

1 LAW OFFICES
2 PHELPS & MOORE
3 PROFESSIONAL LIMITED LIABILITY COMPANY
4 4045 EAST UNION HILLS DRIVE
5 SUITE A-102
6 PHOENIX, ARIZONA 85050
7 (602) 788-2089

8 Jon L. Phelps (027152)
9 jon@phelpsandmoore.com
10 Attorney for Plaintiff

11 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 NORMAN ZWICKY,
14 Plaintiff,

15 vs.

16 PREMIERE VACATION COLLECTION
17 OWNERS ASSOCIATION, f.k.a. Premiere
18 Vacation Club, an Arizona nonprofit
19 corporation,

20 Defendant.

CASE NO. CV2015-051911

**CONTROVERTING STATEMENT OF
FACTS**

(ASSIGNED TO HON. JOHN HANNAH)

21 **PLAINTIFF'S COUNTER-STATEMENT OF MATERIAL FACTS**

22 Pursuant to Rule 56(c)(3), Arizona Rules of Civil Procedure, Plaintiff Norman Zwicky
23 submits his counter-statement of material facts in opposition to Defendant's Cross-Motion
24 for Summary Judgment:

25 **REPLY RE ORIGINAL STATEMENT OF FACTS**

- 26 1. Undisputed.
 2. Plaintiff stands on ¶ 2 of his original Statement of Facts.
 3. Undisputed.
 4. Undisputed.

1 5. Undisputed that Zwicky has contractual obligations. However, the issue of
2 whether Zwicky is being charged a reasonable, fair and lawful share of common expenses,
3 or an excessive amount, is an ultimate issue to be ascertained through the inspection of
4 records.

5 6. The material fact that DRI controls the Board of Directors (by whatever
6 means) remains undisputed. The majority of directors of the Association are in fact
7 director-employed executives. (**Exhibit D**-Premier Collection Member's Website, "Meet
8 your Board.)

9 7. See no. 6.

10 8. See no. 6. The precise numerical voting rights, election history, and the
11 number of votes cast by DRI is unknown. DRI in fact has overwhelming voting rights and
12 in fact controls the Association by virtue of DRI's "(i) ownership of intervals at the related
13 resort; (ii) [DRI's] control of the Diamond Collections that hold intervals at the resort and/or
14 (iii) [DRI's] status as the developer of the resort. The board of directors of each HOA hires
15 a management company to provide the services described above, which in the case of all
16 Diamond Resorts managed resorts, is [DRI]." **Exhibit B**- Excerpts, 2014 DRI 10-K report,
17 p. 8.

18 9. Unclear what Defendant disputes. Plaintiff stands on its original ¶ 9.

19 10. Unclear what Defendant disputes. Plaintiff stands on its original ¶ 10.

20 11. Undisputed.

21 12. Unclear what Defendant disputes. Plaintiff stands on its original ¶ 12.

22 *Defendant does not specifically dispute that DRI is charging a duplicative management*
23 *fee.* See original ¶ 12, citing **Exhibit F**-Excerpts, Diamond Resorts International 2011
24 Registration Statement filed with U.S. Securities and Exchange Commission (as amended)
25 (hereinafter, "DR Registration Statement"), p. 2; **Exhibit B**- Excerpts, 2014 DRI 10-K
26

1 report, p. 5-7, 8.

2 13. Unclear what Defendant disputes. Plaintiff stands on its original ¶ 13.
3 *Defendant does not specifically dispute that DRI imposes a duplicative management fee.*

4 14. Unclear what Defendant disputes. Plaintiff stands on its original ¶ 14.
5 *Defendant does not specifically dispute that DRI, by agreement with the Board, has*
6 *shifted its internal overhead expense to the Association.* See **Exhibit B-** Excerpts, 2014
7 DRI 10-K report, p. 8 (“Our management fees are based on a cost-plus structure and are
8 calculated based on the direct and indirect costs ... including the absorption of a substantial
9 portion of our overhead related to the provision of management services ... incurred by the
10 HOA of the applicable resort.”); and **Exhibit F-**Excerpts, DRI Registration Statement, p. 3,
11 Note 7 to Consolidated Financial Statement of Diamond Resort Parent, LLC (“Transactions
12 with Related Parties ... Allocation of Expenses. In addition to management services
13 revenues, the Company has entered into agreements with the HOAs to be reimbursed for a
14 portion of the Company’s resort management and general and administrative expenses to the
15 HOAs”; further acknowledging more than \$24 million in such re-allocated expenses in
16 2009, and more than \$30 million in 2010).

