

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)**

In re:  
GINN-LA ST. LUCIE LTD., LLLP, *et al.*,

Debtors.

In re:  
GINN-LA QUAIL WEST LTD., LLLP, *et al.*,

Debtors.

**CASE NO. 08-29769-PGH**  
All Cases Jointly Administered

Chapter 7

(4 Cases Substantively Consolidated Under  
Lead Case No. 08-29769-PGH)<sup>1/</sup>

(3 Cases Substantively Consolidated Under  
Lead Case No. 08-29774-PGH)<sup>2/</sup>

**TRUSTEE DILLWORTH'S NOTICE OF LATE FILING OF PAPER  
PURSUANT TO LOCAL RULE 5005-1(F)(2)**

Drew M. Dillworth ("Trustee Dillworth"), in his capacity as Chapter 7 Trustee for the Tesoro and Quail West Debtors' Estates, files this Notice of Late Filing of Paper Pursuant to Local Rule 5005-1(F)(2) and states as follows:

1. The attached Notice of Filing Additional Exhibits is filed for consideration at the hearing scheduled on August 31, 2010, at 9:30 a.m., at 1515 N. Flagler Drive, Room 801, Courtroom A, West Palm Beach, Florida 33401, to consider Trustee Dillworth's Motion to Compel Compliance with Demands for Turnover Pursuant to 11 U.S.C. §§ 521(a) & 542(e) .

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<sup>1/</sup>The "Tesoro Debtors' Estates" (Nos. 08-29769-PGH, 08-29770-PGH, 08-29772-PGH, and 08-29773-PGH) are substantively consolidated into Lead Case No. 08-29769-PGH. *See* Order [D.E. 308/309]. The "Tesoro Debtors," and the last four digits of their respective tax identification numbers, are: (i) Ginn-LA St. Lucie Ltd., LLLP – 5632; (ii) Ginn-St Lucie GP, LLC – 0983; (iii) Tesoro Golf Club Condo., LLC – 4385; and (iv) The Tesoro Club, LLC – 1917. *See* 11 U.S.C. § 342(c)(1).

<sup>2/</sup>The "Quail West Debtors' Estates" (Nos. 08-29774-PGH, 08-29775-PGH, and 08-29776-PGH) are substantively consolidated into Lead Case No. 08-29774-PGH. *See* Order [D.E. 34]. The "Quail West Debtors," and the last four digits of their respective tax identification numbers, are: (i) Ginn-LA Quail West Ltd., LLLP – 2397; (ii) Ginn-Quail West Beach, LLC – 9142; and (iii) Ginn-Quail West GP, LLC – 6313. *See* 11 U.S.C. § 342(c)(1).

2. Trustee Dillworth was unable to comply with the requirement of L.R. 5005-1(F)(1) for timely submission of papers in matters already set for hearing due to the following circumstances: the Additional Exhibits are being submitted in response to factual assertions made by Lubert-Adler in the submission misleadingly-titled "Berger Singerman, P.A.'s Limited Response in Opposition" [D.E. 532], which was filed on behalf of Lubert-Adler by Klehr Klehr Harrison Harvey Branzburg LLP and Berger Singerman, P.A., at 4:25 p.m., two business days prior to the hearing.

Trustee Dillworth respectfully requests that the court consider the attached Notice of Filing at the above scheduled hearing.

Dated: August 30, 2010

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.

Attorneys for Drew M. Dillworth,  
Chapter 7 Trustee of the Tesoro Debtors' Estates  
and the Quail West Debtors' Estates

Museum Tower, Suite 2200  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Telephone: (305) 789-3200  
Facsimile: (305) 789-3395

I hereby certify that I am admitted to the Bar of  
the United States District Court for the Southern District  
of Florida and I am in compliance with the additional  
qualifications to practice in this Court set forth in  
Local Rule 2090-1(A).

By: /s/ Harold D. Moorefield, Jr.  
HAROLD D. MOOREFIELD, JR.  
[hmoorefield@stearnsweaver.com](mailto:hmoorefield@stearnsweaver.com)  
MATTHEW W. BUTTRICK  
Fla. Bar No. 176028  
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In re:  
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Debtors.

(3 Cases Substantively Consolidated Under  
Lead Case No. 08-29774-PGH)<sup>2/</sup>

**TRUSTEE DILLWORTH'S NOTICE OF FILING ADDITIONAL EXHIBITS**  
**IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH**  
**DEMANDS FOR TURNOVER PURSUANT TO 11 U.S.C. §§ 521(a) & 542(e)**

Drew M. Dillworth ("Trustee Dillworth"), in his capacity as Chapter 7 Trustee for the Tesoro and Quail West Debtors' Estates, files the attached documents as additional exhibits to his motion to compel the turnover of information and documents from the Debtors' legal files, which the Debtors' former "parent" companies have wrongfully withheld from production. As explained below, the additional exhibits contradict factual assertions made by Lubert-Adler in the submission misleadingly-titled "Berger Singerman, P.A.'s Limited Response in Opposition," which was filed on behalf of Lubert-Adler by Klehr Klehr Harrison Harvey Branzburg LLP and Berger Singerman, P.A.<sup>3/</sup>

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<sup>1/</sup>The "Tesoro Debtors' Estates" (Nos. 08-29769-PGH, 08-29770-PGH, 08-29772-PGH, and 08-29773-PGH) are substantively consolidated into Lead Case No. 08-29769-PGH. *See* Order [D.E. 308/309]. The "Tesoro Debtors," and the last four digits of their respective tax identification numbers, are: (i) Ginn-LA St. Lucie Ltd., LLLP – 5632; (ii) Ginn-St Lucie GP, LLC – 0983; (iii) Tesoro Golf Club Condo., LLC – 4385; and (iv) The Tesoro Club, LLC – 1917. *See* 11 U.S.C. § 342(c)(1).

<sup>2/</sup>The "Quail West Debtors' Estates" (Nos. 08-29774-PGH, 08-29775-PGH, and 08-29776-PGH) are substantively consolidated into Lead Case No. 08-29774-PGH. *See* Order [D.E. 34]. The "Quail West Debtors," and the last four digits of their respective tax identification numbers, are: (i) Ginn-LA Quail West Ltd., LLLP – 2397; (ii) Ginn-Quail West Beach, LLC – 9142; and (iii) Ginn-Quail West GP, LLC – 6313. *See* 11 U.S.C. § 342(c)(1).

<sup>3/</sup>Lubert-Adler is represented by Klehr Harrison and Berger Singerman in Adv. Pro. No. 10-02976-PGH. Berger Singerman previously represented the Debtors in connection with the initiation of these bankruptcy proceedings.

Although Lubert-Adler still has not yet produced a privilege log identifying the documents from the Debtors' legal files which have been withheld from turnover and production, Lubert-Adler insinuates in "Berger Singerman, P.A.'s Limited Response in Opposition" that they have withheld documents dating back to the *procurement* of the Credit Suisse loans in Q2-2006 pursuant to an alleged oral joint interest agreement, which they say was "memorialized" in the JDA. Even from the limited documents produced thus far, however, it is more than readily apparent that the "non-debtors" and the "debtors" they controlled did *not* have a "joint" or "common interest" in the procurement of the Credit Suisse loans, or in the subsequent "restructuring initiative" which purportedly "prompted" the entry of the JDA in May 2008. To the contrary, at all material times, the "non-debtors" were using the "debtors" as a vehicle to hinder, delay, and defraud creditors.

Supplemental Exhibit 1 is an email chain from May 2006 forwarding a near-final draft of a "Memo" from Lubert-Adler Partners, L.P. to the Lubert-Adler Fund III and IV Advisory Boards. It belies the notion that the "non-debtors" and "debtors" had a joint or common interest in the procurement of the loans. Rather, as indicated therein, the "objectives" of the transaction included:

- "The removal of all guarantee exposure to Bobby Ginn, Lubert-Adler Fund III and Lubert-Adler Fund IV," by "paying off all existing recourse debt" and replacing it with debt that was recourse only at the Project level; and
- "[The funding of] an immediate dividend" of more than \$325,000,000, which would enable (i) "[t]he immediate mitigation of *100% of the capital risk*, through the repayment of all invested equity and bridge fundings," and (ii) "the *harvesting of profits*" on an "accelerated" basis.

In addition, to make a bad situation worse, although the "Memo" expressed an "inten[t] to reserve [\$75,000,000] of otherwise distributable loan proceeds as a sort of contingency fund that could be used to 'balance' the loans in the event that the Projects collectively fail to perform as anticipated," *no* such reserve was ultimately taken. Instead, at a time when real estate markets were collapsing, Lubert-Adler "harvest[ed]" the entire \$75,000,000 for itself and the Fund III & IV Investors, leaving the Projects and their creditors with a virtual certainty of loss.

Supplemental Exhibits 2, 3, and 4 are examples of documents which belie the assertion that the “non-debtors” and “debtors” had “joint” or “common interest” at the time they entered the JDA. Indeed, they indicate the *opposite* is true. The “non-debtors” – and their respective principals – were actively engaged in an effort to protect themselves against claims which a successor to the “debtors” would be able to pursue in the contemplated bankruptcy proceeding.

In late April 2008, for instance, as it became harder for Ginn and Lubert-Adler to deny that they had, in fact, “doomed” the Projects “to failure,” the Ginn-LA C.F.O., John P. Klumph, sent an email to three Morris Manning partners, asking:

Would you gentlemen please check and see what *solvency certificates* I have signed for cs [*i.e.*, Credit Suisse] and if there may be *any individual liability* that could possibly accrue?

Cass, *indemnity agreements*.

“Cass” – a.k.a. Cassady V. Brewer – promptly replied, “Roger. I am escalating the subject (again),” and forwarded the email to “Sonny” Morris, with the preface:

John wants the Rob Gidel strength indemnity agreement. He has a normal indemnity agreement from [Ginn Development Company], but it is not guaranteed by Lubert-Adler like Rob’s. *I do not think we can duck this issue any longer.*

Supp. Ex. 2, Email Streams, 04/29/08.

Similarly, later that same year, Ginn-LA “restructuring” counsel strongly advised *against* any pre-packaged reorganization plan which did *not* include a formal “release” broad enough to cover a “fraudulent conveyance claim” relating to the Credit Suisse loan proceeds “dividend.” For, in counsel’s words: (A) the Borrowing Parties were “left insolvent by [the] dividend”; (B) a Trustee would, therefore, have a “fraudulent conveyance claim” with respect to the “dividend”; (C) “nonrecourse [does] not mean cannot sue”; and (D) Trustees can “file complaints that are *horrible*.” Supp. Ex. 3, Notes of Telephone Conference, 10/02/08.

Ultimately, however, Ginn and Lubert-Adler were unable to achieve a reorganization for the “Borrowing Parties” which included the desired “release,” forcing them to settle for the following provision in the Master Restructuring Agreement, designed to limit the claims which could be asserted against any recovery for fraudulent conveyances, etc.:

Waiver of Recovery Regarding Certain Bankruptcy Claims. . . . [I]n the event that the trustee of the Tesoro and/or Quail West bankruptcy estates is successful in pursuing actual or threatened litigation against any of the Borrower Released Parties or the Other Ginn/LA Released Parties, [Credit Suisse] and the [loan participants], on behalf of themselves and their respective heirs, executors, administrators, successors and assigns, hereby waive any right to receive any of the proceeds thereof arising from settlement, judgment or otherwise.

Supp. Ex. 4, MRA ¶ 3(f), 12/19/08.

\* \* \*

In short, the JDA was not the product of an “arms-length” transaction, and ought not be treated as such. It was part of a larger effort to defraud creditors, in contemplation of a bankruptcy proceeding, and should be treated accordingly.<sup>4/</sup>

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<sup>4/</sup>Indeed, *on its face*, the Ginn / Lubert-Adler JDA was *not* the product of an “arms-length” transaction. Between the JDA’s 17 listed “Parties,” there were but *two* signatories; and the same Ginn-LA representative who signed on behalf of the “non-debtor” parent companies also signed for the two “debtors.”

Dated: August 30, 2010

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.

Attorneys for Drew M. Dillworth,  
Chapter 7 Trustee of the Tesoro Debtors' Estates  
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Facsimile: (305) 789-3395

I hereby certify that I am admitted to the Bar of  
the United States District Court for the Southern District  
of Florida and I am in compliance with the additional  
qualifications to practice in this Court set forth in  
Local Rule 2090-1(A).

By: /s/ Harold D. Moorefield, Jr.  
HAROLD D. MOOREFIELD, JR.  
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## **SUPPLEMENTAL EXHIBIT NO. 1**



**Renee L'Eplattenier**

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**From:** Robert Rosenberg [rosenberg@LubertAdler.com]  
**Sent:** Monday, May 22, 2006 12:54 PM  
**To:** John G. Morris  
**Subject:** FW: Ginn/CSFB Financing

**Attachments:** Ginn CSFB for Advisory Boards v3.doc

**FILE COPY**



Ginn CSFB  
Advisory Board

Here is the current draft of the advisory board memo (including my newly created section on "risk factors". Please take a look at it and let us have some feedback. Thanks.

P.S. I forgot to ask: how did the party for your daughter turn out?

-----Original Message-----

**From:** Stuart Margulies  
**Sent:** Sunday, May 21, 2006 9:34 PM  
**To:** Robert Rosenberg  
**Cc:** Dean Adler; jgm@mmmlaw.com  
**Subject:** RE: Ginn/CSFB Financing

I thought it was very good. I have incorporated the additions. I need to update the numbers based on the CSFB Confidential Information Memorandum, which is in my office. I'll also update the scheduled distribution allocations based upon the most recent equity and preferred return balances. I'll have it done Monday morning.

