

<b>DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO</b> 201 LaPorte Ave., Suite 100 Fort Collins, Colorado 80521 Telephone: (970) 494-3500	
<b>Plaintiffs:</b> Kristen Marie Albrecht, an individual, Marcie McMinimee, as the Personal Representative of the Estate of William G. Albrecht, and derivatively on behalf of Spirit Hospitality, LLC,  v.  <b>Defendants:</b> Alan Butterfield, Bryan Swanson, and Spirit Hospitality, LLC.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>Attorney for Receiver:</b> John M. Tanner, Atty. Reg. No. 16233 Fairfield and Woods, P.C. 1801 California Street, Suite 2600 Denver, Colorado 80202 Telephone: (303) 830-2400 Facsimile: (303) 830-1033 Email: jtanner@fwlaw.com	Case Number: 2024CV030653 Div.: 4C
<b>RECEIVER’S SUBMISSION OF SPECIAL REPORT ON CLAIMS AND MOTION TO APPROVE SAME AND UNOPPOSED MOTION TO SET BRIEFING SCHEDULE</b>	

The Receiver Group, LLC and Ryan Gulick as managing member, as Receiver, by and through its attorneys, Fairfield and Woods, P.C., hereby submits its Special Report on Claims, moves to approve the same, and moves for a briefing schedule regarding the same as follows:

Certification Pursuant to Rule 121: Given the scope of the Special Report on Claims, undersigned counsel has not conferred with all affected parties (which would include all 76 claimants). The Receiver is confident that at least some aspects of the Claims Report will be opposed. Undersigned counsel has made reasonable efforts to confer with parties regarding the

proposed briefing schedule (with responses due January 12, 2026), and that portion of this motion is unopposed.

### **FACTUAL AND PROCEDURAL BACKGROUND**

1. The Receiver was appointed on November 4, 2024.
2. The business of Spirit was developing and managing hotels along the I-25 corridor between Thornton and Ft. Collins, Colorado. A different “Willco” entity owned each hotel. At the time of appointment, there were four entities operating hotels (Willcos VII, X, XI, and XIV) and several others that had already sold their hotels.
3. Spirit owned approximately a one-half interest in each Willco, with various investors owning the other half. Spirit acted as the managing member of each Willco. Once a hotel was built and operating, Spirit was hired to manage it.
4. At the direction of the Court, the Receiver proceeded to complete the sales of the assets of Willcos VII, X, XI, and XIV. As of the date of this Special Report, only Willco X remains unsold.
5. On July 9, 2025, the Court entered its Order to Present and File Claims, and Setting Bar Date.

### **CLAIMS REPORT**

6. The Receiver received 76 claims, which totaled \$24,842,655.65 (some claims did not have amounts, and so are not included in that total). The Receiver has completed its analysis of the claims, and its Special Report on Claims (“Claims Report”) is attached as **Exhibit 1**.
7. This receivership was not initiated due to insolvency. Spirit was generally current on its operational obligations, other than intercompany promissory notes between Spirit and the

Willco entities, and the Estate does not resemble a traditional insolvency scenario in which trade creditors or lenders comprise the bulk of claimants.

8. Instead, most claims were submitted by investors in the various Willco entities, asserting that they were not paid amounts they believed were due to them in connection with the Willco development projects. Several claimants further allege that Spirit, as managing member of the Willco entities, engaged in wrongful conduct in administering those entities or in allocating project proceeds.

9. As a result, many of the claims submitted do not arise from Spirit's direct obligations, but rather from the financial performance, capitalization, or internal operations of separate Willco entities in which Spirit held an interest and managerial role as the general partner. The Claims Report, therefore, distinguishes between claims properly asserted against Spirit itself and those that, in substance, pertain to the operations or financial condition of the Willco entities.<sup>1</sup>

10. The Special Report is divided into sections based on the Willco entity involved, and then a final section on Spirit itself. After overviews of each Willco, there is a spreadsheet detailing the claim amounts and the Receiver's recommendations.

11. The Receiver does not determine claims, but merely makes its recommendations to the Court. The Court makes determinations as to claims. The Court is of course free to accept, modify, or reject entirely any recommendation of the Receiver.

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<sup>1</sup> This distinction is significant for purposes of the Claims Report, because the Receivership Estate consists solely of Spirit's assets, not the assets of the Willco entities. Claims premised on Willco-level obligations or alleged Willco mismanagement do not automatically translate into allowable claims against Spirit. Accordingly, the Receiver evaluated each claim to determine whether it asserts a cognizable liability of Spirit as opposed to a dispute properly belonging to a Willco entity or arising solely among investors.

## ASPECTS OF CLAIMS REPORT

### **Absolute priority rule**

12. The Claims Report follows the “absolute priority rule,” which generally provides that claims be categorized by priority as follows: administrative expenses, secured creditor claims, priority creditor claims, general unsecured claims, and equity. All claims in one category of priority have to be paid before any claims in the next category of priority are paid.