17 15. Undisputed that he (Zwicky) knew assessments were subject to change;
18 nevertheless Plaintiff stands on his original ¶ 15 stating that the assessments are exorbitant
19 and higher than he expected. **Exhibit G-**Affidavit of Plaintiff Zwicky.

20 16. Plaintiff stands on his original ¶ 16, and disputes Defendant’s characterization
21 that the trebling of his assessment liability after the DRI takeover is irrelevant.

22 17. Plaintiff stands on his original ¶ 17, and stands on his opinion that his
23 investment in DRI points is worthless. See **Motion Exhibit G-**Affidavit of Plaintiff
24 Zwicky; **Motion Exhibit J-**Internet advertisements for sale of Premier Collection points for
25 \$1 (or to give them away).
26

1 18. Plaintiff stands on his original ¶ 18, and stands on his opinion that his
2 assessments and dues are so high that there is no appreciable net economic benefit of
3 membership. See ¶ 17, supra.

4 19. Disputed. Plaintiff stands on his original ¶ 19. *Neither the property*
5 *management agreements nor their full terms providing for management fees were ever*
6 *disclosed to owners, and have not been disclosed in this action.* The Association does not
7 now specifically contend that they *were* disclosed, nor does the Association now state when,
8 how, and to whom they were purportedly disclosed. A basic purpose of this inspection suit
9 is to achieve disclosure of those documents.

10 20. No material dispute. Agreed that the records show the time Plaintiff actually
11 last made a reservation. **Exhibit I**-Premier Vacation Collection member site for Norman
12 Zwicky.) The exact date is of no relevance to Plaintiff's basic right to inspect.

13 21. Undisputed.

14 22. Disputed. Plaintiff stands on his original ¶ 22, and the contention that his
15 points are worthless (although that point need not be decided in determining Plaintiff's
16 entitlement to enforcement of his inspection rights).

17 23. Disputed. Plaintiff's stands by his original ¶ 23 as a true and accurate
18 statement of his *purpose* in seeking the financial records. Whether Plaintiff has shown
19 sufficient *questions* regarding management practices (excessiveness of assessments,
20 excessiveness of property management fee, shifting of disproportionate burden of common
21 expenses to private owners) warranting enforcement of his inspection rights is a question of
22 law to be determined by the Court.

23 24. Undisputed that Plaintiff has been provided with certain information.

24 25. Disputed that the records thus far provided provide a sufficient basis to fully
25 understand and meaningfully analyze the potential ultimate substantive legal issues
26

1 concerning misfeasance or malfeasance in management. Plaintiff stands on his original ¶
2 25.

3 26. Plaintiff stands on his original ¶ 26.

4 27. Plaintiff stands on his original ¶ 27.

5
6 **RESPONSE TO DEFENDANT'S SEPARATE STATEMENT OF FACTS**

7 1. Undisputed.

8 2. Undisputed.

9 3. Undisputed, *except* that Zwicky disputes that his membership gives him any
10 *exclusive* access to the resorts. In fact, the DRI resorts in question are available not strictly
11 to Association members but also to the general public. DRI owns numerous units and rents
12 them out to the general public on its own account. See **Response Exhibit A-Excerpts**
13 **Timeshare Disclosure Report** (acknowledging that DRI owns resort units and
14 simultaneously rents them out as hotelier to the public, keeping all revenue).

15 4. Undisputed.

16 5. Undisputed.

17 6. Undisputed.

18 7. Unknown/undisputed.

19 8. Undisputed.

20 9. Undisputed. *However, neither the actual DRI property management*
21 *agreements with the Association and with the individual constituent Resorts, nor the*
22 *overhead-shifting modifications to those Agreements, has ever been disclosed.*

23 10. Unknown/disputed. Plaintiff disputes that the Association was in economic
24 distress warranting radical inflation of assessments. The Disclosure statement filed with the
25 Arizona Department of Real Estate states that the Association's affairs were *unaffected* by
26

1 the prior developer's bankruptcy. **Response Exhibit B-Excerpts Timeshare Disclosure**
2 **Report** (stating that the Association was not a debtor in the Chapter 11 proceedings and was
3 "not affected" by the bankruptcy). In general, Plaintiff is in no position to independently
4 assess the exact reasons for the dramatic escalation in assessments; hence, this lawsuit to
5 investigate that question.

6 11. Undisputed.