Attached is a copy of the document with your comments added. Let's plan to talk in the morning.

-----Original Message-----

**From:** Robert Rosenberg  
**Sent:** Sunday, May 21, 2006 9:04 PM  
**To:** Stuart Margulies  
**Subject:** RE: Ginn/CSFB Financing

I noticed one or two minor errors in what I wrote, but I can fix them once you fold my stuff in and provide me with the revised document (which I hope will be tomorrow).

-----Original Message-----

**From:** Stuart Margulies  
**Sent:** Saturday, May 20, 2006 7:25 PM  
**To:** Robert Rosenberg  
**Subject:** Re: Ginn/CSFB Financing

My gut tells me no, but I'll have to check the term sheet. If we are short on any covenant test, I believe our only option would be to infuse capital.

When would you be available to talk tomorrow?

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Robert Rosenberg <rrosenberg@LubertAdler.com>

To: Stuart Margulies <smargulies@LubertAdler.com>

CC: jmorris@mmmlaw.com <jmorris@mmmlaw.com>

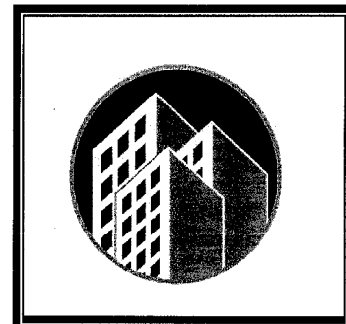
Sent: Sat May 20 18:54:39 2006

Subject: Ginn/CSFB Financing

Stuart-Do you recall whether the revolver can be drawn to provide funds with which to service and/or pay down the term facilities? Even if the revolver is theoretically available for such purposes, would we be permitted to draw on the revolver if we were out of compliance with our financial covenants at the time of the proposed drawing? Would we be inherently likely to be out of compliance with those covenants in a situation where our sales have fallen short of the mark-thereby making it necessary to "feed" the term loans? Is our only true cushion here the \$75MM of reserved proceeds?

# MEMO

DRAFT



To: Advisory Board – Lubert-Adler Fund III  
Advisory Board – Lubert-Adler Fund IV

From: Dean Adler, Stuart Margulies

Date: April 24, 2006

Re: Ginn Clubs and Resorts  
\$385,000,000 Senior Secured First Lien Term Loan Facility  
\$165,000,000 Senior Secured Synthetic Revolving Credit Facility  
\$125,000,000 Senior Secured Second Lien Term Loan Facility

## Executive Summary

Lubert-Adler and GDC develop amenitized residential resort communities aimed at the “Baby Boomer” second and retirement home markets. Since 1997, Lubert-Adler and GDC have invested in 23 residential resort communities that will total over 25,000 lots and condominiums when complete.

In each stage of the development, the JV is focused on managing risk in order to protect the downside, as well as positioning for upside opportunities. The JV seeks to generate its primary returns from the sale of real estate. GDC generates substantial income from the pre-sale of single family unimproved lots. Ginn sells directly to users/investors – not to homebuilders. The JV is able to close on lots prior to infrastructure and amenities because the JV posts performance bonds.

The JV has acquired each of the communities in separate entities, which are owned 80% by the investing Lubert-Adler Fund and 20% by Bobby Ginn. Lubert-Adler provides 100% of the investor capital, and receives a compounded priority return of 10% and its capital back prior to any distributions to Bobby Ginn.

Each investment partnership is capitalized separately. The JV has historically financed the horizontal infrastructure and amenities at each community via:

- 1) Lubert-Adler capital;
- 2) Lot pre-sales proceeds; and
- 3) Acquisition & horizontal development loan facilities, which are typically
  - a. Low loan-to-values
  - b. Secured by unsold real estate inventory and amenities;
  - c. Fully recourse to Bobby Ginn
  - d. Limited recourse (20%-50%) to the Lubert-Adler Funds

Lubert-Adler Partners, LP ♦ 2929 Arch Street ♦ 28<sup>th</sup> Floor ♦ Philadelphia ♦ PA ♦ 19104

(215) 972-2200 Business

(215) 972-2246 Fax

May 22, 2006

While the existing investment structure has allowed each Lubert-Adler Fund to invest and track its capital, and legally separate one property from another, it has been somewhat inefficient from a capitalization (debt/equity) standpoint. Because the "Company" is essentially a collection of stand-alone properties, the JV has not been able to take advantage of entity-level financing options, which would i) allow a more favorable debt/equity ratio; ii) fund a portion of predevelopment costs; and iii) reduce or eliminate recourse to the Funds and Bobby Ginn. Accordingly, Lubert-Adler is often faced with executing guarantees for acquisition-only financing and funding 100% of the ongoing permitting and development costs through lot sales. This often results in an over-funding of Lubert-Adler's capital commitments until lot sales are sufficient to fund ongoing costs.

The JV is negotiating with Credit Suisse Securities (USA) LLC for a pooled financing for five entitled communities. The pooled financing would necessitate the contribution of the ownership interests of five separately owned limited partnerships to a new entity, which would, in turn, own all five properties as one. Sales proceeds from any property would pay down the outstanding debt and provide funds to replenish a revolving loan facility to build the horizontal infrastructure and amenities at all of the communities. In other words, the properties will all be cross-collateralized.

The objectives of the pooled financing are threefold:

- 1) Eliminating loan guarantees by paying off all existing recourse debt
- 2) Providing a revolving credit facility to fund the horizontal development and amenity costs at each community; and
- 3) Mitigating capital risk through an immediate dividend of \$333,125,000, which would a) return all of the Lubert-Adler capital; and b) provide a reserve for potential future capital needs; and c) provided an earlier than anticipated profit distribution

The five properties include two Fund III investments, one which is shared equally between Funds III and IV, and two which are Fund IV investments. While the JV intends to continue tracking the revenues, costs and profitability of each of these investments separately, and target future distributions to each Fund based on the performance of each property under the original economics, any poorly performing properties would be supported by the other properties.

The five communities include:

Community	Location	Lubert-Adler Fund
<b>Tesoro</b>	Port St. Lucie, FL	III
<b>Hammock Beach River Club</b>	Flagler Beach, FL	III
<b>Quail West</b>	Naples, FL	III – 50% IV – 50%
<b>Laurelmor</b>	Boone, NC	IV
<b>Grand Bahama – West End</b>	Grand Bahama Island	IV

May 22, 2006

**The Properties**

The chart below contains some salient facts for each of the properties. The projected revenues, expenses and net values are based upon Ginn's estimate of the remaining revenues and costs to complete each community. A brief description of the status of each community appears on the following pages.

TO BE UPDATED MONDAY – CONFORM TO CSFB FINAL #'s

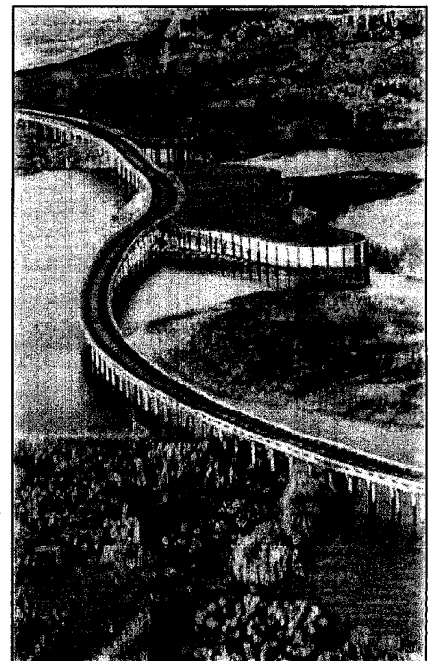
	<b>Tesoro</b>	<b>Quail West</b>	<b>River Club</b>	<b>Laurelmor</b>	<b>Grand Bahama</b>	<b>Total</b>
Acreage	1,400	1,180	2,053	6,000	1,957	12,590
# Lots	940	348	453	1,500	1,836	5,077
# Condos	100	-	-	300	4,396	4,796
Sales Commencement	2002	2005	2007	4Q2006	4Q2006	
Estimated Lot Sellout Date	2009	2008	2010	2010	2010	
Lots Closed	543	58	-	-	-	601
Unsold Lots	397	290	453	1,500	1,836	4,476
Estimated Avg. Lot Price	\$834,000	\$1,045,000	\$695,000	\$750,000	\$732,000	\$764,000
Total Projected Revenues	\$323 mm	\$273 mm	\$279 mm	\$1,009 mm	\$1,564 mm	\$3,449 mm
Total Projected Development Costs	\$148 mm	\$129 mm	\$184 mm	\$573 mm	\$961 mm	\$1,995 mm
Total Projected Net Value	\$175 mm	\$144 mm	\$95 mm	\$436 mm	\$603 mm	\$1,453 mm

**Tesoro**

- Private community and club on 1,400 acres in Port St. Lucie, FL
- Project planned for:
  - 940 single family lots and 100 condominiums
- Scheduled completion of Florida Turnpike Interchange in Q4 2006
  - 30 minutes to West Palm Beach
- 36 Signature golf holes – designed by Palmer and Watson
- Amenities including 60,000 sf clubhouse, beach club on nearby Hutchinson Island, spa/fitness, tennis, pools

**Status**

- 543 of 940 lots closed
- West side infrastructure and Palmer course complete
- East side infrastructure and Watson course underway
- Clubhouse under construction



May 22, 2006

**Quail West**

- Private community and club on 1,180 acres in Naples, Florida
- Project planned for:
  - 564 total homesites – JV acquired 348 unsold lots
- 36 Signature golf holes – designed by Arthur Hills
- Amenities including 70,000 sf clubhouse, restaurants, beach club, spa/fitness, tennis, pools

**Status**

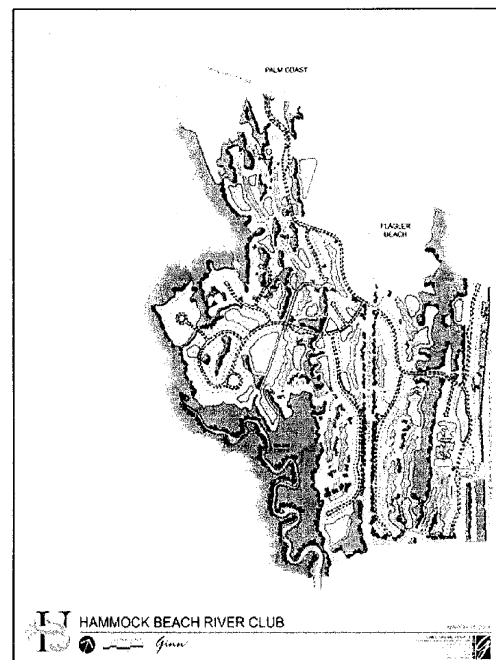
- 47 lots closed - \$40.6 mm
  - 13 lots under agreement for \$13.7 mm
  - 186 site-specific reservations for \$185.6 mm pending final plat recording
- All entitlements received
- Enhancements to clubhouse, golf and entryway to commence shortly
- Parcels acquired in Bonita Beach for a beach club and marina

**Hammock Beach River Club**

- Private club on 2,053 acres located along the Intracoastal Waterway in Flagler Beach, FL
- Project entitled and planned for 453 single family lots and 200,000 sf of commercial use along State Road 100
- 18-hole Fred Couples signature golf course
- All residents will have privilege of membership in The Club at Hammock Beach and use of all amenities
- Beautiful views of Inter Coastal waterway and Bulow Creek

**Status**

- Entitlements received from Flagler County during 4Q2005
- Permitting and platting ongoing
  - Water & environmental and final plats targeted 9/06
  - HUD registration planned 11/06
- Launch targeted for 1Q2007





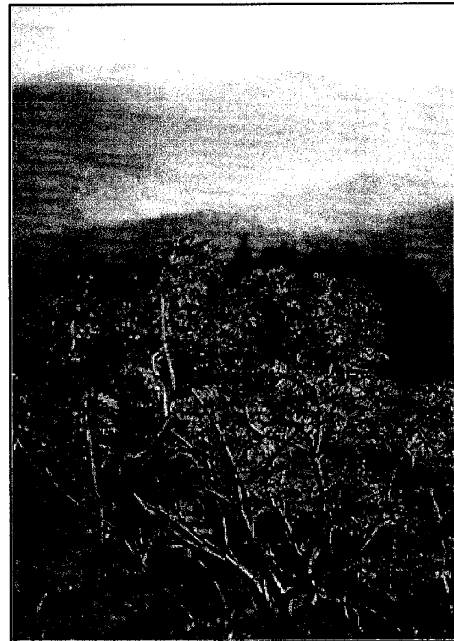
May 22, 2006

**Laurelmor**

- Private club on 6,000+ acres in the Blue Ridge Mountains of North Carolina, located off the Blue Ridge Parkway
- Project planned for:
  - 1,500 single family lots
  - 300 condominiums
- Amenities to include two golf courses, clubhouse, restaurants, indoor water park, swimming pavilion, spa/fitness, tennis, walking & biking trails, and equestrian