13. The Receiver has not endeavored to subdivide categories pursuant to contractual rights. For example, numerous creditors of various Willcos may assert they are entitled to priority of payment over other creditors in the same category *pursuant to the limited partnership agreements*. Those agreements, however, do not dictate how the Receiver must classify claims. Accordingly, all such claims have been classified as general unsecured claims.

14. Some of the claims asserted by equity holders in the various Willcos claimed that Spirit has breached its contractual obligations to them by not recording deeds of trust in their favor. Thus, these creditors assert that they are “secured equity” holders. First, there is no category of “secured equity” under the absolute priority rule. Second, as to a claim against Spirit, this is a general, unsecured breach-of-contract claim. Thus, the Receiver has not taken this priority assertion into account.

### **Released claims**

15. Pre-appointment settlement agreements may have released some of the claims asserted.

16. In particular, the Receiver has reviewed the Settlement and Release Agreements executed between Alan Butterfield and various Spirit-related entities in 2023 and 2024.

Consistent with the Court’s directive that the Receiver make recommendations rather than resolve factual disputes, the Receiver has presumed these settlement agreements to be valid and enforceable as written. This presumption is applied notwithstanding that certain parties may dispute their enforceability, execution, or binding effect.

17. Mr. Butterfield entered into two relevant settlement agreements:

- a. July 18, 2023 Settlement and Release Agreement: a broad general release of all known and unknown claims existing on or before July 18, 2023, against the “Spirit Parties,” including Spirit, the Estate, AG Investments, and various Willco entities.
- b. December 1, 2023 Settlement Agreement: a second broad release covering all claims accruing before December 1, 2023, subject to limited carveouts for rights under the Manager Contract, the Amended Operating Agreement, and Butterfield’s limited partnership interests.

18. Taken together, the July 18 and December 1 agreements function as comprehensive releases, extinguishing all of Butterfield’s claims through their respective dates except those expressly preserved.

19. In evaluating Butterfield’s claims submitted in the receivership process, the Receiver has: (a) applied the releases according to their terms to identify claims barred as a matter of contract; and (b) recommended disallowance of any claim falling within the scope of a release and accruing before the relevant effective date. This approach is necessary because the Receiver lacks authority to adjudicate whether the settlements are voidable, rescindable, or otherwise unenforceable. Questions regarding enforceability are reserved exclusively for the

Court. Accordingly, the Receiver proceeded with the assumptions that: (x) the settlement agreements are operative and enforceable contracts; (y) their releases apply as written; and (z) any challenge seeking to limit, set aside, or reform the agreements must be addressed to, and decided by, the Court.

20. The Receiver emphasizes that this presumption of validity is procedural, not adjudicative. The Receiver: (a) takes no position on whether the settlement agreements may ultimately be invalidated or limited; and (b) defers all questions regarding enforceability to the Court. The Receiver's role is limited to interpreting and applying the agreements as written, unless and until the Court rules otherwise.

#### **Claims with no amount**

21. Numerous claims were filed with no amount or TBD (as it was claimed interest might still be accruing). In all instances, these claims ended up being recommended for denial.

#### **Claims for interest and attorneys' fees**

22. It appears that the assets of Spirit available to pay claims may be insufficient to pay even the principal of all claims. As such, the Receiver is recommending that the Court act in equity and deny all claims for interest and attorneys' fees (a common result when claims are being paid cents-on-the-dollar). Thus, any allowance recommendation is for principal amounts only.

#### **Distinguishing contractual rights from investor expectations**

23. Several claims appeared grounded not in enforceable contractual rights but in investor expectations regarding project performance, anticipated returns, or informal communications with prior management. The Receiver evaluated only those claims asserting

legally cognizable rights under governing agreements or applicable law. Claims resting solely on dissatisfaction, unrealized expectations, or generalized grievances were recommended for disallowance because they do not establish a liability of Spirit.

#### **Screening for duplicative or overlapping claims**

24. Certain claimants submitted multiple claims premised on the same underlying factual allegations or seeking the same recovery. The Receiver reviewed all submissions to identify and eliminate duplication, ensuring no claimant received multiple allowances for a single alleged injury.

#### **Treatment of Receivership sale proceeds**

25. Several claims questioned the propriety, valuation, or distribution of proceeds from court-approved sales of Willco assets completed during the receivership. All such sales were conducted pursuant to Court order, following notice and an opportunity to object. The Receiver's administrative claims evaluation does not revisit or reconsider those sale approvals. Claims premised on disagreements with the sale process or outcomes were therefore recommended for disallowance.