7 12. Undisputed that the membership plan makes payment of assessments
8 mandatory.

9 13. Undisputed.

10 14. Undisputed.

11 15. Undisputed. However, Zwicky disputes that the documents thus far provided
12 afford a basis for a full, clear and meaningful understanding (qualitative or quantitative) of
13 the management fee structure, the DRI overhead-shifting agreements, or potential
14 inequitable apportionment of common expenses as between private owners and DRI as bulk
15 owner of resort units or points).

16 16. Undisputed.

17 17. Undisputed.

18 18. Undisputed.

19 19. Undisputed.

20 20. Undisputed.

21 21. Undisputed.

22 22. Undisputed.

23 23. Disputed. See ¶10 (Arizona Department of Real Estate Disclosure – stating
24 that Association was not a debtor in the prior developer's Chapter 11 proceedings and "not
25 affected" by the bankruptcy). There is no competent evidence before this Court that the
26

1 Association, DRI, or DRI Management, Inc. was at risk of bankruptcy when it acquired the
2 Collection from ILX Resorts in 2010. To the contrary, SEC documents reveal that DRI
3 earned \$93 million in management fees in 2009 and \$91 million in 2010. **Response Exhibit**
4 **C-DRI 2011 Debt-Exchange Prospectus.** As of 2015, DRI had a market capitalization
5 value of \$1.8 billion. **Response Exhibit D-Barron's Article on DRI.**

6 24. Undisputed. (2004 documents not currently sought in this action.)

7 25. Undisputed.

8 26. Undisputed.

9 27. Undisputed. However (as explained in Plaintiff's Reply) the documents
10 provided are opaque, rendered in summary form and wholly inadequate to clarify the issues.
11 Plaintiff identified the documents needed for a meaningful exercise of his inspection rights
12 in his Rule 26.1 Disclosure Statement (**Exhibit A** to Reply.)

13 RESPECTFULLY SUBMITTED this 1st day of February, 2016.

14 PHELPS & MOORE, PLC

15
16 By /s/Jon L. Phelps _____

17 Jon L. Phelps
18 4045 East Union Hills Drive
19 Suite A-102
20 Phoenix, Arizona 85050
21 Counsel for Plaintiff

22 **ORIGINAL** of the foregoing efiled on
23 this the 1st day of February, 2016;

24 **COPY** of the foregoing delivered via azturbocourt.gov
25 on this the 1st day of February, 2016 to:

26 The Honorable John Hannah
Northeast Regional Center
18380 N. 40th Street
Phoenix, Arizona 85032

1 **COPY** of the foregoing delivered via U.S. mail
2 on this the 1st day of February, 2016 to:

3 John E. DeWulf
4 Katherine DeStefano
5 Coppersmith Brockelman, PLC
6 2800 North Central Avenue, Suite 1200
7 Phoenix, Arizona 85004
8 Counsel for Defendant

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By /s/ Kelly Naddaff

EXHIBIT A

TIME-SHARE DISCLOSURE REPORT
(Public Report)

FOR

PREMIERE VACATION CLUB

Registration No. DM98-014798

DEVELOPER

PREMIERE DEVELOPMENT INCORPORATED
2111 E. Highland Avenue, Suite 200
Phoenix, Arizona 85016

May 27, 1998
Effective Date

Fourteenth Amendment: March 10, 2009

PROPERTY REPORT DISCLAIMER

This report is NOT A RECOMMENDATION NOR AN ENDORSEMENT by the State of Arizona of this land but is provided for informational purposes ONLY. The report reflects information provided by the developer and obtained by the Department in its review process in accordance with the provisions of Title 32, Chapter 20, Article 9, of the Arizona Revised Statutes, as amended. **NOTE** that not all of the information in this report has been verified by the Department; certain information has been accepted by the Department as true and accurate based on attestation of the developer and/or the developer's agents. The purchaser should verify all facts before signing any documents. The Department has not passed upon the quality or quantity of any improvement or structure and does not assume responsibility in either event.

TUCSON OFFICE:
400 West Congress
Suite 523
Tucson, Arizona 85701
(520) 628-6940

PHOENIX OFFICE:
2910 N. 44th Street
Suite 130
Phoenix, Arizona 85018
(602) 771-7750

ownership interest in Los Abridados Resort & Spa, evidenced by a Leasehold Assignment from the Club. The Deed or Leasehold Assignment, as applicable, does not confer a direct membership in the owners association at the Los Abridados Resort. The Club is the owner of all occupancy, association memberships, voting and use rights for the underlying Timeshare Resort Days and Weeks owned by the Club and subject to the Plan, and such time may only be utilized through the Club's reservation procedures and in accordance with the Plan and other Membership Documents.