***Status***

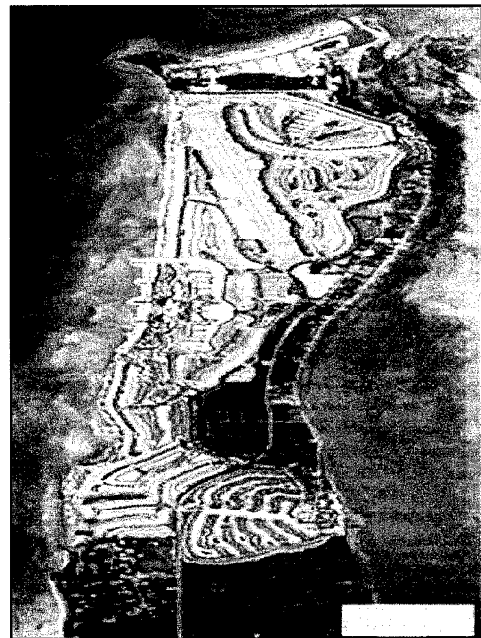
- Final plats for 75 lots, preliminary plats for 801 lots
- 72,000 lineal feet of temporary roadway constructed to support sales launch
- All utility agreements in hand. Utility installation to begin 2Q2006
- Ancillary properties being identified to enhance access and amenities, and support future development activities

**Grand Bahama – West End**

- 1,957 acres on the West End of Grand Bahamas Island
- Planned for exclusive resort less than 60 miles from the Florida coast
  - 1,850 lots
  - 4,400 condominiums
- Tax treaty with Bahamian government
- Amenities include two golf courses, private airport, water park, marinas, spa/fitness, casino, tennis and conference

***Status***

- Land clearing underway
- JV has requested the re-opening of the airstrip to support sales and development activities
- Summer 2006 sales event targeting 400 oceanfront and 2<sup>nd</sup> row lots
- Programming for resort amenities underway



May 22, 2006

**The Facilities**

TO BE UPDATED MONDAY – CONFORM TO CSFB FINAL #'s

Lubert-Adler Funds III and IV, and Ginn Clubs and Resorts, have obtained a term sheet from Credit Suisse Securities (USA) LLC, for three facilities totaling \$675,000,000. The proceeds of the loans made under the First Lien Facility and the Second Lien Facility, along with cash contributed by Borrower will be used by Borrower,

1. To repay certain existing indebtedness of Borrower in the approximate amount of \$160,000,000 (the “*Existing Debt*”);
2. To fund a one-time distribution in the approximate amount of \$333,125,000; and
3. To pay a portion of the development and construction costs associated with the completion of the projects commonly known as Quail West, Tesoro, Hammock Beach River Club, Laurelmor and Grand Bahama (West End), (collectively, the “*Projects*”).

The proceeds of loans made under the Revolving Facility will be used from time to time by Borrower to finance a portion of the development and construction costs associated with the Projects and to provide certain working capital for Borrower.

First Lien Facility - The First Lien Facility will mature on the date that is five (5) years after the Closing Date, and will amortize in equal quarterly installments in an aggregate annual amount equal to 1% of the original principal amount of the First Lien Facility with the balance payable on the maturity date of the First Lien Facility.

Revolving Facility - The Revolving Facility will mature and the commitments thereunder will terminate on the date that is five (5) years after the Closing Date.

Loans under the Facilities shall be prepaid with:

- a) 100% of Excess Cash Flow, it being understood and agreed that 100% of Excess Cash Flow will be used first to pay down any outstanding borrowings under the Revolving Facility and in the event that (i) all such borrowings have been repaid, (ii) 50% of the principal amount of the First Lien Facility has been repaid, (iii) Borrower has provided evidence of compliance with the financial covenants under the Facilities and (iv) there is an absence of defaults or events of default, then such amount of Excess Cash Flow required to be used to repay the Facilities will be reduced to 50%;
- b) 100% of the net cash proceeds of all asset sales or other dispositions of property by Borrower and its subsidiaries to the extent such net cash proceeds do not constitute Excess Cash Flow
- c) 100% of the net cash proceeds of any casualty or condemnation event;
- d) 100% of the net cash proceeds of issuances, offerings or placements of debt obligations of Borrower and its subsidiaries (subject to exceptions for permitted indebtedness to be agreed upon); and
- e) 50% of the net cash proceeds of issuances of equity securities of Borrower and its subsidiaries.

The mandatory prepayments shall be applied pro rata to any outstanding borrowings under the Revolving Facility, then to the remaining amortization payments under the First Lien Facility, and thereafter will be applied to repay the outstanding term loans under the Second Lien Facility.



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The interest rates under the Facilities will be as follows:

- If the Facilities shall have received a rating of Ba3 or higher from Moody's and BB- or higher from S&P, Adjusted LIBOR plus 2.75% or ABR plus 1.75% (ABR is the Alternate Base Rate, which is the higher of CS's Prime and the Fed Funds Effective Rate plus 1/2 of 1.0%).
- If the Facilities shall have received a rating of B1 or higher from Moody's and B+ or higher from S&P, Adjusted LIBOR plus 3.00 % or ABR plus 2.00%.

Commitment fees are 2.75% per annum if the Revolving Facility shall have received a rating of Ba3 or higher from Moody's and BB- or higher from S&P and 3.00% per annum if the Revolving Facility shall have received a rating of B1 or higher from Moody's and B+ or higher from S&P, in each case, on the undrawn portion of the commitments in respect of the Revolving Facility, payable quarterly in arrears after the Closing Date and upon the termination of the commitments, calculated based on the number of days elapsed in a 360-day year.

Selected financial covenants to be usual for facilities of this type (with financial definitions, levels and test periods to be agreed upon), including, without limitation: (a) LTV (maximum ratio of Total Debt to Appraised Value), (b) 1<sup>st</sup> Lien LTV (maximum ratio of First Lien Debt to Appraised Value), (c) Minimum Liquidity for Borrower and its subsidiaries, and (d) aggregate consolidated net indebtedness of Borrower and its subsidiaries shall not exceed amounts to be agreed upon.

### Proposed Uses of Funds

TO BE UPDATED MONDAY – CONFORM TO CURRENT EQUITY #S

The chart below summarizes equity commitments, targeted Lubert-Adler investment returns and the proposed allocation of proceeds from the CSFB financing:

	Tesoro	Quail West	Bulow	Laurelnor	Grand Bahama	Total
Equity Commitments (Aggregate)	17,156,058	25,000,000	20,000,000	25,000,000	50,000,000	137,156,058
Targeted Multiple	5.0	3.2	2.5	2.5	3.0	
Targeted Total Return	85,780,290	81,000,000	50,000,000	62,500,000	150,000,000	429,280,290
Realized to date	18,714,065	-	-	-	-	18,714,065
Balance to be received	67,066,225	81,000,000	50,000,000	62,500,000	150,000,000	410,566,225
Plus Bridge Return	55,737,554	3,074,924	7,039,220	30,831,633	824,774	97,508,106
Total remaining distributions	122,803,779	84,074,924	57,039,220	93,331,633	150,824,774	508,074,331
Targeted CSFB Distribution						
Fund III Equity	4,334,836	12,500,000	20,000,000			36,834,836
Fund III Bridge	55,737,554	1,537,462	7,039,220			64,314,236
Fund III Profit	36,282,058					36,282,058
Total to Fund III	96,354,448	14,037,462	27,039,220	-	-	137,431,130
Fund IV Equity		12,500,000		25,000,000	50,000,000	87,500,000
Fund IV Bridge		1,537,462		30,831,633	824,774	33,193,870
Fund IV Profit						-
Total to Fund IV	-	14,037,462	-	55,831,633	50,824,774	120,693,870
Total (excluding Preferred Returns)	96,354,448	28,074,924	27,039,220	55,831,633	50,824,774	258,125,000
% of Targeted Remaining Distributions	78.5%	33.4%	47.4%	59.8%	33.7%	50.8%
Total CSFB Dividend						333,125,000
Reserve for Development Needs or Future Dividends						75,000,000

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TO BE UPDATED MONDAY – CONFORM TO CURRENT EQUITY #'S

Of the \$333,125,000 in funds available for distribution, Lubert-Adler is proposing that \$258,125,000 be distributed to i) return all outstanding equity funded to each investment (total of \$124,334,836); ii) repay all bridge fundings (total of \$97,508,106), and distribute \$36,282,058 in profits to the most mature investment, Tesoro. Additionally, Lubert-Adler is proposing to hold \$75,000,000 in reserve, which would supplement the \$165,000,000 synthetic revolving facility, if needed. If development and sales activity occurs as projected, these funds will be distributed to the investors.

The proposed \$258,125,000 distribution results in:

- 1) The immediate mitigation of 100% of the capital risk, through the repayment of all invested equity and bridge fundings;
- 2) The removal of all guarantee exposure to Bobby Ginn, Lubert-Adler Fund III and Lubert-Adler Fund IV, because the facility is non recourse, thereby allowing the JV to pursue the harvesting of profits with no risk of capital loss;
- 3) Accelerated profit distributions to Fund III of \$36,282,000 on account of the investment in Tesoro; and
- 4) An identified source of funding for development and amenities of \$240 million (revolver plus developer reserve), which relieves Funds III and IV of potential future funding obligations for these investments.

### **Risk Factors**

In considering the proposed financing outlined above, careful consideration should be given to the following issues:

1. Lubert-Adler Funds III and IV will be asked to "pool" their respective investments in Tesoro, Hammock Beach River Club, Quail West, Laurelmor and Grand Bahamas-West End (collectively, the "Projects") so as to provide Credit Suisse with a package of cross-collateralized assets as security for its loans. From Credit Suisse's point of view, this cross-collateralization theoretically diversifies the risk of non-performance by the borrower--thereby making it feasible for Credit Suisse to extend more credit and provide better terms than would generally be available to the JV if each Project were financed individually. However, the principal risk of any cross-collateralized financing is that Project A (e.g., Tesoro), though highly successful on its own, could nevertheless be lost to foreclosure in the event that Project B (e.g., Laurelmor) or Project C (e.g., Grand Bahamas-West End) do not perform well, thereby causing the Credit Suisse loan to go into default. This risk is potentially heightened where--as is the case here--some projects (e.g., Tesoro) are more nearly completed than others (e.g., Laurelmor and Grand Bahamas-West End). Moreover, each of the Projects, taken individually, will have a somewhat different risk profile at the closing of the loans: for example, Tesoro has no remaining entitlement risk, while Grand Bahamas-West

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End is still in the process of obtaining many of its entitlements. The loans have been underwritten to assume that the Projects will perform in accordance with the projections annexed hereto as Exhibit A (the "Projections"). Although Lubert-Adler and GDC believe that the Projections are realistic and can be achieved, there can be no assurance that the Projects will in fact perform in accordance with the Projections. It is also possible that sales will occur at the projected volumes and prices for each Project but at a different (or more erratic) pace than what is forecast in the Projections. In either event, it is possible that the borrower will be unable to remain in compliance with the various financial covenants set forth in the loan documents. As noted above, Lubert-Adler intends to reserve [\$75MM] of otherwise distributable loan proceeds as a sort of contingency fund that could be used to "balance" the loans in the event that the Projects collectively fail to perform as anticipated. However, there can be no assurance that [\$75MM] will be sufficient to provide complete protection for all such contingencies, and, if sales do not keep pace with the Projections, it may become necessary for the JV to infuse additional capital into the borrower in order to avoid a loan default.

2. If the Projects continue to be developed separately, the owner of each Project will be free to evaluate whether to invest more capital in that particular Project or let it go--solely on the merits of that particular Project. Once the Projects have become part of a cross-collateralized mortgage pool, the common owner of Project A and Project B will, to some degree, be forced to support Project A (performing poorly) in order to protect its equity in Project B (performing well).
3. From Credit Suisse's perspective, there will be one common financing secured by a lien for the full amount of the aggregate borrowing against each of the Projects. Functionally speaking, this means that cash generated by, e.g., Tesoro in a particular quarter could be used, in its entirety, to repay the Credit Suisse loans, without regard to the fact that no other Project produced any revenues--or repaid any of the Credit Suisse debt--in that quarter. However, Lubert-Adler intends, for its own internal accounting purposes, to treat each Project as a "stand-alone" development, such that each Project will be deemed to have financial responsibility only for its allocable share of the overall borrowing. That allocable share will be directly related to the percentage of loan proceeds which is allocated, at closing, on account of each Project. In the event that a particular Project (e.g., Tesoro) contributes disproportionately to the repayment of the loans (e.g., Tesoro "owes" 19% of the aggregate loan amount, based upon its receipt of 19% of the original loan proceeds at closing, but contributes 25% to the repayment of the loans), the "excess" payment made to Credit Suisse by such Project (in this example, Tesoro) shall be deemed to have been made for the benefit of the other Projects and, as such, will be treated, for JV accounting purposes, as an interest-bearing loan to such other Projects (in ratable proportion to the imputed benefit conferred upon each such other Project). In essence, Lubert-Adler will be keeping a running account of "due to's" and "due from's" as

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between the different Projects. However, there can be no assurance that the "debtor" Projects will eventually be able to fully repay their "debts" to the "creditor" Projects, and, in such event, the "creditor" Projects, though successful in their own right, will ultimately be dependent upon the eventual success of the "debtor" Projects to insure that the full profit actually earned, in real time, by such "creditor" Projects is in fact received by the investors in such Projects. In practical terms, the investors in the successful "creditor" Projects could end up with investment risk attributable to the "debtor" Projects.

4. Lubert-Adler believes that all of the Projects will be benefited by the cross-collateralized Credit Suisse financing. However, the percentage of loan proceeds which is allocated to each Project will not be based upon a "fairness" opinion or a current fair market appraisal of each Project. Accordingly, the investors in each Project must make a determination as to whether the perceived benefits to that Project from the proposed financing will, on balance, be proportionate to the potential risks assumed by that Project.
5. The Credit Suisse loan documents will not provide for any "tax distributions". All sale proceeds achieved by each Project (net of pre-agreed transaction costs) will have to be used to repay the then outstanding Credit Suisse loan. If a Project realizes taxable income from the sale of its property, it will not be permitted to use related sale proceeds to pay such liability. In that event, the investors in the Project that owes the tax will have to pay such liability with extrinsic funds.

