde Hamstreet, in his capacity as Chief Restructuring Officer for the Receivership Entities pursuant to the Receivership Order. The CRO is, at all times relevant to this Plan and in performing his duties in any capacity under this Plan, acting solely in the capacity of a federal equity receiver and is subject to the limitations on liability as set forth in Section VII of the Receivership Order.

1.37 "CS-20 Lender" means Columbia Pacific SW/CS, LLC, as holder of the senior participation interest in a certain mortgage loan in the original principal amount of \$159,250,000 evidenced by a certain Loan Agreement dated as of May 30, 2007, as amended or modified.

1.38 "CS-27 Lender" means ING USA Annuity & Life Insurance Company, ING Life Insurance & Annuity Company, and ReliaStar Life Insurance Company.

1.39 "Debtor" means Stayton SW Assisted Living, L.L.C., the entity into which the assets and liabilities of the Sunwest Entities are consolidated as (a) provided in the Distribution Plan Approval, and (b) ordered by the Court in the Substantive Consolidation Order. For the

avoidance of doubt, all uses of the term "Debtor" in this Plan include all Sunwest Entities, unless otherwise expressly excluded in a particular location.

1.40 "Disclosure Statement" means Receiver's, CRO's and Debtor's Second Amended Joint Disclosure Statement, as amended, modified, restated or supplemented from time to time, pertaining to the Reorganization Plan.

1.41 "Distribution Plan" means the Court-approved terms submitted by the Receiver and CRO that address how, when, by what method, and in what priority Plan Dividends on Allowed Claims will be equitably distributed by the Receivership Estate in partial or full satisfaction of Allowed Claims. A copy of the Distribution Plan Approval and the attached Distribution Plan (without exhibits) is attached hereto and incorporated herein as Exhibit 1.

1.42 "Distribution Plan Approval" means the Order entered by the Court approving the terms of the Distribution Plan. A copy of the Distribution Plan Approval is attached hereto and incorporated herein as Exhibit 1.

1.43 "Divestco Properties" means and includes all Facilities and other real property in which Debtor has an interest on the Effective Date that are not Holdco Properties or Trustco Properties.

1.44 "Effective Date" means the date on which all conditions to effectiveness specified in Section 10.4 of this Plan have been satisfied or waived.

1.45 "Employee Benefit Claim" means any Claim that is not otherwise classified of a present or former employee of Debtor, or their spouse or dependents, for any employment-related benefit, including pension, retirement, severance, vacation, medical, disability, or death benefits under any plan, fund, agreement, contract or program established or entered into by Debtor prior to the Petition Date. Employee Benefit Claims do not include (a) any equity rights or interests in, or Claims arising from or related to, any equity rights or interests in any Receivership Entity, or (b) any claims to the extent entitled to priority pursuant to 11 U.S.C. § 507(a)(4) or § 507(a)(5).

1.46 "Excluded Obligations" shall have the meaning assigned to such term in the APA.

1.47 "Excluded Properties" means and includes properties formerly designated as Holdco Properties that Acquirer has elected or elects not to acquire pursuant to the APA. Excluded Properties will be designated by the CRO as either Trustco Properties or Divestco Properties, in his discretion.

1.48 "Facility" means a senior living facility, including all real property, improvements, furniture, fixtures, and equipment used in connection with such senior living facility, but not including any Excluded Personal Property listed on Exhibit D to the APA.

1.49 "Federal Receivership Case" means the proceeding related to the SEC Enforcement Action involving the appointment of the Receiver, the fulfillment of the Receiver's duties, and the adoption and implementation of the Distribution Plan.

1.50 "Filed" means filed with the Court in the Bankruptcy Case or the SEC Enforcement Action, or with the Court or the Receiver in the Federal Receivership Case, as appropriate.

1.51 "Final Order" means an order or judgment entered on the docket by the Clerk of the Court, or any other court exercising jurisdiction over the subject matter and the parties, that has not been reversed, stayed, modified or amended and as to which the time for filing a notice of appeal, or petition for certiorari or request for certiorari, or request for rehearing shall have expired.

1.52 "GE" means General Electric Capital Corporation and GE Business Financial Services, Inc., and either or both of them.

1.53 "Harder" means Jon M. Harder, a defendant in the SEC Enforcement Action.

1.54 "HFG Parties" means Harder, Darryl E. Fisher and J. Wallace Gutzler, and their wives and children, and entities controlled by any of them.

1.55 "HFG Settlement" means the settlement with the HFG Parties, a copy of which is attached to the Distribution Plan as Exhibit 9, as such is modified and amended by agreement as stated on the record on April 2, 2010, a transcript of which is attached to this Plan as Exhibit 10, this Plan, or the Confirmation Order.

1.56 "Holdco Properties" means the Facilities and other properties, together with affiliated assets, to be transferred to Acquirer as set forth in the APA. Holdco Properties shall be deemed to exclude Excluded Properties. A list of the Holdco Properties is attached to this Plan as Exhibit 12.

1.57 "Interests" means all rights of the Receiver in and to equity interests in Debtor under the Distribution Plan and Distribution Plan Approval.

1.58 "Investor" means an individual or entity (excluding the HFG Parties) that invested in a Sunwest Entity, or that invested in Sunwest related interests or assets of Harder. Investors include only persons holding an Allowed Investor Claim as described in Section VI.A.2. of the Distribution Plan.

1.59 "Lien Claim" means a Claim secured by a statutory lien or judicial lien on property of Debtor's estate.

1.60 "Litigation Trust" shall have the meaning assigned to it in the Distribution Plan.

1.61 "LLC Member" shall mean and include an Investor who paid money or provided other material tangible value in order to obtain a membership or limited partnership interest in a Sunwest Entity formed as a limited liability company or limited partnership, but excluding Preferred Members and HFG Parties.

1.62 "Management Committee" means the committee comprised of the CRO, two representatives of the TIC Committee and two representatives of the UCC, acting as a fiduciary committee for all Investors and Unsecured Creditors pursuant to the Court Order entered in the SEC Enforcement Action on March 10, 2009.

1.63 "Member" means and includes LLC Members and Preferred Members, excluding the HFG Parties.

1.64 "Member Settlement Agreement" means a Court approved agreement between Debtor and one or more Members who have exercised the Member Value Election.

1.65 "Member Value Election" means the election provided to Members pursuant to Section VI.B.2.c.(iv) of the Distribution Plan.

1.66 "MLP" means the Master Limited Partnership referred to herein as SWP Holdings, LP.

1.67 "Other Priority Claim" means any Claim for an amount entitled to priority in right of payment under Sections 507(a)(3), (4), (5) or (7) of the Bankruptcy Code.

1.68 "Pari Passu" means the treatment of Allowed Claims as being equal in priority for receiving Plan Distributions.

1.69 "Petition Date" shall have the meaning assigned to it in paragraphs 4 and 5 of the Substantive Consolidation Order.

1.70 "Plan" means this Plan of Reorganization, as amended, modified, restated or supplemented from time to time. Plan and Reorganization Plan as used herein shall have the same meaning.

1.71 "Plan Distribution" means anything of value distributed to a Claimant on account of an Allowed Claim pursuant to the Distribution Plan and the Reorganization Plan.

1.72 "Plan Documents" means all agreements, documents and exhibits necessary or appropriate to implement the Plan and close the transactions contemplated by the Plan.

1.73 "Preferred Interests" shall mean Class A preferred units as defined in the Acquirer LLC Agreement.

1.74 "Preferred Member" means an Investor who paid money or provided other material tangible value in order to obtain a preferred membership interest in a Sunwest Entity.

1.75 "Preferred Rollover Election" means the rights of Investors to elect to contribute their interests in property or Claims in exchange for the issuance of preferred interests in Rollover Member LLC, which will, in turn, contribute such property interests to Acquirer as provided in this Plan and the APA.

1.76 "Priority Tax Claim" means 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 such priority but for the secured status of the Claim; provided that any Claim of a governmental unit secured by a Divestco Property shall not be treated as a Priority Tax Claim.

1.77 "Pro Rata" means, with respect to any class of claims, the same proportion that the Allowed amount of such Claim bears to the sum of (a) the Allowed Amounts of all claims in the same class and (b) the face amounts of all disputed or unliquidated claims in the same class, as reduced from time to time as and to the extent such claims are Allowed.