Subject to the restrictions and limitations set forth in the Plan, the Members have the right, in perpetuity for Memberships in Perpetuity or for the Specified Term for Specific Term Memberships, to use their memberships in connection, with the Timeshare Resorts underlying the timeshare weeks owned by the Club. Notwithstanding such grant of rights, the developer has reserved certain rights to use the occupancy rights attributable to the unused or unsold Memberships including, but not limited to, the right to rent and otherwise utilize them as a hotel operation. Further the developer has the exclusive right to market and sell the Memberships.

The Memberships are subject to the limitations, covenants, conditions and restrictions ("Covenants") set forth in, or created by authority of, the Plan. All such Covenants are binding upon and for the benefit of the Club and each Member thereof and any party having or acquiring any right, title, interest or estate in the Membership.

The Club's Membership categories are defined by a Member's right to occupy a Unit at a Timeshare Resort based on four variables: (1) membership category by Unit type (including studio, one bedroom, two bedroom and luxury Units); (2) duration (including Memberships in Perpetuity and Specific Term Memberships); and (3) annual frequency (including Every-Year, Every-Other-Year Memberships) and Destination Type (including Full Memberships and Adventures Memberships). The Club's Membership categories are described in Article II of the Plan. The developer may use its discretion as to which Membership categories it might from time to time offer for sale.

Subject to the terms and conditions set forth in the Plan and the Membership Documents, each Member or such Member's Permitted User, for each Membership owned, has: (a) the exclusive right to occupy a Timeshare Resort Unit of a type purchased by such Member and to use the common furnishings contained within such Unit during the Member's reserved Occupancy Period; and (b) the non-exclusive right to use and enjoy the common areas at the Timeshare Resort during the Member's reserved Occupancy Period.

The developer advises prospective purchasers that, with respect to Units that have been deeded or otherwise conveyed by developer or ILX Resorts Incorporated to the Club and are unoccupied, it has retained the exclusive right in perpetuity to rent or utilize any such unoccupied Unit as part of a hotel operation. Any Unit that is available for occupancy by Members pursuant to the Plan that has not been reserved by a Member within ten (10) days of its intended use shall be deemed an unoccupied Unit.

In addition, the affiliates of developer have retained the exclusive right to operate at the Timeshare Resorts any restaurants, cafes, food operations, cocktail lounges, gift shops, health

clubs, spas, meeting and conference rooms and business centers, or any other amenities or businesses of any nature whatsoever, in their sole discretion. Members will not be entitled to receive any proceeds resulting from or related to operations of the Timeshare Resorts as hotels, and further, no Member will have the right to receive proceeds generated as a result of any other activities that the developer or its affiliates may choose to conduct at the Timeshare Resorts. However, utilization or rental of Units shall not interfere with or diminish the rights of Members to occupy Units in accordance with the Membership Documents.

The Club has entered into a management agreement with ILX Resorts Incorporated, an affiliate of the developer, concerning management and maintenance of the Club.

INTEREST TO BE CONVEYED

The Deed to be issued by the Club to owners of Memberships in Perpetuity will convey an undivided fractional ownership interest (as described in the Plan) in and to the Los Abridados Resort & Spa, Sedona, Arizona ("Los Abridados") which is a Timeshare Resort of the Club, such Deed to be held in common with other owners of Los Abridados. The Leasehold Assignment to be issued by the Club to owners of Specific Term Memberships will convey a leasehold interest in an undivided fractional interest (as described in the Plan) in and to Los Abridados. Neither the Deed nor Leasehold Assignment confer a membership in the owners' association at Los Abridados. The Club is the member in such association and/or owns the use and occupancy rights. The denominator of the Los Abridados undivided fractional interest in Los Abridados deeded or leased to a Club Member is determined by a portion (but not all) of the aggregate fractional interest in Los Abridados resulting from the number of Weeks in Los Abridados owned by the Club, divided by the aggregate number of Memberships in the Club, sold and unsold, all as described in the Plan. A Member's Membership Share may be purchased in daily or weekly timeshare increments. The numerator of a Member's undivided fractional interest in Los Abridados is determined by the Member's Membership Share, that is, an Every-Year Membership for a timeshare week is one (1), and an Every-Other-Year Membership for a timeshare week is one-half (.5). Correspondingly, an Every-Year Membership Share for one timeshare day is one-seventh (.1428), and an Every-Other-Year Membership Share for one timeshare day is one-fourteenth (.0714). A Member's ownership interest in Los Abridados is expressed as a fraction in the Declaration of Annexation Exhibits to the Plan: however, only a Member's Membership Share (as shown in the "Membership Share" column below) is shown on the Deed which incorporates the Plan by reference as to the denominator of the fraction. The Club presently has a total of 25,700 Total Authorized Membership Shares, which are described in the Declaration of Annexation Exhibits to the Plan. Any change in such number is set forth in recorded Declaration of Annexation Exhibits which are incorporated into the Plan by reference. The number of Total Authorized Membership Shares equals the number of Weeks subject to the Plan.