There are risks associated with the continuing development of each Project on a separate, "stand-alone" basis. Among other things, it is clear, based upon Lubert-Adler's ongoing efforts to finance each of the Projects separately, that a "pooled" financing will offer immediate economic advantages (e.g., greater loan proceeds, better terms) that cannot be achieved if the Projects are to be financed on a "one-off" basis. However, a "pooled" or cross-collateralized financing carries with it a variety of new risks, as outlined above. After considering the pros and cons of the proposed financing with Credit Suisse, Lubert-Adler is of the opinion that the incremental risks associated with such a financing will be outweighed by the incremental benefits to each Project.

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**Conclusion**

Lubert-Adler and GDC have built a world-class organization and residential resort business. The business has been built through the hard work and dedication of Bobby Ginn and his employees, and facilitated through the capital commitments of the investors in the Lubert-Adler Funds. While each investment has been separately underwritten and capitalized, the ultimate success of each is tied to the fortunes of the company as a whole – the successes of earlier developments enhance the Ginn brand for the benefit of all current and future communities.

It is vitally important that Lubert-Adler, as a fiduciary for its investors, ensure that it assists GDC in appropriately planning and capitalizing the developments – matching prospective uses of funds with sources of funds (both Lubert-Adler Fund capital and third party debt) in a way that minimizes risk. With this prospective facility, which entails tying together five properties in two Funds, Lubert-Adler believes that it has not only accomplished this goal, but done so in a way which eliminates the risk of capital through the return of all equity and bridge outstanding.

Accordingly, Lubert-Adler recommends that the Advisory Boards of Funds III and IV approve this transaction.

## **SUPPLEMENTAL EXHIBIT NO. 2**

## Cassady V. Brewer

**From:** Cassady V. Brewer  
**Sent:** Tuesday, April 29, 2008 6:44 PM  
**To:** Klumph, John; Bruce A. Wobeck; Douglas D. Selph  
**Subject:** RE: Solvency certificate

Roger. I am escalating the subject (again).

**From:** Klumph, John [mailto:jkumph@ginncompany.com]  
**Sent:** Tuesday, April 29, 2008 6:37 PM  
**To:** Bruce A. Wobeck; Douglas D. Selph  
**Cc:** Cassady V. Brewer  
**Subject:** Solvency certificate

Would you gentlemen please check and see what solvency certificates I have signed for cs and if there may be any individual liability that could possibly accrue?

Cass, indemnity agreements.

4/29/2008

MMMTQW01\_026618

## Cassady V. Brewer

**From:** Cassady V. Brewer  
**Sent:** Tuesday, April 29, 2008 6:41 PM  
**To:** John G. Morris  
**Subject:** FW: Solvency certificate

See below. John wants the Rob Gidel strength indemnity agreement. He has a normal indemnity agreement from GDC, but it is not guaranteed by Lubert-Adler like Rob's. I do not think we can duck this issue any longer. Let me know your thoughts when you can.

**From:** Klumph, John [mailto:jklumph@ginncompany.com]  
**Sent:** Tuesday, April 29, 2008 6:37 PM  
**To:** Bruce A. Wobeck; Douglas D. Selph  
**Cc:** Cassady V. Brewer  
**Subject:** Solvency certificate

Would you gentlemen please check and see what solvency certificates I have signed for cs and if there may be any individual liability that could possibly accrue?

Cass, indemnity agreements.

4/29/2008

MMMTQW01\_026619



## **SUPPLEMENTAL EXHIBIT NO. 3**

10/2/08

~~Handwritten scribbles~~ JW Josh

## Reason concerned about release

- nonrecourse not mean can not sue
- fraudulent conveyance claim aft. LA + ~~GRG~~  
X on dividend  
co left insolvent by dividend
- transfers of property

File complaints that are horrible

↓ K+E says do not do w/o release

Pick to meet w/ Dean @ 11

UN

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## Funding

Oct health insurance QW 50K Tesoro 30-40

## **SUPPLEMENTAL EXHIBIT NO. 4**

EXECUTION VERSION

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**MASTER RESTRUCTURING AGREEMENT**

**DATED AS OF December 19, 2008**

**Among**

**GINN-LA CS BORROWER, LLC  
and  
GINN-LA CONDUIT LENDER, INC.  
collectively, as the Borrowers,**

**THE FULL RECOURSE BORROWER PARTIES,  
LIMITED RECOURSE BORROWER PARTIES AND  
OTHER GINN/LA PARTIES LISTED HEREIN**

**THE LENDERS,**

**and**

**CREDIT SUISSE, CAYMAN ISLANDS BRANCH  
as Administrative Agent and Collateral Agent**

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**IN CONNECTION WITH THE EXISTING  
\$525,000,000 SENIOR FIRST LIEN CREDIT FACILITY**

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## EXECUTION VERSION

## MASTER RESTRUCTURING AGREEMENT

This MASTER RESTRUCTURING AGREEMENT, dated as of December 19, 2008 (this "Agreement"), is made and entered into by and among GINN-LA CS BORROWER, LLC, a Delaware limited liability company ("CS Borrower") and GINN-LA CONDUIT LENDER, INC., a Delaware corporation ("Conduit Borrower") and together with CS Borrower, collectively, the "Borrowers", each of the entities listed on Schedule 1 attached hereto and incorporated herein (such entities together with the Borrowers, the "Full Recourse Borrower Parties" and each, including the Borrowers, a "Full Recourse Borrower Party"), each of the entities listed on Schedule 2 attached hereto and incorporated herein (such entities, the "Limited Recourse Borrower Parties"; the Limited Recourse Borrower Parties together with the full Recourse Borrower Parties are hereinafter referred to as the "Borrower Parties," and each, a "Borrower Party"), each of the entities listed on Schedule 3 attached hereto and incorporated herein (such entities, the "Other Ginn/LA Parties"; the Other Ginn/LA Parties, together with the Borrower Parties, the "Ginn/LA Parties"), and CREDIT SUISSE, CAYMAN ISLANDS BRANCH, as administrative agent for the Lenders (as defined below) and as collateral agent for the Lenders (the "Agent").

WHEREAS, the Borrowers, the lenders that are parties thereto from time to time (the "Lenders") and the Agent entered into that certain First Lien Credit Agreement, dated as of June 8, 2006 (the "Original Credit Agreement"), as amended pursuant to that certain Waiver and Amendment to First Lien Credit Agreement, executed as of April 30, 2007, but effective as of April 15, 2007 (the "First Amendment"); that certain Second Waiver and Amendment to First Lien Credit Agreement, executed as of June 28, 2007, but effective as of July 20, 2007 (the "Second Amendment"); that certain Waiver to First Lien Credit Agreement, executed as of April 18, 2008, but effective as of April 14, 2008 (the "Waiver"); and that certain Third Amendment to First Lien Credit Agreement, executed as of September 8, 2008, but effective as of September 10, 2008 (the "Third Amendment," and together with the Original Credit Agreement, the First Amendment, the Second Amendment and the Waiver, as the same may be further amended, restated, extended, modified or otherwise supplemented from time to time, the "Credit Agreement").

WHEREAS, the Agent, the Borrowers and certain other Borrower Parties signatory thereto entered into that certain prenegotiation letter agreement, dated as of June 24, 2008 (the "Prenegotiation Agreement") to memorialize certain agreements among such parties.

WHEREAS, the Borrower Parties, the Agent and the Requisite Lenders signatories thereto entered into that certain Acknowledgment and Forbearance Agreement, dated as of June 30, 2008 (the "Original Forbearance Agreement"), as amended by that certain First Amendment to Acknowledgment and Forbearance Agreement, dated as of July 28, 2008 (the "First Amendment to Forbearance Agreement"), and that certain Second Amendment to Acknowledgment and Forbearance Agreement, dated as of September 8, 2008 (the "Second Amendment to Forbearance Agreement," and together with the Original Forbearance Agreement and the First Amendment to Forbearance Agreement, the "Forbearance Agreement") to memorialize certain agreements with respect to certain defaults by the Borrowers under the Credit Agreement.

WHEREAS, each of the Borrower Parties has made the covenants, representations and warranties made by it herein as a material inducement for Agent and the Requisite Lenders to enter into this Agreement.

WHEREAS, the Requisite Lenders who are signatories to this Agreement have approved this Agreement pursuant to Section 9.5 of the Credit Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the parties hereto agree as follows.

1. Definitions. A glossary of capitalized terms defined herein is attached hereto as Exhibit A. Capitalized terms used herein and not defined shall have the meanings provided in the Credit Agreement.

2. Reaffirmation of Loan Documents.

(a) Agent, the Lenders and the Borrower Parties acknowledge and agree that this Agreement and the Forbearance Agreement are each a "Loan Document" for all purposes. Each Borrower Party hereby: (a) reaffirms and acknowledges all of the terms and provisions of the Loan Documents to which it is a party and such Borrower Party's obligations under the Loan Documents to which it is a party and (b) represents and warrants to Agent that the Loan Documents to which it is a party are in full force and effect, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws of general application affecting the enforcement of creditors' rights or general equitable principles (whether applied in law or equity). Each Full Recourse Borrower Party hereby reaffirms and acknowledges the obligations to pay, when due, all principal, interest and fees and on demand, all expenses, including, without limitation, reasonable, documented attorneys' fees and expenses of the Agent and each Lender and all reasonable, documented costs and expenses arising out of or relating to the hiring of third party consultants, financial advisors and other consultants retained by the Agent (i) incurred in connection with the exercise of Agent's and such Lender's duties under the Loan Documents and the preparation, negotiation, execution and delivery of this Agreement and amendments and waivers under the Loan Documents, (ii) incurred in the enforcement or attempted enforcement of this Agreement and any of the Loan Documents or in preserving any of Agent's or such Lender's rights and remedies, including, without limitation, all such fees and expenses incurred in connection with any modification, "workout" or other restructuring affecting the Loan Documents or any bankruptcy or similar proceeding involving, among others, the Borrower Parties or any of their affiliates, and (iii) as otherwise provided in the Credit Agreement and the other Loan Documents. The Full Recourse Borrower Parties further acknowledge and agree that all such costs and expenses incurred but unreimbursed as of the date of this Agreement constitute Obligations under the Credit Agreement.

(b) Notwithstanding any provision of the Credit Agreement, the Prenegotiation Agreement, the Forbearance Agreement or any of the Loan Documents to the contrary, and except as expressly provided in Section 10(d)(iii), each party to this Agreement shall be responsible for any and all expenses incurred by such party in connection with negotiations and documentation relating to this Agreement, including, without limitation, the

fees and expenses incurred by any advisor retained by the respective parties in connection with negotiations concerning this Agreement. The failure by any of the Borrower Parties or the Other Ginn/LA Parties to pay any of the costs and expenses described in the Credit Agreement, Prenegotiation Agreement, Forbearance Agreement or any other Loan Document that may otherwise be due and owing notwithstanding the parties' agreement, shall not constitute a Default or Event of Default hereunder or under the Credit Agreement, Prenegotiation Agreement, Forbearance Agreement or any other Loan Document. Notwithstanding the foregoing, the Borrower Parties acknowledge and agree that all such costs and expenses incurred by the Agent and the Lenders constitute Obligations under the Credit Agreement.

### 3. Waiver and Release.

(a) Waiver by Borrower Parties. The Borrower Parties hereby waive any and all defenses, affirmative defenses, counterclaims, claims, causes or action, setoffs or other rights that any of them may have in connection with the obligations of the Borrower Parties under the Loan Documents and the exercise of any remedies by the Agent and/or the Lenders as a result of any and all Defaults or Events of Default under the Credit Agreement and/or the other Loan Documents (the "Borrower Parties Waivers"); provided that the foregoing shall not limit the rights of the Borrower Parties to enforce the Restructuring Documents in accordance with their respective terms. The Borrower Parties shall not contest or raise any defenses, affirmative defenses, counterclaims, claims, causes or action, setoffs or other rights against or in connection with any action, proceeding, foreclosure enforcement action or other exercise of remedies by the Agent and/or the Lenders in connection with the Loan or the Loan Documents; provided that the foregoing shall not limit the rights of the Borrower Parties to enforce the Restructuring Documents in accordance with their respective terms. Notwithstanding the Borrower Parties Waivers, the Borrower Parties do not waive, and expressly reserve, any and all defenses any of them may have in connection with (i) that certain Subsidiary Guaranty dated June 8, 2006 with respect to rights and obligations of Ginn-LA Laurel Creek Ltd., LLP, Ginn-Laurel Creek GP, LLC and Tesoro Beach Club Condominium, LLC thereunder, (ii) that certain Security Agreement dated June 8, 2006 with respect to rights and obligations of Ginn-LA Laurel Creek Ltd., LLLP, Ginn-Laurel Creek GP, LLC and Tesoro Beach Club Condominium, LLC thereunder, and (iii) that certain Pledge Agreement dated June 8, 2006 with respect to the rights and obligations of CS Borrower and Ginn-Laurel Creek GP, LLC related to their interests in Ginn-LA Laurel Creek Ltd., LLLP and Ginn-Laurel Creek GP, LLC.

(b) Waiver by Other Ginn/LA Parties. The Other Ginn/LA Parties hereby waive any and all claims or causes or action that any of them may have in connection with the obligations of the Borrower Parties under the Loan Documents and the exercise of any remedies by the Agent and/or the Lenders as a result of any and all Defaults or Events of Default under the Credit Agreement; provided that the foregoing shall not limit the rights of the Other Ginn/LA Parties to enforce the Restructuring Documents in accordance with their respective terms. The Other Ginn/LA Parties shall not contest or raise any claims or causes or action against or in connection with any action, proceeding, foreclosure enforcement action or other exercise of remedies by the Agent and/or the Lenders in connection with the Loan or the Loan Documents; provided that the foregoing shall not limit the rights of the Other Ginn/LA Parties to enforce the Restructuring Documents in accordance with their respective terms.