1.78 "Procedures Motion" means Debtor's Motion for Approval of Auction Process, Bidding Procedures, Overbid Protection, Break-Up Fee and Expense Reimbursement, and Approving Form and Manner of Notice and Scheduling a Hearing for Final Approval of the Sale filed on January 19, 2010 in this Case.

1.79 "Proof of Claim" means the form approved by the Court in the Federal Receivership Case required to be filed by any person or entity asserting a Claim as a condition to the right to receive a Plan Distribution.

1.80 "Proponents" means Receiver, CRO and Debtor.

1.81 "Receiver" means Michael Grassmueck, or any Court-appointed successor, in his capacity as Receiver for the Receivership Entities pursuant to the Receivership Order. The Receiver is, at all times relevant to this Plan and in performing his duties in any capacity under this Plan, acting solely in the capacity of a federal equity receiver and is subject to the limitations on liability as set forth in Section VII of the Receivership Order.

1.82 "Receivership Entities" means the 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.

1.83 "Receivership Estate" means the aggregate of all assets, rights and powers created by the Receivership Order.

1.84 "Receivership Order" means the Order entered by the Court on March 10, 2009 in the SEC Enforcement Action, together with the Unopposed Order Granting Additional Preliminary Injunction and Appointing Receiver for Additional Entities entered by the Court on May 27, 2009, and the Further Order Granting Additional Preliminary Injunction and Appointing Receiver for Further Entities entered by the Court on August 28, 2009.

1.85 "Rents and Profits Receiver" means a receiver appointed by a court at the request of a Secured Creditor to take control of real property collateral pending a foreclosure of the collateral.

1.86 "Reorganization Plan" means this Plan of Reorganization, as amended, modified, restated or supplemented from time to time. Plan and Reorganization Plan as used herein shall have the same meaning.

1.87 "Reorganized Company" shall mean Debtor following the Effective Date.

1.88 "Resident Contracts" means contracts between Debtor and residents of Debtor's Facilities that are Holdco Properties.

1.89 "Rollover Equity Election" shall mean and include the Common Rollover Election and the Preferred Rollover Election.

1.90 "Rollover Equity Interests" means any common interests or preferred interests in Rollover Member LLC issued or to be issued to Rollover Investor pursuant to this Plan.

1.91 "Rollover Investor" shall mean and include each Investor participating in the Rollover Equity Election who has not filed an appeal to the Confirmation Order, Substantive Consolidation Order, Sale Order or a TIC Transfer Order.

1.92 "Rollover Member LLC" means Sunwest Rollover Member LLC, a Delaware limited liability company. The initial member of Rollover Member LLC is Debtor. Debtor will, on or before the Effective Date, invest, \$100,000 in Rollover Member LLC.

1.93 "Rollover Member LLC Agreement" means the limited liability company agreement to be executed by and among the Rollover Member LLC and all Rollover Investors. The Rollover Member LLC Agreement shall be in substantially the form and have substantially the content of the LLC Agreement attached to this Plan as Exhibit 7.

1.94 "Sale Order" means the order entered in this Case on May 17, 2010.

1.95 "Schedules" means the Schedules of Assets and Liabilities and the Statement of Financial Affairs filed by Debtor pursuant to Section 521 of the Bankruptcy Code, as amended, modified, restated or supplemented from time to time.

1.96 "SEC Enforcement Action" means the civil lawsuit commenced by the Securities and Exchange Commission and pending as *Securities and Exchange Commission v. Sunwest Management, Inc., et al.*, United States District Court for the District of Oregon Case No. 6:09-cv-6056-HO.

1.97 "Secured Claim" means any Claim against Debtor held by any entity, including, without limitation, an affiliate or judgment creditor of Debtor, to the extent such Claim constitutes a secured Claim under Sections 506(a) or 1111(b) of the Bankruptcy Code.

1.98 "Secured Creditor" means the holder of an Allowed Secured Claim.

1.99 "Substantive Consolidation Order" means the Order entered in this Case on December 22, 2009 granting the Joint Motion of Debtor, the Unsecured Creditors' Committee and the Tenants-in-Common Committee for Substantive Consolidation of Assets and Liabilities of Sunwest Related Entities. The Substantive Consolidation Order consolidated all the assets and liabilities of the Sunwest related entities identified on Exhibit 1 thereto into Debtor's bankruptcy estate.

1.100 "Sunwest Entity" means and includes the entities identified on Exhibit 1 to the Substantive Consolidation Order. A copy of the list of Sunwest Entities is attached to this Plan as Exhibit 14.

1.101 "SWP Holdings, LP" means the MLP created to directly or indirectly hold certain properties.

1.102 "TIC" means a tenant in common (excluding Debtor and the HFG Parties ) or the holder (excluding Debtor and the HFG Parties) of an interest as a tenant in common, a form of real property ownership comprising a fractional undivided interest in real property.

1.103 "TIC Interest" means the undivided interest of a TIC in real property.

1.104 "TIC Settlement Agreement" means a Court approved agreement between Debtor and a TIC in settlement of the claims asserted against such TIC in a TIC Transfer Proceeding.

1.105 "TIC Transfer Order" means an order or judgment entered in a TIC Transfer Proceeding authorizing Debtor to sell, exchange or transfer TIC Interests to Acquirer or Trustco.

1.106 "TIC Transfer Proceeding" means an adversary proceeding initiated by Debtor to compel the sale, exchange or transfer of TIC Interests from TICs to Acquirer or Trustco pursuant to 11 U.S.C. § 363(h).

1.107 "Transaction Documents" means the deeds, bills of sale, assignments, or other documents evidencing the transfer of Holdco Properties from Debtor to Acquirer pursuant to the terms of this Plan and the APA.

1.108 "Trustco" means Sunwest Trustco LLC, an Oregon limited liability company. Receiver, acting solely in his capacity as federal equity receiver under the Receivership Order, is the sole member and manager of Sunwest Trustco LLC.

1.109 "Trustco Properties" means the real and personal properties and affiliated assets listed on Exhibit 13 as such may be modified by the CRO by the addition of Excluded Properties.

1.110 "Trustco Subsidiary " means a Sunwest Entity that holds legal title to a Trustco Property.

1.111 "Trustco Subsidiary Member Election" shall have the meaning assigned to it in Section 4.8.2 of this Plan.

1.112 "Unsecured Claim" means an unsecured Claim that is not an Administrative Expense Claim, a Secured Claim, a Priority Tax Claim or an Other Priority Claim.

1.113 "Unsecured Creditor" means a Claimant that is not a Secured Creditor or an Investor and includes holders of Administrative Claims as that term is used in Section VI.A.1. of the Distribution Plan.

1.114 "Utility Deposits" means deposits with utilities made by Debtor after the Petition Date pursuant to Section 366(b) of the Bankruptcy Code.

## ARTICLE 2

### UNCLASSIFIED CLAIMS

2.1 Administrative Expense Claims. Each holder of an Administrative Expense Claim shall be paid by Reorganized Company in full in Cash on the later of (a) the Effective Date or (b) 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.

2.2 Priority Tax Claims. 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 any unpaid default interest or late charges that have accrued before or after the Petition Date in connection with a Priority Tax Claim.

2.3 Bankruptcy Fees. Fees payable by Debtor under 28 U.S.C. § 1930 or to the Clerk of the Bankruptcy Court will be paid in full in Cash on the Effective Date. After confirmation, 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 this Case is closed by the Court, dismissed or converted.

### **ARTICLE 3**

#### **CLASSIFICATION**

For purposes of this Plan, Claims (except those treated under Article 2) are classified as provided below. A Claim is classified in a particular Class only to the extent such Claim qualifies within the description of such Class, and is classified in a different Class to the extent such Claim qualifies within the description of such different Class.

3.1 Class 1 (Other Priority Claims). Class 1 consists of all Allowed Other Priority Claims.

3.2 Class 2 (Employee Benefit Claims). Class 2 consists of all Allowed Employee Benefit Claims.

3.3 Class 3 (Personal Property Secured Claims). Class 3 consists 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 this Plan.

3.4 Class 4 (Real Property Secured Claims). Class 4 consists of Allowed Secured Claims secured by Collateral consisting, in part or in whole, of real property. Each holder of a Class 4 Secured Claim shall be deemed to be in a separate subclass, all as listed on Exhibit 3 to this Plan.