#### **Limitations in available records and documentation**

26. Historical financial and project records were incomplete or inconsistent due to pre-receivership events, including management changes and the death of William Albrecht. Many claims lacked documentation, contained inconsistencies, or relied on information not reflected in Spirit's records. The Receiver, therefore, conducted a good-faith review based on the limited materials available and applicable legal obligations.

### **Administrative nature and limits of the Receiver's claims analysis**

27. The claims process occurred within a compressed timeframe and under circumstances atypical for a receivership, including a substantial number of Investor-driven claims implicating complex pre-receivership conduct. The Receiver undertook a diligent and methodical review based on the materials submitted, documents available to Spirit, and the legal standards governing claim allowance. The Receiver did not conduct depositions, forensic audits, or other discovery mechanisms ordinarily available in litigation. As such, the Receiver's recommendations reflect a good-faith administrative assessment, not findings of fact or determinations on the merits, which remain within the exclusive province of the Court.

28. Should the Court wish to obtain any further information regarding a claim, the Receiver can make best efforts to do so.

### **Late claim**

29. On December 5, 2025, the Receiver received a claim against Spirit for Willco III. The claim was submitted by Ms. Amy Johnston Miller through counsel, Brian D. Artery (Wyoming Counsel), in the amount of \$144,518.18 as a 28.74% Capital interest holder. The basis of the claim simply said "Capital." No explanation was offered as to why the claim was two months late.

30. The Receiver has verified that investors of Willco III were provided copies of the claims process information and orders from the Court, including the claim form as with all other investors and Willcos.

31. The claims bar date was in early October and therefore the Receiver believes this claim should be denied. There was no time to do research and prepare an overview of this claim



before the filing deadline for the Receiver's recommendations, so this claim is not discussed in the Willco III section of the Claims Report.

32. As the claim was submitted two months late without explanation, and the business day before the claims Report was due, the Receiver recommends this claim be denied at this time.

### **Dropbox**

33. The Receiver has set up a Dropbox, which contains all of the Claims Report, the claims, and certain information related to the claims. A link to this Dropbox is [https://www.dropbox.com/scl/fo/3oml629xdihvtxmg8b0fk/AF\\_wkPpERp7pyciaAbTN6oA?rlkey=f8tx8zjmp4tokld6eii4ooqly&st=bdazjs3g&dl=0](https://www.dropbox.com/scl/fo/3oml629xdihvtxmg8b0fk/AF_wkPpERp7pyciaAbTN6oA?rlkey=f8tx8zjmp4tokld6eii4ooqly&st=bdazjs3g&dl=0). Any party is welcome to email the Receiver at [spiritclaims@thereceivergroup.com](mailto:spiritclaims@thereceivergroup.com) for this link. It will also be loaded on to Spirit's website as quickly as Spirit's IT professional can do this.

### **MOTION TO SET RESPONSE DATE**

34. This motion is being served on all parties listed on the Certificate of Service, as well as all claimants who filed claims.

35. Any person or entity that is affected by a recommendation can file a response. Thus, any claimant may respond to the recommendation regarding their claim. Further, any claimant in the same or a lower category as a recommendation for allowance can object to that recommendation. The holder of equity can object to all claims.

36. The July 9, 2025 Order granting the claims process and setting the bar date, Paragraph E. 22, provides explicitly: "[a]fter such report, any party affected by the Receiver's recommendation may file a response within 21 days of the Report. Any party may reply to a

response within 14 days of the response.” Given the circumstances, including the length and complexity of the Claims Report, the fact that no one other than the Receiver has been privy to it until now, and the holidays, the Receiver respectfully submits that twenty-one days is too short a period to respond. The Receiver recommends allowing thirty-five days to respond or until January 12, 2026.

37. This deadline will allow the Court to know which recommendations are disputed before the Case Management Conference now set for January 20, 2026. At that time, the Court can consider what, if any, discovery is appropriate and set a discovery schedule if necessary.

38. For the Court’s convenience, a proposed Order regarding the proposed response date is submitted herewith. Due to the complexity of the issues related to the Report and the likelihood of objections, no order is submitted on the merits of the Claims Report.

WHEREFORE, The Receiver Group and Ryan Gulick, as managing member, as Receiver, prays that this Court allow the claims as recommended by the Receiver, give anyone affected by the Claims Report until January 12, 2026, to respond, and for such other and further relief as the Court deems and proper.

Respectfully submitted this 8<sup>th</sup> day of December 2025.

FAIRFIELD AND WOODS, P.C.

/s/ John M. Tanner  
John M. Tanner

*Attorney for The Receiver Group, LLC  
and Ryan Gulick as managing member,  
as Receiver*

## CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of December 2025, a true and correct copy of the foregoing **RECEIVER'S SUBMISSION OF SPECIAL REPORT ON CLAIMS AND MOTION TO APPROVE SAME AND UNOPPOSED MOTION TO SET BRIEFING SCHEDULE** was e-filed and e-served via Colorado Courts E-filing System upon the following:

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