(c) Release by Ginn/LA Parties. Each of the Ginn/LA Parties, for themselves and their respective heirs, executors, administrators, successors and assigns, hereby remises, releases and forever discharges each of Agent and the Lenders and their respective officers, directors, principals, shareholders, affiliates, agents, employees, legal representatives, successors and assigns from and against any and all actions, causes of action, suits, debts, covenants, contracts, damages, judgments, claims and demands whatsoever, whether at law, in equity or otherwise, including, without limitation, claims of Agent or lender liability arising up to and including the date hereof with respect to or arising out of the Credit Agreement and/or the other Loan Documents.

(d) Release of Borrower Parties by Lenders. Conditioned upon the occurrence of and effective as of the Effective Date, the Agent and the Lenders, for themselves and their respective heirs, executors, administrators, successors and assigns, hereby remise, release and forever discharge the Borrower Parties, their Affiliates, and each of their respective officers, directors, principals, shareholders, partners, members, affiliates, agents, employees, legal representatives, successors and assigns (the "Borrower Released Parties") from and against any and all actions, causes of action, suits, debts, covenants, contracts, damages, judgments, claims and demands whatsoever, whether at law, in equity or otherwise with respect to, arising out of or related to the Credit Agreement and/or Loan Documents (the "Borrower Parties Released Claims"); provided, however, that Borrower Parties Released Claims shall not include (and shall expressly exclude) any actions, causes of action, suits, debts, covenants, contracts, damages, judgments, claims and demands whatsoever, whether at law, in equity or otherwise with respect to or arising out of (A) any and all obligations of the Borrower Parties under this Agreement and all agreements contemplated hereby or (B) the Credit Agreement and/or the Loan Documents (i) in connection with the Lenders' rights to receive payment in full of all Obligations due thereunder (and none of the security interests created by the Loan Documents shall be released or terminated, or deemed to be released or terminated, on account of this paragraph unless and until such Obligations have been paid in full, except as otherwise expressly provided in this Agreement); or (ii) arising solely on account of actual fraud or gross negligence. Notwithstanding the foregoing, if, following commencement of the Tesoro and Quail West Bankruptcy Cases, any of the Borrower Parties and their respective Affiliates and any of their respective officers, directors, principals, shareholders, partners, members, affiliates, agents, employees, legal representatives, successors and assigns take any action seeking to dismiss or convert any of the Tesoro and Quail West Bankruptcy Cases to a case or cases under Chapter 11, then this release shall be null and void and of no further force or effect. In addition, if any of the Borrower Parties and their respective Affiliates and any of their respective officers, directors, principals, shareholders, partners, members, affiliates, agents, employees, legal representatives, successors and assigns withdraw their consent to, or object to or take any action to dismiss or oppose the Equity Foreclosure Proceedings and/or a foreclosure of the Conduit Loan Documents, then this release shall be null and void and of no further force or effect.

(e) Release of Other Ginn/LA Parties by Lenders. Conditioned upon the occurrence of and effective as of the Effective Date, the Agent and the Lenders, for themselves and their respective heirs, executors, administrators, successors and assigns, releases the Other Ginn/LA Parties, their Affiliates, and each of their respective officers, directors, principals, shareholders, partners, members, affiliates, agents, employees, legal representatives, successors and assigns (the "Other Ginn/LA Released Parties") from and against any and all actions, causes



of action, suits, debts, covenants, contracts, damages, judgments, claims and demands whatsoever, whether at law, in equity or otherwise with respect to, arising out of or related to the Credit Agreement and/or the Loan Documents (the "Other Ginn/LA Parties Released Claims"); provided, however, that Other Ginn/LA Parties Released Claims shall not include (and shall expressly exclude) any actions, causes of action, suits, debts, covenants, contracts, damages, judgments, claims and demands whatsoever, whether at law, in equity or otherwise with respect to or arising out of (A) any and all obligations of the Other Ginn/LA Parties under this Agreement and all agreements contemplated hereby, including, without limitation, the Restated Sur Mer Development Agreements and the Sur Mer Guaranties or (B) the Credit Agreement and/or Loan Documents arising solely on account of actual fraud or gross negligence. Notwithstanding the foregoing, if, following commencement of the Tesoro and Quail West Bankruptcy Cases, any of the Other Ginn/LA Parties and their respective Affiliates and any of their respective officers, directors, principals, shareholders, partners, members, affiliates, agents, employees, legal representatives, successors and assigns take any action seeking to dismiss or convert any of the Tesoro and Quail West Bankruptcy Cases to a case or cases under Chapter 11, then this release shall be null and void and of no further force or effect. In addition, if any of the Other Ginn/LA Parties and their respective Affiliates and any of their respective officers, directors, principals, shareholders, partners, members, affiliates, agents, employees, legal representatives, successors and assigns withdraw their consent to, or object to or take any action to dismiss or oppose the Equity Foreclosure Proceedings and/or a foreclosure of the Conduit Loan Documents, then this release shall be null and void and of no further force or effect.

(f) Waiver of Recovery Regarding Certain Bankruptcy Claims. In connection with the Agent's and the Lenders' release of the Borrower Parties Released Claims and the Other Ginn/LA Parties Released Claims as provided in Sections 3(d) and (e) above, in the event that the trustee of the Tesoro and/or Quail West bankruptcy estates is successful in pursuing any actual or threatened litigation against any of the Borrower Released Parties or the Other Ginn/LA Released Parties, the Agent and the Lenders, on behalf of themselves and their respective heirs, executors, administrators, successors and assigns, hereby waive any right to receive any of the proceeds thereof arising from settlement, judgment or otherwise.

(g) Action Not a Default. The Agent, the Lenders and the Borrowers hereby agree that notwithstanding anything in the Credit Agreement or any other Loan Document, none of the actions required to be taken by the Ginn/LA Parties hereunder will constitute a Default or Event of Default or violate any provision of any Loan Document.

(h) Limited Recourse Obligations. Except to the extent specifically provided herein, no provision of this Agreement, including without limitation Sections 2 and 3, shall be construed in any way to expand upon the limited nature of the obligations, if any, of the Limited Recourse Borrower Parties or the Other Ginn/LA Parties.

4. No Lender Funding of Expenses. Notwithstanding anything to the contrary contained in the Forbearance Agreement, the Credit Agreement or any of the other Loan Documents, but without limiting any right of the Borrowers to receive a credit against the Laurelmor Release Payment pursuant to Section 11 hereof, Agent and the Lenders shall have no obligation to reimburse or otherwise provide funding to any of the Borrower Parties with respect

to any costs or expenses incurred in connection with the ownership, development, operation or maintenance of any of the Projects or otherwise in connection with their respective businesses.

5. Evidence of Payment of Accounts Payable. On or concurrently with the execution and delivery of this Agreement, the Borrowers shall provide the Agent with evidence acceptable to the Agent of the payment of payables which have been paid by the Borrower Parties since the date of Second Amendment to Forbearance Agreement.

6. Other Financial Covenants; Financial Reporting. Within sixty (60) days after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter of any Fiscal Year) commencing with the Fiscal Quarter ending December 31, 2008, each of Ginn-LA OBB Ltd., LLLP and the Sur Mer Guarantor shall provide the Agent with its unaudited balance sheet as of the end of such Fiscal Quarter and the related unaudited statement of operations and unaudited statement of cash flows for such Fiscal Quarter, all prepared in accordance with GAAP (excluding percentage completion and other normal adjustments done in connection with the year end process). Within one hundred twenty (120) days after the end of each Fiscal Year, each of Ginn-LA OBB Ltd., LLLP and the Sur Mer Guarantor shall provide the Agent with its respective reviewed balance sheet as of the end of such Fiscal Year and the related reviewed statement of operations and audited statement of cash flows for such Fiscal Year, all prepared in accordance with GAAP.

7. HUD Registrations. The Borrowers shall provide, at the Borrower Parties' expense, all cooperation and information (a) reasonably requested by the Agent to ascertain the status of West End's compliance with the requirements of the Department of Housing and Urban Development ("HUD") regarding registration of the Sur Mer Project, and (b) required to reinstate and/or amend the HUD registrations for the Sur Mer Project in favor of the Agent or its designee. The Agent shall not require the Borrower Parties to take any further action with respect to the HUD registrations for the Laurelmor, Tesoro and Quail West Projects.

8. Intentionally Omitted.

9. Communications with Homeowners and Club Members. The Agent shall have the right to approve the format and substance of all communications by the Borrower Parties with any homeowners and/or club members regarding the Sur Mer, Tesoro and Quail West Projects. Without limiting the foregoing, the Borrower Parties shall provide the Agent with not less than three (3) Business Days' notice of all meetings with any homeowners and/or club members regarding a Project and an opportunity to attend and participate in any such meetings. In addition, the Borrower Parties shall provide the Agent with copies of any correspondence with any homeowners and/or club members regarding any of such Projects promptly after receipt or delivery thereof, and shall inform the Agent of the substance of any oral communications with any homeowners and/or club members regarding any of such Projects promptly after the occurrence thereof. Notwithstanding the foregoing, nothing herein is intended to, shall result in or otherwise suggest that the Borrower Parties have any obligation or duty to communicate with any homeowners and/or club members regarding the Tesoro Project or the Quail West Project from and after the filing of the Tesoro and Quail West Bankruptcy Cases.

10. Covenants and Agreements Regarding the Sur Mer Project.

(a) Uncontested Transfer of Conduit Loan; Release of Lien; Uncontested Judicial Foreclosure; Release of Lots.

(i) The Conduit Loan and the interest of Conduit Borrower under the Conduit Loan Documents was assigned and transferred to Agent under Bahamian law pursuant to that certain Transfer of Supplemental Debenture, dated as of June 9, 2006, between Conduit Borrower and Agent. To effectuate the full and absolute transfer of Conduit Borrower's interest in the Conduit Loan and Conduit Loan Documents in furtherance of that certain Collateral Assignment of Mortgage and Note, dated as of June 8, 2006, by and between Conduit Borrower and Agent, concurrently herewith Conduit Borrower shall execute and deliver an assignment in the form of Exhibit C attached hereto (the "Conduit Loan New York Law Assignment"). Upon execution and delivery to the Agent of the Conduit Loan New York Law Assignment, the sum of \$61,350,814.40 (the unpaid principal amount of the Conduit Loan as of December 17, 2008) will be credited against the Loans as a result of such transfer.

(ii) Upon the conveyance of the West End Contributed Land to Bahamian Newco and the issuance of the 60% equity interest in the Joint Venture to Sur Mer Designee in accordance with Section 10(b), the West End Contributed Land shall be released from the lien of the Conduit Loan Documents.

(iii) The Agent, in its sole and absolute discretion and at any time after the earlier to occur of (a) the Initial Transfer and (b) the Initial Transfer Approval Deadline, may elect to cause all of the Collateral comprising or relating to the Sur Mer Project (except the West End Contributed Land if and only if the Joint Venture Approvals are obtained and the West End Contributed Land is transferred to Bahamian Newco as provided in Section 10(b)) (the "Sur Mer Collateral") to be transferred and conveyed to one or more Persons designated by the Agent pursuant to judicial foreclosure proceedings (and any other applicable actions and proceedings necessary or desirable to effectuate such result that are approved by Agent in its sole and absolute discretion) in the courts of the Bahamas under the applicable Conduit Loan Documents and Applicable Laws (collectively, the "Conduit Loan Foreclosure Proceedings"). Each of the Borrower Parties hereby agrees that it shall not contest any such Conduit Loan Foreclosure Proceeding or raise any defenses, affirmative defenses, counterclaims, claims, causes or action, setoffs or other right that any Borrower Party may have in connection with any such Conduit Loan Foreclosure Proceedings. Each of the Borrower Parties further agrees that it shall assist and cooperate with the Agent to effectuate such transfer of the Sur Mer Collateral, including, without limitation, by filing any consents in support of the Conduit Loan Foreclosure Proceedings requested by the Agent, all without any cost or expense to the Agent or any of the Lenders. In furtherance and without limitation of the foregoing, (A) concurrently herewith West End and/or its counsel shall execute and deliver an Application for Foreclosure Absolute by Consent and an Order by Consent for Foreclosure

Absolute in the forms of Exhibits D-1 and D-2 attached hereto (the "Conduit Loan Consent to Foreclosure"), which West End agrees may be submitted to the court in connection with the Conduit Loan Foreclosure Proceedings, (B) the Borrower Parties hereby acknowledge that in such event Agent intends to file a foreclosure complaint and other related foreclosure documents in substantially the respective forms attached hereto as Exhibits D-3 and D-4 (the "Conduit Loan Foreclosure Documents"), and (C) the Borrower Parties hereby approve the Conduit Loan Foreclosure Documents, agree that they will not oppose or contest the Conduit Loan Foreclosure Documents or take any action or make any filing inconsistent therewith and agree to execute and deliver to Agent any written consent or other evidence of the foregoing agreements as Agent may reasonably request. The Borrower Parties agree that the commencement of the Conduit Loan Foreclosure Proceedings shall not constitute an election of remedies by the Agent, and that Agent shall not be subject to any one action rule or election of remedies law or rule, and the Borrower Parties hereby waive any right of appraisal or fair value adjustment in connection with the Conduit Loan Foreclosure Proceedings.