3.5 Class 5 (Interests). Class 5 consists of the Interests.

3.6 Class 6 (General Unsecured Claims). Class 6 consists of all Allowed Unsecured Claims held by Unsecured Creditors not otherwise classified and treated under this Plan.

3.7 Class 7 (Lien Claims). Class 7 consists of all Allowed Lien Claims. Each holder of a Class 7 Lien Claim shall be deemed to be a separate subclass.

3.8 Class 8 (Investor Claims). Class 8 consists of all Allowed Investor Claims.

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

#### **ARTICLE 4**

##### **TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

4.1 Class 1 (Other Priority Claims). Class 1 is unimpaired. Each Allowed Class 1 Claim will be paid or satisfied in full by Debtor or Reorganized Company. Each Class 1 Claim 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 allowed, unless such 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 and governing such Claim).

4.2 Class 2 (Employee Benefit Claims). Class 2 is unimpaired. The Class 2 Claims 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.

4.3 Class 3 (Personal Property Secured Claims). Class 3 is impaired. Unless the holder of a Class 3 Secured Claim is specifically identified and separately treated, then each such

holder of each Class 3 Secured 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 set forth in Sections 4.3.1 or 4.3.2.

4.3.1. Class 3 Secured Claims secured by Collateral used in connection with a Holdco Property or a Trustco Property shall be restructured as hereinafter provided and assumed and paid as restructured by either (a) Acquirer, in the event 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 Secured 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 contract 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 as 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 Secured Claim. The holder of the Class 3 Secured Claim and Acquirer or Trustco shall execute such other and further documents as are necessary or appropriate to accomplish the transactions contemplated herein.

4.3.2. The holder of a Class 3 Secured 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.

4.4 Class 4 (Real Property Secured Claims). Class 4 is impaired unless otherwise indicated below.

4.4.1. Each holder of a Class 4 Secured Claim in each subclass shall receive the following treatment, except to the extent that the Class 4 Secured Claim is specifically identified and accorded a different treatment.

4.4.1.1 Each holder of a Class 4 Secured 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 Allowed Class 4 Secured Claim will be restructured as hereinafter provided and paid as restructured by either (a) Acquirer with respect to any Claim secured by 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 Secured Claim. Unless specifically identified and separately treated, each Class 4 Secured 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 (i) the Closing, with respect to the Holdco Properties, and (ii) the Effective Date, with respect to the Trustco Properties. The parties will execute loan and security documents in substantially the form attached hereto as Exhibit 8. Pursuant to the Distribution Plan, Class 4 Secured Claims will not include default interest, late fees, penalties, or attorneys fees above a reasonable amount allowed by the Court.

4.4.1.2 The holder of a Class 4 Secured Claim secured by a Divestco Property shall, at its option, either (a) 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 Secured 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 Secured Claim secured by a Divestco Property 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 this Plan prior to the Effective Date. Consistent with the Distribution Plan, in the event the holder of a Class 4 Secured 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 this Case.

4.4.2. GE. The Class 4 Secured Claims of GE will be allowed and treated as set forth in the Consolidated Loan Agreement dated as of November 20, 2009 entered into among GE, Debtor, and certain affiliates of Debtor, and the Loan Documents referenced in such Consolidated Loan Agreement, which documents were entered into pursuant to the Stipulated Order Approving Restructuring of Indebtedness Held by General Electric Corporation and GE Business Financial Services, Inc. entered in this Case on November 2, 2009. The Consolidated Loan Agreement and the Loan Documents shall remain in full force and effect. Accordingly, the Class 4 Secured Claims of GE are unimpaired.

4.4.3. LibertyBank. The Class 4 Secured Claims of LibertyBank will be allowed and treated as provided in the prepetition loan agreements as modified or amended by the agreement attached hereto as Exhibit 9-1.

4.4.4. Wells Fargo Bank. The Class 4 Secured Claims of Wells Fargo Bank will be allowed and treated as provided in the Settlement Term Sheet attached to this Plan as Exhibit 9-2. Wells Fargo Bank and Acquirer or Reorganized Company will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in the Settlement Term Sheet.

4.4.5. NebraskaLand National Bank. The Class 4 Secured Claims of NebraskaLand National Bank will be allowed and treated as provided in the Settlement Term Sheets attached to this Plan as Exhibit 9-3. NebraskaLand National Bank and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in the Settlement Term Sheet.

4.4.6. First Citizens Bank. The Class 4 Secured Claims of First Citizens Bank will be allowed and treated as provided in the Settlement Agreement attached to this Plan as Exhibit 9-4. First Citizens Bank and Reorganized Company or Acquirer will execute and deliver

such documents as are necessary or appropriate to accomplish the transactions contemplated in Exhibit 9-4.

4.4.7. Capmark. The Class 4 Secured Claims of Capmark will be allowed and treated as provided in the letter attached to this Plan as Exhibit 9-5. Capmark and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in the letter

4.4.8. United States of America Department of Housing and Urban Development. The Class 4 Secured Claims of United States of America Department of Housing and Urban Development will be allowed and treated as provided in the letter attached to this Plan as Exhibit 9-5. United States of America Department of Housing and Urban Development and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in the letter.

4.4.9. CS-20 Lender. The Class 4 Secured Claim of the CS-20 Lender will be allowed and treated as provided in the Stipulated Order Approving Loan Modification Agreement (Sunwest CS-20) entered in this Case on January 20, 2010, and the documents executed pursuant to such Order. Accordingly, the Class 4 Secured Claim of the CS-20 Lender is unimpaired.

4.4.10. CS-27 Lender. The Class 4 Secured Claim of the CS-27 Lender will be allowed and treated as provided in the Stipulated Order Approving Loan Modification Agreement (Sunwest CS-27) entered in this Case on January 20, 2010, and the documents executed pursuant to such Order. Accordingly, the Class 4 Secured Claim of the CS-27 Lender is unimpaired.

4.4.11. First Sound Bank. The Class 4 Secured Claim of First Sound Bank will be allowed and treated as provided in the Stipulated Order Approving Restructuring of Indebtedness Held by First Sound Bank entered in this Case on December 23, 2009, the Amended Stipulated Order Approving Restructuring of Indebtedness Held by First Sound Bank

entered in this Case on March 31, 2010, and the documents to be executed pursuant to such Orders. Accordingly, the Class 4 Secured Claim of First Sound Bank is unimpaired.

4.4.12. Sterling Bank. The Class 4 Secured Claim of Sterling Bank will be allowed and treated as provided by the agreements attached to this Plan as Exhibit 9-6.

4.4.13. Prudential Mortgage SI, LLC. The Class 4 Secured Claim of Prudential Mortgage SI, LLC ("Prudential") will be allowed and treated as provided in the Plan Term Sheet attached to this Plan as Exhibit 9-7. Prudential and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in Exhibit 9-7.

4.4.14. Charter Bank. The Class 4 Secured Claim of Charter Bank will be allowed and treated as provided in the Settlement Term Sheet attached to this Plan as Exhibit 9-8. Charter Bank and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in Exhibit 9-8.

4.4.15. Bank of America, N.A., as Trustee of Marathon Real Estate CDO 2006-1 Grantor Trust. The Class 4 Secured Claim of Bank of America, N.A., as Trustee of Marathon Real Estate CDO 2006-1 Grantor Trust (successor in interest to Marathon Structured Finance Fund, LP, a Delaware limited partnership) ("Marathon") and its participants will be allowed and treated as two subclasses.

4.4.15.1 The first subclass of Marathon's Class 4 Secured Claim relates to a loan to Chris Ridge Senior Living, LLC, Albuquerque Memory Care Community, LLC, Franklin Senior Living, LLC, and Ashland Senior Living, LLC ("Marathon's First Subclass"). Marathon's First Subclass will be allowed and treated as provided in the Settlement Term Sheet attached to this Plan as Exhibit 9-9. Marathon and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transaction contemplated in Exhibit 9-9.

4.4.15.2 The second subclass of the Class 4 Secured Claim of Marathon relates to a loan to Plum Ridge Care Community, LLC secured by a Facility generally known as Plum Ridge. Marathon 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. This subclass of Marathon's Class 4 Secured Claim will be allowed in an amount equal to the principal balance owing on the loan, with all post-Petition Date payments applied first to interest at the non-default rate and then to principal. The Class 4 Secured Claim will be paid on the same terms and with the same interest rate as set forth in Exhibit 9-9 with respect to Marathon's First Subclass. Marathon and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in this Section 4.4.15.2.