The following table sets forth the Membership Share for each type of one-week and one-day Every-Year and Every-Other-Year Membership, and the corresponding undivided fractional ownership interest in Los Abridados that will be conveyed with respect to each type of Every-Year and Every-Other-Year Membership:

EXHIBIT B

TIME-SHARE DISCLOSURE REPORT
(Public Report)

FOR

PREMIERE VACATION CLUB

Registration No. DM98-014798

DEVELOPER

PREMIERE DEVELOPMENT INCORPORATED
2111 E. Highland Avenue, Suite 200
Phoenix, Arizona 85016

May 27, 1998
Effective Date

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2910 N. 44th Street
Suite 130
Phoenix, Arizona 85018
(602) 771-7750

THE ARIZONA DEPARTMENT OF REAL ESTATE

REQUIRES THAT:

1. You **BE GIVEN** this public report;
2. **YOU SIGN A RECEIPT** indicating that you received this report;

RECOMMENDS:

1. You **DO NOT SIGN ANY AGREEMENT** before you have read this report;
2. You see an **ACCURATE REPRESENTATION** of the unit you are interested in **BEFORE SIGNING** any document for lease or purchase.

ARIZONA LAW STATES:

1. A PERSON SHALL NOT SELL OR LEASE OR OFFER FOR SALE OR LEASE IN THIS STATE TWELVE OR MORE TIME-SHARE INTERVALS WITHOUT FIRST OBTAINING A PUBLIC REPORT FROM THE COMMISSIONER. ANY SALE OR LEASE OF TWELVE OR MORE TIME-SHARE INTERVALS PRIOR TO ISSUANCE OF THE PUBLIC REPORT IS VOIDABLE BY THE PURCHASER. AN ACTION BY THE PURCHASER TO VOID SUCH TRANSACTION MUST BE BROUGHT WITHIN FIVE YEARS OF THE DATE OF THE EXECUTION OF THE PURCHASE AGREEMENT BY THE PURCHASER. IN ANY SUCH ACTION, THE PREVAILING PARTY IS ENTITLED TO REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.
2. ANY PURCHASE AGREEMENT FOR A TIMESHARE INTEREST MAY BE CANCELED BY THE PURCHASER WITHOUT CAUSE OF ANY KIND BY MAILING OR DELIVERING WRITTEN NOTICE OF CANCELLATION BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY ON WHICH THE PURCHASER EXECUTED THE PURCHASE AGREEMENT. A NOTICE OF CANCELLATION MUST BE MAILED OR DELIVERED TO DEVELOPER'S ADDRESS ON PAGE 1 OF THIS PUBLIC REPORT.

SPECIAL NOTES

NOTICE OF BANKRUPTCY: On March 2, 2009, ILX Resorts Incorporated and certain of its subsidiaries (Debtors), including Premiere Development Incorporated, filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Arizona. Pursuant to Sections 1107 and 1108 of the Code, the Debtors continue in the possession of their respective properties and the management of their respective businesses. **Premiere Vacation Club is not one of the Debtors.**

ILX Resorts Incorporated and Premiere Development Incorporated are "debtors in possession", as defined by the Code. This permits operations to continue under the corporations' current management. ILX Resorts Incorporated has a management contract with Premiere Vacation Club to manage the Club's operations. ILX Resorts Incorporated and Premiere Development Incorporated are in the process of reorganizing pursuant to the Code.

Purchasers' deposits will be placed into a segregated depository account. Purchasers' deeded interests in real estate are evidenced by Special Warranty Deeds recorded in Coconino County, Arizona.