(iv) Concurrently herewith, the Agent and the Lenders shall execute and deliver into escrow with Title Associates one or more releases in recordable form of all liens and claims on the lots within the Sur Mer Project described on Schedule 7-3 attached hereto pursuant to a partial release of debenture in the form of Exhibit E attached hereto. Said lot releases shall not become effective until, and shall be released from said escrow only upon, the occurrence of the Effective Date.

(b) Joint Venture.

(i) As soon as possible following the date hereof, but subject to obtaining the Initial Transfer Approvals, the entire real property owned by OBB and currently designated for development as the East Side Golf Course as described on Exhibit F attached hereto and shown on Exhibit G attached hereto (the "OBB Contributed Land") shall be transferred to Ginn-LA West End, Limited, a Bahamian International Business Company ("West End," and such transfer, the "Initial Transfer"). OBB shall use its best efforts to obtain all governmental approvals required for the Initial Transfer (the "Initial Transfer Approvals"). All costs and expenses of the Initial Transfer, including the cost of obtaining the Initial Transfer Approvals and all stamp taxes (if any), shall be borne by OBB. In the event any of the Initial Transfer Approvals are not obtained on or before April 30, 2009 (the "Initial Transfer Approval Deadline"), OBB and/or Sur Mer Guarantor shall pay to the Lenders \$5,000,000 by wire transfer of immediately available funds (the "Initial Transfer Breakup Fee") on May 1, 2009. In such event and upon payment of the Initial Transfer Breakup Fee, the parties shall have no further obligation to pursue the transactions or approvals described below in this Section 10(b).

(ii) As soon as possible following the completion of the Initial Transfer and the Equity Foreclosure Proceedings, but subject to obtaining the JV



Approvals, West End, as agent for OBB shall transfer the OBB Contributed Land to the newly formed Bahamian company described in Section 10(b)(iii) below ("Bahamian Newco"). Concurrently therewith, but subject to obtaining the JV Approvals, West End, as agent for the Sur Mer Designee, shall transfer a portion of the property owned by West End located on the east side of the Sur Mer Project which is currently platted as single family lots and related uses as shown on Exhibit G attached hereto (the "West End Contributed Land") and, together with the OBB Contributed Land, the "JV Land") to Bahamian Newco. The transfer of the JV Land to Bahamian Newco shall be subject to the receipt of all governmental approvals required for (x) Bahamian Newco to own the JV Land and (y) the Joint Venture to own Bahamian Newco (such approvals, collectively, the "JV Approvals").

(iii) Bahamian Newco shall be formed pursuant to a memorandum and articles of association in the forms of Exhibit H attached hereto. All of the equity interests in Bahamian Newco shall be owned by a newly formed Delaware limited liability company (the "Joint Venture"), which Joint Venture shall own 60% by a designee of Agent ("Sur Mer Designee") and 40% by a designee of OBB (such percentages, the "Ownership Percentages"). The Joint Venture shall be formed pursuant to a limited liability company agreement in the form of Exhibit I attached hereto.

(iv) OBB and West End shall use their best efforts to obtain the JV Approvals. All costs and expenses directly related to obtaining the JV Approvals, the formation of the Joint Venture and the issuance of the interests in the Joint Venture to Sur Mer Designee and a designee of OBB, together with all stamp taxes (if any) in connection with the transfer of the JV Land to the Bahamian Newco, shall be shared by the designee of OBB and the Sur Mer Designee in accordance with their respective Ownership Percentages.

(v) If any of the JV Approvals are not obtained on or before February 28, 2010 (the "JV Approval Deadline"), OBB shall have the option to repurchase the OBB Contributed Land from West End (the "Repurchase Option") upon the payment to the Agent, or to West End if the Equity Foreclosure Proceeding has been completed, of \$5,000,000 by wire transfer of immediately available funds (the "Option Payment"). The Repurchase Option must be exercised, if at all, by delivery to Agent and West End of written notice of such exercise of the Repurchase Option (an "Exercise Notice") and payment of the Option Payment to Agent or West End (as applicable) by not later than April 30, 2010 (the "Option Exercise Deadline"). Upon such the delivery of the Exercise Notice and payment of the Option Payment, OBB shall be permitted to record the Exercise Notice in the Registry of Records for The Bahamas (the "Official Records"). The parties acknowledge that the conveyance of the OBB Contributed Land from West End to OBB shall be subject to receipt of any applicable Bahamian regulatory approvals, and West End agrees to file promptly all necessary applications to effectuate the Repurchase Option promptly after receipt of the Exercise Notice. The parties agree that promptly following the receipt of

such approvals West End shall convey the OBB Contributed Land to OBB, for no additional consideration other than the Option Payment, pursuant to documentation in the same form as the documents used for the Initial Transfer. If such approvals are not obtained on or before October 31, 2010 (the "Outside Closing Date"), then (A) the Repurchase Option shall terminate and be of no further force or effect, and (B) the Agent or West End (as applicable) shall be entitled to retain the Option Payment. Promptly following the Initial Transfer, a memorandum evidencing the Repurchase Option will be recorded in the Official Records, and West End promptly shall execute the same upon request by OBB; provided, however, that West End shall have no obligation to execute any such memorandum, and no such memorandum shall be recorded, unless the same contains a self-operative provision that the Repurchase Option and memorandum thereof shall automatically terminate and be of no further force or effect if (1) an Exercise Notice is not recorded in the Official Records on or before the Option Exercise Deadline, or (2) if an Exercise Notice is recorded in the Official Records on or before the Option Exercise Deadline, then if a deed conveying the OBB Contributed Land to OBB is not recorded in the Official Records on or before the Outside Closing Date. From and after the date of the Initial Transfer, West End shall not cause or permit any new mortgage lien or any other material encumbrance to encumber the OBB Contributed Land without the prior written consent of OBB, which consent shall not be unreasonably withheld, conditioned or delayed.

(vi) The Borrower Parties and Mr. Bobby Ginn shall provide full cooperation in effectuating the transactions described above in this Section 10(b). Such cooperation shall include, without limitation, meeting and negotiating with the Bahamian government in an effort to obtain (i) the approvals and permits for the transactions contemplated herein, (ii) stamp tax waivers or reductions, and (iii) approval of the Bahamian government to extend the provisions of the Heads of Agreement ("HOA") to the JV Land and for the Bahamian Newco and Sur Mer Designee to be recognized as developers under the HOA.

(c) Equity Foreclosure. Lubert-Adler Fund IV, Ginn-West End GP, LLC ("West End GP") and ERG Enterprises, LP (collectively, "West End Pledgors") shall consent to a foreclosure of 100% of the equity and other beneficial ownership interests in Ginn-LA West End Ltd., LLLP ("West End LLLP") and West End GP (such interests in West End LLLP and West End GP, the "West End Equity Interests"), the upper-tier parent of West End, to a designee of Agent ("West End Designee") pursuant to a judicial foreclosure proceeding (and any other applicable actions and proceedings necessary or desirable to effectuate such result that are approved by Agent in its sole and absolute discretion) conducted in the courts of the State of New York under the applicable Loan Documents and Applicable Laws (collectively, the "Equity Foreclosure Proceedings"). Agent agrees that the Equity Foreclosure Proceedings shall not be commenced until the earlier to occur of (a) the Initial Transfer and (b) the Initial Transfer Approval Deadline. Each of the Borrower Parties and West End Pledgors hereby agrees that it shall not contest any such Equity Foreclosure Proceeding or raise any defenses, affirmative defenses, counterclaims, claims, causes or action, setoffs or other right that any Borrower Party

or West End Pledgor may have in connection with any such Equity Foreclosure Proceedings. Each of the Borrower Parties and West End Pledgors further agrees that it shall assist and cooperate with the Agent to effectuate such foreclosure of the West End Equity Interests, including by executing and filing any consents, affidavits and/or stipulations in support of the Equity Foreclosure Proceedings as may be reasonably requested and prepared by the Agent and delivered to the Borrower Parties and/or West End Pledgors for execution; provided, however, that the Borrower Parties shall not be required to incur any third party costs or expenses in connection therewith other than any costs and expenses of their own legal counsel. In furtherance and without limitation of the foregoing, (A) concurrently herewith the West End Pledgors shall execute and deliver an affidavit in the form of Exhibit J-1 attached hereto (the "Equity Consent to Foreclosure"), which each of the West End Pledgors agrees may be submitted to the court in connection with the Conduit Loan Foreclosure Proceedings, (B) the Borrower Parties and West End Pledgors hereby acknowledge that Agent intends to file a foreclosure complaint in substantially the form attached hereto as Exhibit J-2 (the "Equity Foreclosure Documents"), and (C) the Borrower Parties and West End Pledgors hereby approve the Equity Foreclosure Documents, agree that they will not oppose or contest the Equity Foreclosure Documents or take any action or make any filing inconsistent therewith, and agree to execute and deliver to Agent any written consent or other evidence of the foregoing agreements as Agent may reasonably request. Upon the conclusion of a foreclosure sale process conducted pursuant to the Equity Foreclosure Proceedings, a sum equal to the greater of (i) \$53,000,000, and (ii) the proceeds of such foreclosure sale net of costs and expenses of the foreclosure sale and any amounts awarded by the court to any party other than Agent, will be credited against the Loans. The Borrower Parties and West End Pledgors agree that the commencement of the Equity Foreclosure Proceedings shall not constitute an election of remedies by the Agent, and that Agent shall not be subject to any one action rule or election of remedies law or rule, and the Borrower Parties and West End Pledgors hereby waive any right of appraisal or fair value adjustment in connection with the Equity Foreclosure Proceedings. In connection with the Equity Foreclosure Proceedings, the Borrower Parties and West End Pledgors hereby waive any requirement that the Agent seek a deficiency judgment and acknowledge and agree that any failure by the Agent to seek such deficiency judgment against any of the Borrower Parties or the West End Pledgors shall not constitute a waiver of any rights of the Agent or the Lenders under the Loan Documents; provided, however that notwithstanding the foregoing, the Agent and Lenders agree not to seek or obtain a deficiency judgment against Lubert-Adler Fund III and/or Lubert-Adler Fund IV in connection with the Equity Foreclosure Proceedings.

(d) Completion of Infrastructure, Golf Course and Utility Improvements.

OBB covenants and agrees that certain infrastructure, utility and golf course improvements at the Sur Mer Project (the "Sur Mer Development Work") shall be completed and funded as provided in this Section 10(d).

(i) Concurrently herewith, the existing agreements listed on Schedule 4 attached hereto (the "Existing Sur Mer Development Agreements") shall be amended and restated pursuant to agreements in the respective forms attached hereto as Exhibits K-1 to K-3 (the "Restated Sur Mer Development Agreements") in order to (1) clarify and detail the work to be undertaken by OBB within the existing scope of the Sur Mer Development Work as described in the Existing Sur Mer Development Agreements, (2) amend the Existing Sur Mer

Guaranties as provided in Section 10(d)(vi) below, and (3) cause the obligations of the parties to the Existing Sur Mer Development Agreements pursuant thereto to be direct contractual obligations of such parties in favor of, and directly enforceable by, the Agent, all as more particularly provided in, and in accordance with the terms and conditions of, the Restated Sur Mer Development Agreements. In addition, concurrently herewith, that certain Omnibus Recognition and Construction Draw Agreement, dated as of July 20, 2007, by and among certain of the Ginn/LA Parties, the Agent, Deutsche Bank Trust Company Americas, Inspection & Valuation International, Inc. ("IVI"), and certain other parties (as amended, the "Omnibus Agreement") shall be amended pursuant to an agreement in the form attached hereto as Exhibit K-4 in order to (x) replace IVI with Boyken International, Inc. as the "Consultant" under the Omnibus Agreement and (y) acknowledge that the Restated Sur Mer Development Agreements are contemplated and included within the scope of the Omnibus Agreement.

(ii) The Infrastructure Development Agreement and the Golf Course Development Agreement each contain a budget for the applicable Sur Mer Development Work (each a "Sur Mer Development Budget"). West End, OBB and the Agent agree that attached hereto as Exhibit L-1 is a budget for the Soft Costs relating to the Infrastructure Work and the Golf Course Work which is to be incurred after the date of this Agreement (the "Soft Costs Budget"). The Borrower Parties, OBB and the Agent further agree that attached hereto as Exhibit L-2 is detailed hard and soft cost budget for completion of the work required pursuant to the Utility Services Agreement (the "Utility Budget"). The Soft Costs Budget and the Utility Budget shall be deemed a Sur Mer Development Budget. The Agent shall have the right to approve, in its sole and absolute discretion, any (A) change proposed by OBB in the scope of the Sur Mer Development Work, (B) decrease in the Sur Mer Development Budget that could reasonably be expected to diminish the scope or quality of the Sur Mer Development Work, or (C) increase in a Sur Mer Development Budget (unless the Sur Mer Guarantor executes and delivers an amendment to the applicable Sur Mer Guaranty providing for a corresponding increase in the guarantee limit thereunder, in form and substance acceptable to the Agent).

(iii) OBB shall pay the engineering, surveying, consultant (including cost of oversight work by any consultant of Lenders), inspectors and architectural cost necessary to undertake and complete the Sur Mer Development Work, security costs relating to the portion of the Sur Mer Project on which the Sur Mer Development Work occurs, garbage removal for garbage created by the Sur Mer Development Work and beach cleaning (collective, the "Soft Costs") relating to the Sur Mer Development Work in accordance with the Soft Costs Budget. OBB shall utilize the escrowed funds held pursuant to the Soft Costs Escrow Agreement to pay the Soft Costs and upon depletion of such escrowed funds, shall utilize its own funds to pay the Soft Costs. Sur Mer Guarantor shall guarantee OBB's obligation under this Section 10(d)(iii) to pay Soft Costs as provided in Section 10(d)(vi).