4.4.16. Umpqua Bank. The Class 4 Secured Claim of Umpqua Bank will be allowed and treated as provided in the Settlement Term Sheet attached to this Plan as Exhibit 9-10. Umpqua Bank and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in Exhibit 9-10.

4.4.17. Lewis & Clark Bank. The Class 4 Secured Claim of Lewis & Clark Bank will be allowed and treated as provided in the Stipulated Order Approving Restructuring of Indebtedness held by Lewis & Clark Bank entered in this Case on April 30, 2010 and the documents executed pursuant to such Order. Accordingly, the Class 4 Claim of Lewis & Clark Bank is unimpaired.

4.4.18. Cornerstone Community Bank. The Class 4 Secured Claim of Cornerstone Community Bank will be allowed and treated as provided in the Settlement Term Sheet attached to this Plan as Exhibit 9-12. Cornerstone Community Bank and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in Exhibit 9-12.

4.4.19. First National Bank of Waupaca. The Class 4 Secured Claim of First National Bank of Waupaca ("Waupaca") will be allowed and treated as provided in the Settlement Term Sheet attached to this Plan as Exhibit 9-13. Waupaca and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in Exhibit 9-13.

4.4.20. First National Bank & Trust Co. of McAlester. The Class 4 Secured Claim of First National Bank & Trust Co. of McAlester ("McAlester") will be allowed and treated as provided in the Settlement Term Sheet attached to this Plan as Exhibit 9-14. McAlester and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in Exhibit 9-14.

4.4.21. THE National Bank. The Class 4 Secured Claim of THE National Bank will be allowed and treated as provided in the Settlement Term Sheets attached to this Plan as Exhibits 9-15 and 9-16. THE National Bank and Reorganized Company or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated in Exhibits 9-15 and 9-16.

4.4.22. Neilsen Manufacturing, Incorporated. The Class 4 Secured Claim of Neilsen Manufacturing, Incorporated ("NMI") will be allowed and treated as provided in the Settlement Term Sheet attached to this Plan as Exhibit 9-17. NMI and Reorganized Company, Trustco, or a Trustco Subsidiary will execute and deliver such documents as are necessary or appropriate to accomplish the transaction contemplated in Exhibit 9-17.

4.4.23. Tennessee Commerce Bank. The Class 4 Secured Claim of Tennessee Commerce Bank will be allowed and treated as provided in the Settlement Term Sheet – Tennessee Commerce Bank (Lender) attached to this Plan as Exhibit 9-18. Tennessee Commerce Bank and Reorganized Debtor or Acquirer will execute and deliver such documents as are necessary or appropriate to accomplish the transactions contemplated by Exhibit 9-18.

4.4.24. The Royal Bank of Scotland, PLC. The Class 4 Secured Claim of The Royal Bank of Scotland ("RBS") will be allowed in an amount equal to all principal, accrued and unpaid interest at the non-default contract rate, and legal costs in the amount of \$300,000. All cash on hand with Rents and Profits Receivers, cash collateral accounts, or otherwise held in escrow, will be applied first to reimburse RBS for protective advances in the amount of \$94,426; second, to pay fees and expenses of the Rents and Profits Receivers (estimated at \$210,000 through July 31, 2010), and third to accrued and unpaid interest (approximately \$3,600,000 through July 31, 2010). The remaining balance of RBS' Class 4 Secured Claim will be paid, together with interest at a rate equal to 5.75% per annum, commencing on the first day of the first month following the Effective Date and continuing on the first day of each month thereafter in 12 monthly payments of interest only followed by 48 equal monthly payments of principal and interest in the amount required to amortize principal and interest over 300 months. The entire unpaid balance of principal and interest shall be due and payable on the fifth anniversary of the Effective Date. Management fees for any successor management company must be equal to management fees charged on other Facilities, but in no event higher than 6% of gross revenues. The management company must be approved by RBS. Emeritus Senior Living is an approved management company. Customary lender reserves for taxes, insurance and capital expenditures will resume pursuant to the terms of the existing loan agreements between Debtor and RBS. The debt service coverage ratio and prepayment fee in the existing loan documents shall no longer be applicable. RBS shall retain its security interests and liens on its Collateral with the same priority such security interests and liens had as of the Petition Date. RBS and Reorganized Company or Acquirer shall execute such loan and security documents as are reasonably acceptable to Acquirer and RBS.

4.4.25. LPP Mortgage Ltd., as Assignee of Beal Bank, Successor to New South Federal Savings Bank. LPP Mortgage Ltd. is under-secured and, as such, is not entitled to interest, costs or fees incurred from and after August 18, 2008, the date on which its borrowers

filed Petitions under Chapter 11 of the Bankruptcy Code. Consequently, the Class 4 Secured Claim of LPP will be allowed in an amount equal to the Claim of LPP on August 18, 2008 of approximately \$24,751,000, less the adequate protection payments made by Debtor through the Effective Date (\$1,755,556 through May of 2010). The Allowed Secured Claim of LPP will be paid as follows: the accumulated funds in the cash collateral accounts (currently approximately \$2,400,000) will be applied on the Effective Date in reduction of LPP's Class 4 Secured Claim, and the remaining balance will be paid, together with interest at the rate of 4.75% per annum (or such other interest rate as may be set by the Court) in 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 the Effective Date. LPP will retain its security interests and liens on its Collateral with the same priority such security interests and liens had as of August 18, 2008. The Allowed Class 4 Secured Claim, as restructured, will be assumed and paid by Acquirer. Reorganized Company or Acquirer and LPP will execute loan and security documents in substantially the form attached to this Plan as Exhibit 8.

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

4.6 Class 6 (General Unsecured Claims). Class 6 is unimpaired.

4.6.1. Each holder of a Class 6 Claim shall receive payments and distributions as provided in the Distribution Plan and Distribution Plan Approval.

4.6.2. By way of clarification, each holder of an Unsecured Claim that results from the bifurcation pursuant to agreement or valuation under Section 506(a) of the Bankruptcy Code of a Claim secured in part by a Holdco Property or a Trustco Property shall be entitled to an Allowed Class 6 Unsecured Claim in the amount agreed to with Debtor or as determined pursuant to Section VI.A.3.(e) of the Distribution Plan. Such Unsecured Claims are not

classified as Lender Deficiency Claims, as that term is used in the Distribution Plan. Rather, such Unsecured Claims are classified and treated as "Other" unsecured creditor claims under the Distribution Plan.

4.7 Class 7 (Lien Claims). Class 7 is unimpaired. Unless a Class 7 Lien Claim in a particular subclass is specifically identified and separately treated, then each holder of a Class 7 Lien Claim shall receive the following treatment: each holder of a Class 7 Lien Claim secured by a Holdco Property or a Trustco Property shall be paid in full on the later of the Effective Date or the date on which the Lien Claim becomes an Allowed Lien 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. Holders of a Class 7 Lien Claim secured by a Divestco Property shall retain their liens on their Collateral and may realize on their Collateral as allowed by law.

4.8 Class 8 (Investor Claims). Class 8 is 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 the elections described in Sections 4.8.1 through 4.8.4.

4.8.1. Member Value Election. Pursuant to the Distribution Plan, each Member of a Sunwest Entity that holds legal title to a Holdco Property to be sold or contributed to Acquirer may elect to either (a) file a Claim as an Investor and be treated as an Investor, or (b) waive all Claims and instead receive a distribution in cash in an amount equal to the value attributable to their ownership percentage in such Holdco Property 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"). A Preferred Member or LLC Member that exercises the 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 Properties as provided in the Distribution Plan.

All Member Value Elections shall be made by delivering to Receiver and the CRO a written and signed notice of election identifying the Member making the election and the Holdco Property with respect to which the election is made. The notice of election shall be served and received as required by Section 11.16 of this Plan on or before 4:00 p.m. Pacific daylight time on the date first set for filing objections to confirmation of this Plan of Reorganization.

4.8.2. Trustco Subsidiary Member Election. Pursuant to the Distribution Plan, each Member of a Trustco Subsidiary may elect to retain a membership interest in the Trustco Subsidiary in lieu of receiving an Allowed Claim (the "Trustco Subsidiary Member Election"). Such election must have been made by delivering to the Receiver on or before the Claims Bar Date a notice of election concurrently with the delivery of its Proof of Claim. In the event a Member has made the Trustco Subsidiary Member Election, then the Member will not be treated as an Investor and will not receive any distribution under the Distribution Plan on account of an Allowed Unsecured Claim. Rather, the electing Member will retain a membership interest in the Trustco Subsidiary. Each such electing Member shall execute an amended and restated

operating agreement, in a form approved by the Court, that contains provisions including, but not limited to, the following provisions with respect to Member's membership interest.

(a) Member will receive no distribution for two full years following the Effective Date, except for distributions necessary to pay any tax or income attributed to the Member;

(b) Member may receive distributions from operating income for the third and fourth years following the Effective Date that equal in amount a return on the value attributed to their ownership percentage as of March 2, 2009, determined as set forth in Exhibit 7 to the Distribution Plan ("Member's Adjusted Capital Account"). The return will be equal to a rate calculated by (1) adding 265 basis points to the Bank of America published five-year certificate of deposit rate on the first business day of the third year following the Effective Date, and (2) dividing by two;

(c) Thereafter, Member will receive distributions based on Member's Adjusted Capital Account;

(d) Upon sale of the Trustco Property in which the Trustco Subsidiary has an interest, Member shall receive a distribution equal to the Member's Adjusted Capital Account, plus 55% of any appreciation in value of such Trustco Property to the date of sale, with recognition that Member's interest is not a controlling interest; and

(e) Member shall have no role, veto, management rights or authority whatsoever with respect to the Trustco Subsidiary, its ownership, operation, sale, or merger.

4.8.3. Rollover Equity Election. Only Investors who have not filed an appeal to the Confirmation Order, Substantive Consolidation Order, Sale Order, or TIC Transfer Order, are qualified to be Rollover Investors. Each Rollover Investor is entitled to participate in the Rollover Equity Election, subject to the terms of Section 2.6(f) of the APA. A Rollover Investor may exercise the Rollover Equity Election by delivering to Receiver and CRO a signed and complete Notice of Rollover Equity Election in the form attached to this Plan as Exhibit 11 and

thereafter taking such other actions as are necessary or appropriate to become a member of Rollover Member LLC. All such notices shall be served on the Receiver and the CRO in the manner provided in Section 11.16 of this Plan and must be received by both the Receiver and the CRO on or before 4:00 p.m. Pacific daylight time on the date first set for filing objections to confirmation of this Plan of Reorganization.

Any Investor (other than a TIC who has executed and performed a TIC Settlement Agreement or a Member who has executed and performed a Member Settlement Agreement) 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.

4.8.4. 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 each of the following conditions and procedures:

4.8.4.1 The TIC Interests of the non-electing Bare Land TICs (each a "Non-Electing Bare Land TIC") in the subject Bare Land Property shall be conveyed, together with Debtor's TIC Interest in the Bare Land Property, to the Electing Bare Land TICs pursuant to a TIC Settlement Agreement or TIC Transfer Order.

4.8.4.2 Electing Bare Land TICs will assume all debts and other obligations secured by the Bare Land Property, including all mortgage debt, real estate taxes, and other liens. Electing Bare Land TICs reserve the right to contest the validity and amount of such assumed obligations. Debtor shall not further encumber the Bare Land Property with any additional secured debt or liens.

4.8.4.3 Electing Bare Land TICs shall release all Claims against Debtor, its estate and the Receivership Estate, including all rights to distributions under the Distribution

Plan. Further, Electing Bare Land TICs will release all Claims against the HFG Parties, all Sunwest Entities, and all employees, agents and representatives of all Sunwest Entities.

4.8.4.4 All Electing Bare Land TICs shall assign to the Litigation Trust all Third Party Claims shared by all Bare Land TICs with TIC Interests in the subject Bare Land Property. Individual claims (those claims not held in common with all Bare Land TICs in the subject Bare Land Property, such as claims against brokers) will not be assigned to Receiver.

4.8.4.5 Electing Bare Land TICs shall obtain releases from secured lenders, if any, having a security interest in or lien on the subject Bare Land Property of any Claims against Debtor, its Estate, the Sunwest Entities, or the Receivership Estate, together with a release of all personal guaranties other than any guaranties executed by the Electing Bare Land TICs.

4.8.4.6 The releases and assignments required by Sections 4.8.3.3 through 4.8.3.5 apply only to claims related to or arising from the Bare Land Property subject to the Bare Land TIC Election.

4.8.4.7 The Claims of Non-Electing Bare Land TICs shall be allowed and treated as provided in this Plan and the Distribution Plan, and shall not be affected by the election of other Bare Land TICs.

4.8.4.8 Electing Bare Land TICs shall purchase Debtor's interest in the subject Bare Land Property for Debtor's Pro Rata share of the Property's Net Current Fair Market Value. Debtor's Pro Rata share shall include any TIC Interests in the property transferred by a Non-Electing Bare Land TIC pursuant to a TIC Settlement Agreement or TIC Transfer Order. Net Current Fair Market Value, as used in this section, will equal the current fair market value of the Bare Land Property minus all debts secured by the property that are being assumed by Electing Bare Land TICs. If Electing Bare Land TICs and Debtor cannot reach agreement on the Net Current Fair Market Value of the subject Bare Land Property, the parties will select an appraiser to determine the Net Current Fair Market Value of the Bare Land Property. If the

parties cannot agree on the appraiser, then the parties shall each submit a list of up to three acceptable appraisers, with background information on each proposed appraiser, to the Honorable Lyle C. Velure, as mediator ("Mediator"). From the lists submitted by both parties, the Mediator shall select one appraiser. The selected appraiser shall appraise the subject Bare Land Property, and the costs of the Mediator and the appraiser will be split evenly between the parties. The valuation determined by the appraiser as the Net Current Fair Market Value of the subject Bare Land Property will be binding on all parties.

4.8.4.9 Electing Bare Land TICs shall be entitled to a credit against the purchase price of Debtor's interest in the Bare Land Property equal to 6% of the Net Current Fair Market Value of the Bare Land Property. In the event the 6% exceeds the value of Debtor's interest in the subject Bare Land Property, the Electing Bare Land TICs may not apply that excess to other amounts owed to Debtor or the Receivership Estate.

4.8.4.10 Electing Bare Land TICs shall repay to Debtor all cash lease payments received by TICs in the subject Bare Land Property, including all cash lease payments received by Non-Electing Bare Land TICs, from and after January 1, 2006.

4.8.4.11 Electing Bare Land TICs cannot receive value based on the Net Current Fair Market Value of the subject Bare Land Property as determined by the appraiser pursuant to Section 4.8.4.8 in excess of 100% of their original investment in the subject Bare Land Property. Electing Bare Land TICs must pay to Debtor any amount by which the Current Fair Market Value exceeds 100% of their original investment.

4.8.4.12 All amounts due to Debtor or the Receivership Estate under this Bare Land Election can be paid in cash with a 10% discount at the time of closing of the contemplated transaction or by a promissory note secured by a first priority lien on the subject Bare Land Property or, if the subject Bare Land Property is currently encumbered by a trust deed, a second priority lien on the subject Bare Land Property. The promissory note will be in an amount payable to Debtor or the Receivership Estate calculated pursuant to this Section 4.8.4

and will bear simple interest at a rate equal to 4% per annum. The promissory note will be payable in full, together with all accrued and unpaid interest, on the earlier of the last day of the 36th month following the closing of the transaction or the date of sale or refinance of the subject Bare Land Property. Each of the Electing Bare Land TICs shall have several liability on the promissory note in the amount of each Electing Bare Land TIC's Pro Rata ownership interest in the Bare Land Property.

4.8.4.13 Each Electing Bare Land TIC shall receive a non-warranty deed from the Receiver for the Electing Bare Land Property TIC's Pro Rata share of Debtor's interest in the Bare Land Property. To the extent in the possession or control of Debtor or the Receiver, the Receiver or the CRO shall transfer to the electing Bare Land TICs relevant information and documentation regarding the subject Bare Land Property, including land use materials, marketing materials, environmental reports, appraisals, engineering and feasibility studies, plans and drawings, and similar information and documentation. Further, to the extent assignable, and at no cost to Debtor or the Receiver, Debtor or Receiver will assign to Electing Bare Land TICs all entitlements, such as land use approvals and building permits, for the subject Bare Land Property.