(iv) The Infrastructure Costs incurred in connection with the performance of the Infrastructure Work and the Golf Course Costs incurred in connection with the performance of the Golf Course Work shall be funded from the applicable security established pursuant to the applicable Existing Sur Mer Development Agreements and the Omnibus Agreement, subject to and in accordance with the terms thereof. Any hard costs necessary to complete the Infrastructure Work or Golf Course Work in excess of amounts available under the security established pursuant to the applicable Existing Sur Mer Development Agreements for such hard costs shall be funded pursuant to and as limited by the applicable Sur Mer Guaranty.

(v) Until the earlier to occur of (A) the receipt of the JV Approvals and the transfer of the JV Land to Bahamian Newco, and (B) the Initial Transfer Approval Deadline, OBB shall pay all taxes and insurance relating to the property that will be subject to the lien of the Conduit Loan Documents following the Effective Date of this Agreement and shall pay all taxes and insurance with respect to the OBB Contributed Land.

(vi) As a material inducement for the Agent and the Lenders to enter into this Agreement, (a) the existing guaranties listed on Schedule 5 attached hereto (the "Existing Sur Mer Guaranties") shall be amended pursuant to amendments in the respective forms attached hereto as Exhibits M-1 to M-2 attached hereto and (b) Sur Mer Guarantor shall execute and deliver to West End a guarantee of payment of all Soft Costs necessary to complete the Infrastructure Work and Golf Course Work in the form attached hereto as Exhibit M-3 (such amendments together with the Existing Sur Mer Guaranties, and the guarantee of such Soft Costs are collectively referred to as the "Sur Mer Guaranty"), pursuant to which the Sur Mer Guarantor shall guarantee the payment of all hard and soft costs necessary to complete the Infrastructure Work and Golf Course Work in accordance with the applicable Restated Sur Mer Development Agreements, as and to the extent provided in the Sur Mer Guaranty.

(e) Master Covenant Agreement. West End and OBB shall cooperate in good faith to amend the Declaration of Covenants, Conditions and Restrictions for Versailles Sur Mer (the "Sur Mer Master Covenant Agreement"), and cause such amendment to be recorded in the applicable real property records, as reasonably requested by the Agent and the Lenders in order to, among other things, provide guaranteed access rights to common infrastructure and amenities and provide development restrictions for all Committed Property, Club Property, Airport Property and Heliport Property (as such terms are defined in the Sur Mer Master Covenant Agreement) that are consistent with the development restrictions currently contained in the Sur Mer Master Covenant Agreement.

(f) Development Matters. The Agent, the Lenders and the Borrower Ginn/LA Parties acknowledge and agree that the Sur Mer Project is in the development stage and therefore it is desirable to address certain ongoing development matters prior to the completion of the Joint Venture and related transactions contemplated by this Section 10. Simultaneously with the execution of this Agreement, the Agent shall execute and deliver to West End a consent and

subordination to certain plats and re-plats of the Sur Mer Project in the form attached hereto as Exhibit Z. West End shall have the right to record such consent and subordination in the Official Records. The Agent and the Ginn/LA Parties further agree to cooperate in good faith regarding such additional development-related consents, subordinations and other agreements as the parties may determine are necessary or advisable in connection with the Sur Mer Project ("Sur Mer Development Matters"). In furtherance thereof, the Agent and the Ginn/LA Parties agree to use good faith efforts to review promptly and to respond diligently and in good faith to any Sur Mer Development Matters presented by the other party, and, to the extent that agreement is reached regarding such Sur Mer Development Matters, promptly to execute and deliver the same.

11. Covenants and Agreements Regarding the Laurelmor Project. Within three (3) Business Days after the date of this Agreement, Borrowers shall pay to the Lenders \$12,300,000 by wire transfer of immediately available funds (the "Laurelmor Release Payment"). The arrangement and sources of funding for the Laurelmor Release Payment shall be the sole responsibility of the Borrower Parties. Concurrently with the payment of the Laurelmor Release Payment, Agent shall execute and deliver to Borrowers a release of the Laurelmor Collateral from the lien of the Laurelmor Deed of Trust and the other Loan Documents in the forms of Exhibits O-1 and O-2 attached hereto. Conditioned and effective upon the receipt by the Lenders of Laurelmor Release Payment, Agent hereby consents to the conveyance of the Laurelmor Collateral to Borrowers' designee.

12. Covenants and Agreements Regarding the Tesoro Project.

(a) Chapter 7 Bankruptcy Proceeding. Borrowers have informed Agent that voluntary Chapter 7 bankruptcy cases will be commenced with respect to the Tesoro Debtors in the Bankruptcy Court ( the "Tesoro Bankruptcy Proceedings") within three (3) Business Days after the date of this Agreement by the filing of the documents listed on Schedule 6 attached hereto and in the respective forms of Exhibits P-1 through P-8 attached hereto and such other documents required to be filed therewith under the applicable federal and local rules of practice and procedure, which documents shall be in form and substance acceptable to Agent (all of the foregoing, collectively, the "Tesoro Bankruptcy Documents"). Following the initiation of the Tesoro Bankruptcy Proceedings, the Tesoro Debtors shall thereafter diligently and in good faith carry out their duties as chapter 7 debtors.

(b) Home Lot Releases. Concurrently herewith, the Agent and the Lenders shall execute and deliver into escrow with Title Associates one or more releases in recordable form of all liens and claims on the lots within the Tesoro Project described on Schedule 7-1 attached hereto pursuant to a partial release of mortgage in the form of Exhibit Q attached hereto. Said lot releases shall not become effective until, and shall be released from said escrow only upon, the occurrence of the Effective Date.

(c) Tesoro Beach Club Condominium. Conditioned upon the occurrence of and effective upon the Effective Date, Agent and the Lenders hereby consent to the transfer by Tesoro Beach Club Condos of the beach club property described on Exhibit R attached hereto (the "Tesoro Beach Club Property") to a designee of Tesoro Beach Club Condos, free and clear of all claims, liens and encumbrances of the Agent and the Lenders pursuant to the Loan

Documents. Agent and Lenders hereby acknowledge and confirm that they have no further right, claim or interest in the Beach Club Property or any interest therein or proceeds therefrom.

(d) Palmer Golf Course.

(i) As a material inducement for Agent and the Lenders to enter into this Agreement and for the Agent's designee ("Tesoro Designee") to assume the Textron Loan, concurrently herewith Palmer Golf Course Owner shall transfer and convey to Tesoro Designee, for no additional consideration, (x) the real property commonly known as the Palmer Golf Course property and more particularly described on Exhibit S attached hereto (the "Palmer Golf Course"), pursuant to a special warranty deed in the form attached hereto as Exhibit T-1 (the "Palmer Golf Course Deed") and (y) all right, title and interest of Palmer Golf Course Owner or any of its Affiliates in and to all personal property owned or leased by Palmer Golf Course Owner or any of its Affiliates in connection with the Palmer Golf Course, to the extent transferable, pursuant to a bill of sale and general assignment in the form attached hereto as Exhibit T-2 (the "Palmer Golf Course Bill of Sale"), in each case subject to the lien of the Textron Loan Documents. Concurrently herewith, Palmer Golf Course Owner, as transferor, and Agent or Tesoro Designee, as transferee, shall enter into an agreement of purchase and sale in the form attached hereto as Exhibit T-3 (the "Palmer Golf Course Sale Agreement") providing for the transactions contemplated by this Section 12(c) in more detail, including, without limitation, the making by Palmer Golf Course Owner of certain representations, warranties and covenants with respect to the Palmer Golf Course Owner and the Palmer Golf Course and the execution and delivery of other customary closing documents, all as more particularly provided in, and in accordance with the terms and conditions of Palmer Golf Course Sale Agreement. Tesoro Club Owner hereby waives any non-compliance by Palmer Golf Course Owner with the terms and conditions of the right of first refusal set forth in Section 8.1 of the Tesoro Club Lease in connection with the transfer and conveyance of the Palmer Golf Course to Tesoro Designee as contemplated by this Section 12(d).

(ii) The Borrower Parties and Mr. Bobby Ginn, at such parties' cost and expense, shall cooperate with Agent and Tesoro Designee to obtain from Textron (1) the written consent of Textron to such transfer and conveyance, which consent shall include, without limitation, a waiver of the due-on-sale clause contained in the Textron Loan Documents with respect to the transfer described in this Section 12(d), and (2) a mortgagee estoppel certificate from Textron. In the event that a waiver of such due-on-sale clause is not obtained from Textron, Tesoro Designee shall indemnify Bobby Ginn for any payments made by Bobby Ginn pursuant to the guaranty of the Textron Loan made by Mr. Bobby Ginn arising from the conveyance of the Palmer Golf Course to Tesoro Designee or from any occurrence after the effective date of such conveyance, as more particularly provided in the Palmer Golf Course Sale Agreement.

13. Covenants and Agreements Regarding the Quail West Project.

(a) Chapter 7 Bankruptcy Proceeding. Borrowers have informed Agent that voluntary Chapter 7 bankruptcy cases will be commenced with respect to the Quail West Debtors in the Bankruptcy Court ( the "Quail West Bankruptcy Proceedings") within three (3) Business Days after the date of this Agreement by the filing of the documents listed on Schedule 8 attached hereto and in the respective forms of Exhibits U-1 through U-8 attached hereto and such other documents required to be filed therewith under the applicable federal and local rules of practice and procedure, which documents shall be in form and substance acceptable to Agent (all of the foregoing, collectively, the "Quail West Bankruptcy Documents"). Following the initiation of the Quail West Proceedings, the Quail West Debtors shall thereafter diligently and in good faith carry out their duties as chapter 7 debtors.

(b) Home Lot Releases. Concurrently herewith, the Agent and the Lenders shall execute and deliver into escrow with Title Associates one or more releases in recordable form of all liens and claims on the lots within the Quail West Project described on Schedule 7-2 attached hereto pursuant to a partial release of mortgage in the form of Exhibit V attached hereto. Said lot releases shall not become effective until, and shall be released from said escrow only upon, the occurrence of the Effective Date.

14. Conditions Precedent. The Agent's and the Requisite Lenders' execution and delivery of this Agreement, and the effectiveness of this Agreement, shall be expressly conditioned upon the satisfaction of the following conditions, each of which may be waived by the Agent in its sole and absolute discretion (except for the condition set forth in Section 14(m), which may only be waived by the mutual agreement of the Agent and the Borrowers, each in its sole and absolute discretion):

(a) No Defaults. No Default or Event of Default shall have occurred and be continuing other than the Specified Events of Default, any event contemplated by this Agreement which would constitute a Default or Event of Default, and any Default or Event of Default that does not materially and adversely impact the benefits to the Agent and the Lenders to be derived from this Agreement or the value of the Collateral that is part of the Sur Mer Project.

(b) Representations and Warranties. All representations and warranties in this Agreement, the Credit Agreement and the other Loan Documents shall be true, correct and complete in all material respects to the best knowledge of each applicable Borrower Party (except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects on and as of such earlier date), other than, without duplication, (i) the Specified Events of Default and any existing Default or Event of Default that does not materially and adversely impact the benefits to the Agent and the Lenders to be derived from this Agreement or the value of the Collateral that is part of the Sur Mer Project, (ii) the representations and warranties in Sections 4.16 and 4.31 of the Credit Agreement, (iii) the representations and warranties in Sections 4.25 and 4.33 of the Credit Agreement to the extent that such representations and warranties relate to the Second Lien Loan Documents with respect to the Specified Events of Default and any existing Default or Event of Default that does not materially and adversely impact the benefits to the Agent and the Lenders to be derived from this Agreement or the value

of the Collateral that is part of the Sur Mer Project, and (iv) any representations and warranties in Sections 4.34, 4.35 and 4.36 of the Credit Agreement relating to the Project Projections, to the extent that the Project Projections address the utilities, licenses and entitlements described in Sections 4.34, 4.35 and/or 4.36 of the Credit Agreement. The Borrower Parties shall promptly notify the Agent in the event any Borrower Party obtains knowledge or receives notice of any breach of any representation or warranty made by such Borrower Party in the Credit Agreement, the Loan Documents or this Agreement.

(c) Delivery of Closing Documents.

(i) The applicable Ginn/LA Parties shall have executed, acknowledged (where applicable), and delivered to Agent on behalf of the Lenders each of the agreements listed on Schedule 9-1 attached hereto.

(ii) The documents listed on Schedule 9-2 attached hereto shall have been duly executed and delivered by all applicable parties thereto, shall be in full force and effect, and copies thereof shall have been delivered to Agent on behalf of the Lenders.

(d) Accounts Payable. The Borrowers shall have provided Agent with the evidence of payments required under Section 5.

(e) Palmer Golf Course. Palmer Golf Course Owner shall have performed each of its obligations specified in Section 12(d)(i) of this Agreement and each of its obligations under the Palmer Golf Course Agreement required in accordance with its terms to be satisfied on or before the closing date thereunder.

(f) Sur Mer Transactions.

(i) Conduit Borrower shall have delivered to Agent the Conduit Loan New York Law Assignment in accordance with Section 10(a)(i).

(ii) West End shall have delivered to Agent the Conduit Loan Consent to Foreclosure in accordance with Section 10(a)(iii).

(iii) The Joint Venture shall have been formed and the Ownership Interests shall have been issued to Sur Mer Designee and OBB in accordance with Section 10(b).

(iv) West End Pledgors shall have delivered to Agent the Equity Consent to Foreclosure in accordance with Section 10(c).