4.8.4.14 Payments made by TICs to protect the value of the subject Bare Land Property and its improvements or to avoid foreclosure ("Protective Payments"), providing such advances have been or are explicitly approved by the CRO or the Receiver, shall be deducted from the total amount due to Debtor or the Receivership Estate.

4.8.4.15 Land Sold Prior to Effective Date - Debtor is in the process of selling three parcels of bare land to third-party buyers. TICs with TIC Interests in these properties shall be eligible for the Bare Land election on the same terms as other Bare Land TICs, with the following exceptions:

4.8.4.15.1 Electing Bare Land TICs must pay Debtor's or Reorganized Company's out-of-pocket selling expenses, including brokers' fees, transfer taxes,

and escrow and other closing costs, in addition to making all other payments and meeting all other conditions required under the election;

4.8.4.15.2 Electing Bare Land TICs must pay Debtor or Reorganized Company for administrative costs in selling the property, subject to the following caps:

- (a) For properties with a sale price up to and including \$500,000, 3% of the sale price;
- (b) For properties with a sale price from over \$500,000, up to and including \$1 million, 2.5% of the sale price; or
- (c) For properties with a sale price over \$1 million, 2% of the sale price.

4.8.4.15.3 Payment of Debtor or Reorganized Company's out-of-pocket selling expenses and administrative costs shall be subject to Court approval;

4.8.4.15.4 In return for meeting the conditions of the Bare Land Election, instead of receiving title to the land, Electing Bare Land TICs will be paid cash directly from the sale; and

4.8.4.15.5 Reorganized Company shall cooperate with the Bare Land TICs, at no cost to Reorganized Company, in attempting to structure the sale of the Bare Land TICs' interest in the property as a sale qualifying under IRC Section 1031 for the Bare Land TICs so electing.

4.8.4.15.6 Debtor will dismiss the TIC Transfer Proceedings pending against Electing Bare Land TICs who have fully performed all obligations under the Bare Land TIC Election. Electing Bare Land TICs shall have the right to revoke the Bare Land TIC Election for a period of 30 days following the date on which the Net Current Fair Market Value of the subject Bare Land Property has been determined pursuant to Section 4.8.3.8. Any

Electing Bare Land TIC that revokes a Bare Land TIC Election shall receive only cash distributions on account of its Unsecured Claim.

4.9 Class 9 (HFG Parties). Class 9 is unimpaired. Each holder of a Class 9 Claim will receive the treatment provided in the HFG Settlement.

## **ARTICLE 5**

### **CLAIM ALLOWANCE**

Only Claims that are Allowed as provided in this Plan, the Distribution Plan, Distribution Plan Approval, and related orders entered in the Federal Receivership Case or this Case, shall be entitled to distributions under the Plan. Section 502(d) of the Bankruptcy Code shall be applicable to the allowance of all Claims and the making of all distributions provided in this Plan, and no election or right to an election shall constitute a waiver or release of the application of such section. Allowance of Administrative Expense Claims shall be governed by the Bankruptcy Rules and Orders of the Court. The Secured Claim of each Secured Creditor will be allowed and treated as set forth in this Plan. The distribution payable to each Preferred Member and LLC Member that has timely delivered a notice of the exercise of the Member Value Election shall be determined and paid as provided in this Plan, the Distribution Plan and the Distribution Plan Approval and shall be subject to the application of Section 502(d) of the Bankruptcy Code.

## **ARTICLE 6**

### **MEANS TO EFFECTUATE PLAN**

#### **6.1 Effective Date Transfers**

6.1.1. Pursuant and subject to the terms and conditions of the APA, on and after the Effective Date, Proponents, Reorganized Company and SWP will sell, assign, transfer, and contribute the Holdco Properties and assign the Assumed Holdco Executory Contracts and Unexpired Leases and Resident Contracts to Acquirer free and clear of the Excluded Obligations

and all claims, liens, encumbrances and other interests arising before the Effective Date (except as permitted by the APA) and will otherwise perform their obligations under the APA.

6.1.2. Except as may otherwise be provided in a separate order of the Court, on the Effective Date, each Divestco Property will either (a) at the option (as provided in Section 4.4.1.2 of this Plan) 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 and related transfer documents 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.

6.1.3. Except as otherwise provided in a separate order of the Court, Proponents and Reorganized Company will sell, transfer and assign the Trustco Properties, together with Assumed Trustco Executory Contracts and Unexpired Leases, to Trustco, subject to liens and security interests securing the Allowed Secured Claim of any Secured Creditor as provided in this Plan.

6.2 Sale, Exchange or Contribution of TIC Interests

6.2.1. TIC Interests in Holdco Properties will either be (a) conveyed to Acquirer by Debtor pursuant to a TIC Transfer Order; (b) contributed pursuant to a TIC Settlement Agreement by the TIC holding the TIC Interest to Rollover Member LLC in exchange for equity interests in Rollover Member LLC and thereafter contributed by Rollover Member LLC to Acquirer in exchange for Rollover Equity Interests; or (c) conveyed directly to Acquirer pursuant to a TIC Settlement Agreement.

6.2.2. Subject to the Bare Land TIC Election or a TIC Settlement Agreement approved by the Court, TIC Interests in Trustco Properties will be transferred and conveyed to Trustco pursuant to a TIC Transfer Order in exchange for Investor Claims.

6.2.3. The transfer and conveyance of TIC Interests to Acquirer and to Trustco is necessary to, and a condition of, the effectiveness of this Plan of Reorganization.

6.3 Rollover Member LLC

6.3.1. Rollover Member LLC will hold the Preferred Interests and Common Interests on behalf of Rollover Investors. Each such Rollover Investor must execute a copy of the Rollover Member LLC Agreement and a subscription agreement to become a member of Rollover Member LLC.

6.3.2. Receiver, acting solely in his capacity as federal equity receiver under the Receivership Order, will be the initial manager of Rollover Member LLC and will serve until the later of December 31, 2010 or the date on which a Board of Managers is elected, qualified and approved by the Court. The compensation of Receiver, serving in his capacity as initial Manager, will be determined by Order of the Court.

6.3.3. On January 1, 2011, or as soon thereafter as reasonably practicable, the members of Rollover Member LLC will elect a Board of Managers, comprised of three persons, a majority of whom will not be "interested persons" as such term is defined in 15 U.S.C. § 80a-2(a)(19). The Managers will receive such compensation as is approved by the members of Rollover Member LLC. Receiver and the Board of Managers will take all actions necessary or appropriate to issue and distribute the equity interests in Rollover Member LLC to Rollover Investors that executed the Rollover Member LLC Agreement. Rollover Member LLC will have three classes of interests: common interests, preferred interests and a profit participation interest. The common interests and preferred interests will mirror the economic but not the governance terms of the Common Interests and Preferred Interests to be issued by Acquirer to Rollover Member LLC pursuant to the terms of the APA. The common interests and preferred interests in Rollover Member LLC will be distributed to Rollover Investors Pro Rata pursuant to the terms of the Distribution Plan based on the initial book value of such common interests and preferred interests. In the event that either the common interests or the preferred interests are over-

subscribed as a result of the number of Investors executing the Common Rollover Election or the Preferred Rollover 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 (each a "Settling TIC"). The second level of priority in allocating such interests will be to SWP 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 (each a "Settling Member"). 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 and Settling Members, any remaining common interests and preferred interests available for distribution to Rollover Investors will be allocated Pro Rata among Rollover Investors.

6.3.4. In addition to the common interests and preferred interests of Rollover Member LLC to be issued and distributed to Rollover Investors, Rollover Member LLC shall include 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 pursuant to the terms of the HFG Settlement. The holders of such profits interest shall not be entitled to vote, or to be considered in determining whether there shall exist a quorum with respect to any matter upon which Rollover Investors are entitled to vote.

6.3.5. Reorganized Company shall provide a loan facility to Rollover Member LLC in an amount up to \$2,000,000 that will be available to Rollover Member LLC for the purpose of allowing Rollover Member LLC to finance its operating and compliance expenses. All advances made by Reorganized Company to Rollover Member LLC will bear interest from the date of the advance until repaid at a rate equal to 6% per annum. All obligations owing by Rollover Member LLC to Reorganized Company shall be due and payable in full, with interest, on the third anniversary of the Effective Date. Rollover Member LLC and Reorganized Company will execute a loan agreement in a form acceptable to the Receiver and the CRO.

6.3.6. Ford Elsaesser 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.

6.3.7. Except for the issuance of member interests and the compensation of Receiver as the initial administrator, Rollover Member LLC is authorized to enter into contracts, pay and perform its obligations, conduct its business, and otherwise operate without order or supervision of the Court.

6.3.8. The Court shall have and retain exclusive jurisdiction over all disputes that may arise under the Rollover Member LLC Agreement.

#### 6.4 Trustco

6.4.1. Trustco will hold, manage and sell the Trustco Subsidiaries and Trustco Properties. Receiver will be the sole member and manager of Trustco.

6.4.2. Trustco, and each Member who has made a Trustco Subsidiary Member Election pursuant to Section 4.8.2 of this Plan, shall execute an amended and restated operating agreement for the Trustco Subsidiary in which the Member has retained a membership interest. Each operating agreement will recognize Trustco as a member and sole manager, and incorporate the economic and management terms set forth in Section 4.8.2 relating to the rights and interests of the Member electing the Trustco Subsidiary Member Election.

6.4.3. Subject to and conditioned on the prior satisfaction of and performance by each Member who has elected the Trustco Subsidiary Member Election, Trustco will convey equitable title or cause equitable title to be conveyed to each Trustco Property to the Trustco Subsidiary that retains legal title to such Trustco Property.

6.4.4. Reorganized Company shall provide credit accommodations to Trustco by:

- (a) Advancing funds to pay in full all Class 7 Lien Claims and Priority Tax Claims secured by a Trustco Property;
- (b) Advancing funds to cure any defaults on Assumed Executory Contracts and Unexpired Leases listed on Exhibit 5-2 to this Plan;
- (c) Advancing funds to pay in full any Class 1 Other Priority Claims arising out of or related to Trustco Properties or Trustco Subsidiaries; or
- (d) Extending a loan facility to Trustco in an amount up to \$1,000,000 for the purpose of enabling Trustco to fund its operations.

All funds advanced pursuant to this Section (the "Trustco Credit Accommodations") will accrue interest from and after the date of the advance until repaid at a rate equal to 15% per annum. The Trustco Credit Accommodations will be the joint and several obligation of Trustco and each Trustco Subsidiary, and will be due and payable in full prior to any distribution to any Member who has elected the Trustco Subsidiary Member Election. The Trustco Credit Accommodations will be evidenced by such loan agreements as are satisfactory to Reorganized Company and Receiver.

6.4.5. Trustco Properties shall be sold or otherwise disposed of within seven years of the Effective Date. Proceeds from the sale or disposition of Trustco Properties remaining after payment of all debts, including the Trustco Credit Accommodations, shall be distributed to members of Trustco and Trustco Subsidiaries pursuant to the terms of their operating agreements.

6.5 Distribution of Cash Proceeds. All cash proceeds from the sale or contribution of Holdco Property, and any other sale, lease or disposition of Debtor's or Reorganized Company's assets, remaining after the payment or funding of (or reservation of funds sufficient to pay or fund) Debtor's or Reorganized Company's obligations under this Plan, will be disbursed to Receiver to be paid or distributed pursuant to the Distribution Plan.

6.6 SWP Settlement Contribution. In order to allow SWP to contribute its interests in Holdco Properties pursuant to Section 6.1.1 of this Plan, Debtor will waive and release its rights under its option agreements with SWP pursuant to which Debtor has the right to repurchase such interests. SWP will contribute its interests in Holdco Properties pursuant to Section 6.1.1 of this Plan and receive cash and common interests in Rollover Member LLC in the priority set forth in Section 6.3.3 of this Plan in amounts sufficient to allow it to make distributions to its limited partners as required by the Distribution Plan and to meet its note obligations to Debtor.

6.7 Corporate Action. Upon entry of the Confirmation Order, all actions to be taken by or on behalf of Debtor and Reorganized Company as contemplated by this Plan or the APA shall be authorized and approved in all respects, including, without limitation, the execution, delivery and performance of all documents and agreements relating to or provided by the Plan or the APA. On the Effective Date, the CRO is authorized and directed to execute and deliver all agreements, documents and instruments contemplated by the Plan, the APA or the Disclosure Statement in the name of and on behalf of Debtor, 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 this Plan and otherwise to cause Debtor and Reorganized Company to perform their obligations under this Plan.

## **ARTICLE 7**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.1 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 are 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 by separate order of the Court. Subject to the APA (including the condition that Acquirer is not assuming any Excluded Obligations), Reorganized Company 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 Residential Contracts.

7.2 Assignment. Subject to the APA (including the condition that Acquirer is not assuming any Excluded Obligations), Assumed Executory Contracts and Unexpired Leases and Resident Contracts shall be assigned, as of the Effective Date, to and assumed by Acquirer or Trustco with respect to Assumed Executory Contracts and Unexpired Leases affiliated with Trustco Properties, all as more particularly identified in the Confirmation Order. Management Contracts will be assigned as provided in the Confirmation Order. The Confirmation Order shall constitute an order authorizing such assignment and assumption.

7.3 Rejection. All executory contracts and unexpired leases that are not assumed pursuant to Section 7.1 of this Plan or Order of the Court are rejected as of the Effective Date (unless otherwise terminated by Debtor in accordance with its terms), 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.

7.4 Rejection Claims. Rejection Claims must be Filed pursuant to the Distribution Plan Approval, Distribution Plan or other 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, Reorganized Company and their property and estates. Each Rejection Claim resulting from such rejection shall constitute a Class 6 Claim.

## **ARTICLE 8**

### **EFFECT OF CONFIRMATION**

The effect of confirmation shall be as set forth in Section 1141 of the Bankruptcy Code. Except as otherwise provided in the Plan, the Confirmation Order or the Distribution Plan, confirmation of the Plan shall act as a permanent injunction applicable to Claimants 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, or their assets, of a judgment obtained against Debtor 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 acquired from Debtor pursuant to this Plan. Nothing in this Article shall enjoin or otherwise impair the assertion or enforcement by the Securities and Exchange Commission, or any other federal or state regulatory agency, of any claim or right against Debtor, any Sunwest Entity or the HFG Parties.

## **ARTICLE 9**

### **RETENTION OF JURISDICTION**

9.1 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:

9.1.1. Classify the Claim or Interest of any Creditor or Claimant, reexamine Claims or Interests that have been Allowed for voting purposes, and determine any objections that may be Filed to Claims or Interests;

9.1.2. Determine requests for payment of Administrative Expense Claims entitled to priority under Section 507(a)(2) of the Bankruptcy Code;

9.1.3. Avoid transfers or obligations and to subordinate Claims under Chapter 5 of the Bankruptcy Code;

9.1.4. Approve the assumption, assignment or rejection of an executory contract or unexpired lease pursuant to this Plan;

9.1.5. Resolve controversies and disputes regarding the interpretation of this Plan (other than disputes arising out of the Acquirer LLC Agreement);

9.1.6. Implement the provisions of this 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 11.8 of this Plan (other than disputes relating to the Acquirer LLC Agreement);

9.1.7. Adjudicate adversary proceedings and contested matters pending or hereafter commenced in this Chapter 11 Case (other than disputes relating to the Acquirer LLC Agreement);

9.1.8. Adjudicate any action seeking partition of any real property in which Debtor or Reorganized Company and any TIC have an interest;

9.1.9. Adjudicate any dispute between or among any holder of a Class 3 or Class 4, Class 7 or Class 9 Claim and Reorganized Company arising from or relating to the terms of this Plan or the treatment provided in this Plan;

9.1.10. Adjudicate any claim or controversy concerning interests in or governance of the Rollover Member LLC or otherwise arising out of or related to the Rollover Member LLC Agreement;

9.1.11. Adjudicate any claim or controversy concerning interests in or governance of any Trustco Subsidiary; and

9.1.12. Enter a final decree closing this Chapter 11 case.

## **ARTICLE 10**

### **ADMINISTRATIVE PROVISIONS**

10.1 Modification or Withdrawal of the Plan. Proponents may alter, amend or modify the Plan pursuant to Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 at any time prior to the time the Bankruptcy Court has signed the Confirmation Order. After such time,

and prior to substantial consummation of the Plan, Proponents may, so long as the treatment of holders of Claims and Interests under the Plan is not adversely affected, institute proceedings in Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002.