(g) Laurelmor Release Payment. The Lenders shall have received the Laurelmor Release Payment.

(h) Tesoro Bankruptcy Proceeding. The Tesoro Bankruptcy Documents shall have been properly filed in the Bankruptcy Court.



(i) Quail West Bankruptcy Proceeding. The Quail West Bankruptcy Documents shall have been properly filed in the Bankruptcy Court.

(j) Opinions. The Agent shall have received opinions from counsel to the Ginn/LA Parties reasonably acceptable to the Agent as to the enforceability of this Agreement and all other agreements to be executed and delivered by any Ginn/LA Party pursuant hereto, and such other matters regarding the Ginn/LA Parties and the transactions contemplated hereby as the Agent may reasonably require, all in form and substance reasonably acceptable to the Agent.

(k) Evidence of Due Authorization. The Agent shall have received with respect to each of the Ginn/LA Parties copies of organizational documents, resolutions and such other evidence as the Agent may require of the due execution and delivery of this Agreement and all other agreements to be executed and delivered by any Ginn/LA Party pursuant hereto, all in form and substance acceptable to the Agent.

(l) Evidence of Resignation of Club Officers and Directors. The Agent shall have received evidence reasonably satisfactory to the Agent of the resignation, effective on or before the Effective Date, of (x) each representative to the boards of directors of Tesoro POA, Tesoro Club Owner and Quail West POA nominated by a Borrower Party, and (y) each of the officers of the Tesoro POA, Tesoro Club Owner and Quail West POA.

(m) Consent of Second Lien Lenders. The consent of the requisite lenders under the Second Lien Credit Agreement shall have been obtained.

15. Representations and Warranties. Each of the Borrower Parties hereby represents and warrants (on its own behalf and not on behalf of any other Borrower Party) to the Agent and the Lenders as follows:

(a) Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by the Borrower Parties, and this Agreement constitutes the legal, valid and binding obligation of the Borrower Parties, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting the enforcement of creditors' rights generally and by equitable principles (whether at law or in equity). By execution hereof, each Person signing on behalf of each Borrower Party hereby represents and warrants that such Person is fully authorized to act on behalf of such Borrower Party with respect to the Loans and to execute this Agreement on behalf of such Borrower Party.

(b) Formation; Good Standing. Each Borrower Party is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction under which it was organized with full power to execute and deliver this Agreement and perform the obligations and transactions contemplated by this Agreement.

(c) No Conflicts. The execution, delivery and performance of this Agreement by the Borrower Parties does not and will not contravene or conflict with (i) any law, order, rule, regulation, writ, injunction or decree now in effect of any government, governmental instrumentality or court having jurisdiction over any of the Borrower Parties, or (ii) subject to

receipt of the consent of Textron to the conveyance of the Palmer Golf Course, any contractual restriction binding on or affecting any of the Borrower Parties' respective property or assets.

(d) Actions, Investigations and Proceedings. Except as set forth on Schedule 10 attached hereto and incorporated herein, there is no action, proceeding or investigation pending or, to the knowledge of the Borrower Parties, threatened or affecting any Borrower Party which may materially and adversely affect the ability of the Borrower Parties to fulfill or otherwise satisfy or perform their undertakings or obligations under this Agreement or the Loan Documents.

(e) No Claims, Offsets or Defenses. The Full Recourse Borrower Parties have no claims, offsets or defenses to the payment in full of the indebtedness and other amounts due under the Loan Documents. The Borrower Parties have no defenses to (i) the enforcement of any of the obligations of the Borrower Parties under the Loan Documents or (ii) the enforcement of any of the rights or remedies of Lenders under the Loan Documents.

(f) No Events of Default. No Default or Event of Default has occurred and is continuing other than the Specified Events of Default and any Default or Event of Default that does not materially and adversely impact the benefits to the Agent and the Lenders to be derived from this Agreement or the value of the Collateral that is part of the Sur Mer Project.

(g) Organizational Structure. The charts attached hereto as Exhibits W-1 through W-22 are true and correct depictions of the organizational structure of each of the Ginn/LA Parties.

(h) Textron Loan Documents. Attached hereto as Exhibit X are a true, correct and complete copies of the Textron Loan Documents.

(i) Tesoro Clubhouse FF&E and Inventory. Attached hereto as Schedule 11 is a true, correct and complete list, in all material respects, of all furniture, fixtures, equipment and inventory comprising, located in or about, or otherwise used in connection with the Tesoro Project clubhouse. All of the property listed on such Schedule 11 is Collateral for the Obligations and is subject to the lien of the applicable Collateral Documents or is being conveyed to Tesoro Designee pursuant to the Palmer Golf Course Bill of Sale. Except for the leases described on Schedule 11-1 attached hereto, the Tesoro Club Owner owns good and valid title to all of the property listed on such Schedule 11, and no other Person has any interest therein (other than Agent and the Lenders).

(j) Cash on Hand, Accounts Payable. (A) Attached hereto as Schedule 12-1 is a true, correct and complete schedule of all accounts payable related to the Projects and/or the Full Recourse Borrower Parties which have been paid by the Borrower Parties since the date of the Second Amendment to Forbearance Agreement; (B) Attached hereto as Schedule 12-2 is a true, correct and complete schedule of all cash on hand with respect to each of the Projects and the Full Recourse Borrower Parties as of the date of this Agreement; (C) Attached hereto as Schedule 12-3 is a true, correct and complete schedule of all accounts payable related to the Projects and/or the Full Recourse Borrower Parties accrued and invoiced through and including the date of this Agreement; (D) attached hereto as Schedule 12-4 is a true, correct and complete



itemized description of all accounts payable related to the Projects and/or the Full Recourse Borrower Parties accrued through and including the date of this Agreement but not invoiced as of such date, together with the Borrowers' good faith estimate of the accrued amount for each item (having made due inquiry through and including the date of this Agreement, provided that, for items where the Borrowers had no other reasonable basis for such estimate, such items have been estimated based on three month averages for similar expenses), in each case other than the Excluded Payables (as defined in the Second Amendment to Forbearance Agreement) and all expenses owing under the Loan Documents.

(k) Financial Statements. The financial statements of the Sur Mer Guarantor, West End LLLP, West End, Ginn-LA International Business Company, Ltd. and the Palmer Golf Course Owner described on Exhibit Y have been delivered to the Agent and are true, correct and complete in all material respects. None of the Sur Mer Guarantor, West End LLLP, West End, Ginn-LA International Business Company, Ltd. or the Palmer Golf Course Owner have any contingent obligation, contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the financial statements described on Exhibit Y or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of such Person and its Subsidiaries taken as a whole. The Sur Mer Guarantor has the ability to satisfy its obligations under the Sur Mer Guaranties.

(l) Featured Builder Fee Agreements. Attached hereto as Schedule 13 is a true and correct and complete list of all "Developer's Homebuilder Royalty Agreements" or other similar agreements in effect with respect to the Project providing for the payment of royalties or other similar payments by home lot developers participating in a "Featured Builder Program".

(m) Conduit Loan. As of December 17, 2008, the outstanding principal balance of the Conduit Loan is \$61,350,814.40 and the amount of accrued unpaid interest on the Conduit Loan is \$4,182,660.30.

#### 16. Defaults and Remedies.

(a) Events of Default. Each of the following events shall constitute an event of default hereunder:

(i) the failure by any Borrower Party to perform any of its respective obligations arising under the terms of this Agreement that is not cured within ten (10) days subsequent to receipt of written notice from Agent with regard to such failure, or any of the documents entered into or amended pursuant hereto that is not cured within any applicable period of time provided for in such document if any;

(ii) the occurrence of any "Event of Default" (as defined in the Credit Agreement) other than any of the Specified Events of Default and any Default or Event of Default that does not materially and adversely impact the

benefits to the Agent and the Lenders to be derived from this Agreement or the Collateral;

(iii) any representation or warranty contained in this Agreement was false or misleading in any material respect when made; or

(iv) the failure of the applicable Borrower Parties to satisfy each of the conditions set forth in Section 14 on or before the date that is three (3) Business Days after the date of this Agreement.

Each of the Borrower Parties hereby agrees that any of the foregoing events of default shall be deemed to constitute an "Event of Default" under this Agreement and the Credit Agreement.

(b) Remedies. Upon the occurrence of an Event of Default, the Agent may, in its sole and absolute discretion, exercise any or all of the following rights and remedies:

(i) the Agent may exercise any and all rights and remedies available to the Agent under any of the Loan Documents;

(ii) the Agent may foreclose or otherwise take any actions necessary to realize on the collateral granted under any of the Loan Documents, this Agreement or any of the other agreements delivered pursuant to this Agreement;

(iii) the Agent may sue any or all of the Borrower Parties for specific performance of the covenants and obligations of such Borrower Party under the Loan Documents, this Agreement or any of the other agreements delivered pursuant to this Agreement; and

(iv) subject to any express limitation thereon contained in this Agreement, the Agent may exercise any additional rights and remedies available to the Agent at law or in equity (it being agreed that the foregoing shall not be construed in any way to expand the limited nature of the obligations, if any, of the Limited Recourse Borrower Parties and the Other Ginn/LA Parties under the Loan Documents, except and to the extent provided in this Agreement).

17. No Waiver. Neither the failure nor delay by the Agent or any Lender to exercise any of its remedies, nor the acceptance of any payments (in whole or in part), nor any provision of this Agreement, will amend, modify, supplement, extend, delay, renew, terminate, waive, release or otherwise limit or prejudice the Agent's or any Lender's rights and remedies (including, but not limited to, its right to receive full payment of interest and principal as well as late charges, delinquent interest, attorneys' fees and expenses, and other fees, expenses or charges to the extent provided in the Loan Documents) under the Loan Documents. In particular, nothing referred to above shall operate to cure an existing Default or Event of Default or to prohibit, restrict or otherwise inhibit the Agent or any Lender from exercising any right or remedy it may have under the Loan Documents and shall not extend any applicable reinstatement or redemption period.

18. Binding Effect. When executed by the Borrower Parties, the Agent and the Requisite Lenders, this Agreement shall be effective as to and for the benefit of the Borrower Parties, the Agent and the Lenders, shall be binding upon and inure to the benefit of each of such signatory parties and their respective heirs, successors and assigns, except that no Borrower Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Agent.

19. Voluntary Agreement. Each Borrower Party has entered into this Agreement freely and voluntarily, without coercion, duress, distress or undue influence by the Agent or any Lender, or any of their respective directors, officers, partners, agents or employees.

20. Advice from Independent Counsel. Each party to this Agreement (a "Party") understands that this Agreement is a legally binding agreement that may affect such Party's rights. Each Party represents to the other Party that it has received legal advice from counsel of its choice in connection with the negotiation, drafting, meaning and legal significance of this Agreement and that it is satisfied with its legal counsel and the advice received from it.

21. Governing Law. This Agreement and all obligations of the parties hereunder shall be governed by, and be construed and interpreted in accordance with, the internal laws of the State of New York without regard to choice of law rules.

22. Waiver of Trial by Jury. Each Borrower Party hereby waives trial by jury in any action, proceeding or counterclaim brought by any of them or against any of them on any matters whatsoever arising out of or in any way connected with this Agreement.

23. Judicial Interpretation. Should any provision of this Agreement require judicial interpretation, it is agreed that the parties have mutually negotiated and drafted this Agreement, and that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same.

24. Entire Agreement. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior or contemporaneous understandings, oral representations or agreements had among the parties with respect to the subject matter hereof are merged in, and are contained in, this Agreement. Paragraph headings used in this Agreement are for convenience only and shall not be used to interpret limit or amplify any term of this Agreement.

25. Paragraph Headings. Paragraph headings used in this Agreement are for convenience only and shall not be used to interpret limit or amplify any term of this Agreement.

26. Amendments. This Agreement may only be amended by a written agreement signed by the Ginn/LA Parties, the Agent and the Requisite Lenders.

27. Loan Documents. Except for the modifications to the Forbearance Agreement expressly set forth herein, the Loan Documents shall remain unmodified and in full force and effect.

28. Counterparts. This Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement. Facsimile signatures for any party hereto shall be binding as an original.

29. Acknowledgment and Reaffirmation by the Ginn/LA Parties. The Persons listed on Schedules 1, 2 and 3 attached hereto are executing this Agreement to acknowledge this Agreement, to make the respective representations, warranties and covenants of such Persons set forth in this Agreement and to reaffirm their obligations, if any, under the Loan Documents, provided that the execution and delivery of this Agreement by the Limited Recourse Borrower Parties and the Other Ginn/LA Parties shall not be construed in any way to expand the limited nature of the obligations, if any, of such Persons under the Loan Documents, except and to the extent provided herein.

30. Further Assurances. Each party to this Agreement agrees for the benefit of each other party hereto that, at any time and from time to time, upon the reasonable request by any party hereto, such party will make, execute and deliver, or cause to be made, executed and delivered, to such other party, and, where appropriate, cause to be recorded and/or filed at such time and in such offices and places as shall be deemed desirable by such other party, such other further agreements, instruments of further assurance, certificates and other documents as may be necessary or desirable in order to further effectuate the express provisions of this Agreement.

31. Notices. All notices and other communications provided for herein shall be made in accordance with Section 9.7 of the Credit Agreement, with all notices and communications to a Ginn/LA Party to be directed as specified therein with respect to the Borrowers.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered on the date first written above.

**BORROWERS:**

GINN-LA/CS BORROWER, LLC

By: 

Name: Robert H. Gidel

Title: President

GINN-LA CONDUIT LENDER, INC.

By: 

Name: Robert H. Gidel

Title: President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]