10.2 Revocation or Withdrawal of Plan

10.2.1. Right to Revoke. Proponents reserve the right to revoke or withdraw the Plan at any time prior to the Effective Date.

10.2.2. Effect of Withdrawal or Revocation. If Proponents revoke or withdraw the Plan prior to the Effective Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against Debtor, or any other Entity, or to prejudice in any manner the rights of Proponents or any Entity in any further proceeding involving Debtor.

10.3 Nonconsensual Confirmation. Proponents shall request that the Bankruptcy Court confirm the Plan pursuant to Section 1129(b) of the Bankruptcy Code if the requirements of all provisions of Section 1129(a) of the Bankruptcy Code, except Subsection 1129(a)(8), are satisfied.

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

10.4.1. The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to Proponents which shall, among other things, approve the Plan Documents required to consummate the transactions contemplated by the Plan;

10.4.2. No stay of the Confirmation Order shall be in effect;

10.4.3. Licenses and regulatory approvals have been obtained as necessary to allow consummation of the transactions contemplated by this Plan;

10.4.4. Judgments have been entered or settlements reached in the TIC Transfer Proceedings that allow the consummation of the transactions contemplated by this Plan; and

10.4.5. All conditions to Closing have occurred.

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

11.1 Revesting. Except as otherwise expressly provided herein, on the Effective Date, the property and assets of the estate of Debtor remaining after the transfers, including abandonments, contemplated in this Plan shall revert in Reorganized Company, free of all claims, liens, encumbrances and other interests arising before the Effective Date.

11.2 Utility Deposits. All utilities holding a Utility Deposit shall immediately after the Effective Date return or refund such Utility Deposit to Debtor. At the sole option of Debtor, any Utility Deposit that has not been refunded may be applied in satisfaction of any payments due or to become due from Reorganized Company to a utility holding such a Utility Deposit.

11.3 Rights of Action. Except as otherwise expressly provided herein, any rights or causes of action (including, without limitation, any and all avoidance actions or other causes of action arising under Chapter 5 of the Bankruptcy Code) accruing to Debtor shall remain assets of Reorganized Company. Debtor may pursue such rights of action, as appropriate, and shall pay and deliver any proceeds, after payment of related legal fees and expenses, and fees arising under 28 U.S.C. § 1930, to the Litigation Trust.

11.4 Setoffs. Except with respect to any Claims that are transferred to Acquirer, Debtor or Reorganized Company may, but shall not be required to, set off against any Claim and the distributions to be made pursuant to the Reorganization Plan in respect of such Claim, any claims of any nature whatsoever which Debtor may have against the holder of such Claim, but

neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claim Debtor may have against such holder.

11.5 Discharge of Inter-Entity Obligations. Except as otherwise expressly provided herein, on the Effective Date, all obligations between or among any Sunwest Entities are discharged.

11.6 Termination of Options. On the Effective Date, all options to purchase any TIC Interest pursuant to any one or more tenant in common agreements, master lease agreements, sponsor purchase option agreements, or similar agreements, are terminated and released, other than any options expressly reserved or created elsewhere in the Plan.

11.7 Property Acquisition. Consistent with tax objectives, additional properties may be acquired by or for the benefit of SWP Holdings, LP.

11.8 Governing Law. Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal laws are applicable, or as otherwise provided in the APA or the Acquirer LLC Agreement, the laws of the State of Oregon shall govern the construction and implementation of the Plan, and all rights and obligations arising under the Plan.

11.9 Withholding and Reporting Requirements. In connection with the Plan and all instruments issued in connection therewith and distributions thereon, Debtor and Reorganized Company shall comply with all withholding, reporting, certification and information requirements imposed by any federal, state, local or foreign taxing authority, and all distributions hereunder shall, to the extent applicable, be subject to any such withholding, reporting, certification and information requirements. Entities entitled to receive distributions hereunder shall, as a condition to receiving such distributions, provide such information and take such steps as Debtor or Reorganized Company may reasonably require to ensure compliance with such withholding and reporting requirements, and to enable Debtor or Reorganized Company to obtain the certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

11.10 Time. Unless otherwise specified herein, in computing any period of time prescribed or allowed by this Plan, the day of the act or event from which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day, in which event the period runs until the end of the next succeeding day that is a Business Day.

11.11 Section 1146(a) Exemption. Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan, or the execution, delivery or recording of an instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the revesting, transfer, conveyance or sale of any real or personal property, including any TIC Interest, of Debtor, Reorganized Company or a TIC, and any transfers and conveyances of the Holdco Property to Acquirer pursuant to, in implementation of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a document recording tax, conveyance fee, sales tax, stamp tax, deed stamp, transfer tax, mortgage tax, filing or recording fee, intangibles or similar tax, or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any city, county or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument without requiring the payment of any documentary, recording tax, stamp tax, conveyance fee, sales tax, mortgage tax, filing or recording fee, deed stamp, transfer tax, intangibles tax or similar tax, or similar tax or fee.

11.12 Severability. In the event any provision of the Plan is determined to be unenforceable, such determination shall not limit or affect the enforceability and operative effect of any other provisions of the Plan. To the extent any provision of the Plan would, by its inclusion in the Plan, prevent or preclude the Bankruptcy Court from entering the Confirmation Order, the Bankruptcy Court, on the request of Proponents, may modify or amend such provision, in whole or in part, as necessary to cure any defect or remove any impediment to the confirmation of the Plan existing by reason of such provision

11.13 Binding Effect. The provisions of the Plan shall bind Debtor, Reorganized Company, Claimants, Creditors, Investors, and all holders of Interests, and their respective successors, heirs and assigns.

11.14 Retiree Benefits. On or after the Effective Date, to the extent required by Section 1129(a)(13) of the Bankruptcy Code, Reorganized Company shall continue to pay all retiree benefits (if any) as that term is defined in Section 1114 of the Bankruptcy Code, maintained or established by Debtor prior to the Effective Date, without prejudice to the rights of Reorganized Company under applicable non-bankruptcy law to modify, amend or terminate the foregoing arrangements.

11.15 Recordable Order. The Confirmation Order shall be deemed to be in recordable form, and shall be accepted by any recording officer for filing and recording purposes without further or additional orders, certifications or other supporting documents.

11.16 Plan Controls. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, or any other instrument or agreement contemplated to be executed pursuant to the Reorganization Plan (other than the APA and Acquirer LLC Agreement, which shall each control in the event of any inconsistency with the Plan), the provisions of the Plan shall control and take precedence.

11.17 Exhibits. All Exhibits to this Plan are incorporated into and are a part of this Plan as if set forth in full herein.

11.18 Effectuating Documents and Further Transactions. Debtor and Reorganized Company shall execute, deliver, file or record such contracts, instruments, assignments and other agreements or documents, and take or direct such actions as may be necessary or appropriate, to effectuate and further evidence the terms and conditions of this Plan.

11.19 Notices. All notices required or elections allowed to be served on Debtor or Reorganized Company in connection with this Plan shall be writing and served by hand delivery

or reputable overnight delivery service, all charges prepaid, and shall be deemed given when received by the following parties:

Michael A. Grassmueck  
The Grassmueck Group  
Fiduciary and Insolvency Services  
2120 SW Jefferson, Suite 300  
Portland, OR 97201

David L. Osias  
Allen Matkins Leck Gamble  
Mallory & Nastis LLP  
501 West Broadway, 15th Floor  
San Diego, CA 92101-3541

Clyde A. Hamstreet  
Clyde A. Hamstreet & Associates LLC  
One SW Columbia, Suite 1000  
Portland, OR 97258

Albert N. Kennedy  
Tonkon Torp LLP  
888 SW Fifth Avenue, Suite 1600  
Portland, OR 97204

11.20 Discharge of Rents and Profits Receivers. As of the Effective Date, any Rents and Profits Receiver that has not previously been discharged will be discharged and will immediately take all actions necessary to return any and all records and assets to Reorganized Company and provide Reorganized Company with copies of all the Rents and Profits Receiver's records relating to the property.

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  
Timothy J. Conway, OSB No. 85175  
Of Attorneys for Debtor

ALLEN MATKINS LECK GAMBLE MALLORY

By /s/ David Zaro  
David Zaro  
Of Attorneys for Receiver

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