Premiere Vacation Club and membership in Premiere Vacation Club are not affected by the Debtor's action to reorganize under Chapter 11 of the Code.

EXHIBIT C

Table of Contents

Filed Pursuant to Rule 424(b)(3)
Registration No. 333-172772

PROSPECTUS

\$425,000,000



Diamond Resorts Corporation

Diamond Resorts Corporation is offering to exchange all of its outstanding \$425,000,000 12% Senior Secured Notes due 2018 (the "outstanding notes") for an equal amount of 12% Senior Secured Notes due 2018 (the "exchange notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act").

The Exchange Offer

- We will exchange all outstanding notes that are validly tendered and not validly withdrawn for an equal principal amount of exchange notes that are freely tradable.
- You may withdraw tenders of outstanding notes at any time prior to the expiration date of the exchange offer.
- The exchange offer expires at 11:59 p.m., New York City time, on August 10, 2011, unless extended. We do not currently intend to extend the expiration date.
- The exchange of outstanding notes for exchange in the exchange offer will not be a taxable event for U.S. federal income tax purposes.
- We will not receive any proceeds from the exchange offer.

The Exchange Notes

- The exchange notes are being offered in order to satisfy certain of our obligations under the registration rights agreement entered into in connection with the placement of the outstanding notes.
- The terms of the exchange notes to be issued in the exchange offer are substantially identical to the outstanding notes, except that the exchange notes will be freely tradable.
- Each of Diamond Resorts Parent, LLC, Diamond Resorts Holdings, LLC and all of Diamond Resorts Corporation's existing and future direct or indirect U.S. restricted subsidiaries jointly and severally, irrevocably and unconditionally guarantee, on a secured senior basis, the performance and full and punctual payment when due, whether at maturity, by acceleration or otherwise, of all obligations of Diamond Resorts Corporation under the outstanding notes, exchange notes and the indenture governing the notes.
- The exchange notes and the guarantees will be secured by first-priority liens on all Diamond Resorts Corporation's and the guarantors' assets, other than real property and consumer loans, subject to certain exceptions and permitted liens.

Resales of Exchange Notes

- The exchange notes may be sold in the over-the-counter market, in negotiated transactions or through a combination of such methods. We do not plan to list the exchange notes on a national market.

All untendered outstanding notes will continue to be subject to the restrictions on transfer set forth in the outstanding notes and in the indenture. In general, the outstanding notes may not be offered or sold, unless registered under the Securities Act, except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws. Other than in connection with the exchange offer, we do not currently anticipate that we will register the outstanding notes under the Securities Act.

Each broker-dealer that receives exchange notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such exchange notes. The letter of transmittal states that, by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of exchange notes received in exchange for outstanding notes where such outstanding notes were acquired by such broker-dealer as a result of market-making activities or other trading activities. We have agreed that, for a period of 180 days after the

Table of Contents**Comparison of the Year Ended December 31, 2010 to the Year Ended December 31, 2009***(In thousands)*

	<u>Year Ended December 31, 2010</u>				<u>Year Ended December 31, 2009</u>			
	<u>Hospitality and Management Services</u>	<u>Vacation Interest Sales and Financing</u>	<u>Corporate and Other</u>	<u>Total</u>	<u>Hospitality and Management Services</u>	<u>Vacation Interest Sales and Financing</u>	<u>Corporate and Other</u>	<u>Total</u>
Revenues:								
Vacation Interest sales	\$ —	\$ 214,764	\$ —	\$ 214,764	\$ —	\$ 248,643	\$ —	\$ 248,643
Provision for uncollectible Vacation Interest sales revenue	—	(12,655)	—	(12,655)	—	(14,153)	—	(14,153)
Vacation Interest, net	—	202,109	—	202,109	—	234,490	—	234,490
Management, member and other services	91,156	11,495	—	102,651	93,431	14,772	—	108,203
Consolidated resort operations	26,547	—	—	26,547	23,814	—	—	23,814
Interest	—	39,150	177	39,327	—	43,200	972	44,172
Gain on mortgage repurchase	—	191	—	191	—	282	—	282
Total revenues	117,703	252,945	177	370,825	117,245	292,744	972	410,961
Costs and Expenses:								
Vacation Interest cost of sales	—	39,730	—	39,730	—	55,135	—	55,135
Advertising, sales and marketing	—	114,029	—	114,029	—	116,098	—	116,098
Vacation Interest carrying cost, net	—	29,821	—	29,821	—	32,992	—	32,992
Management, member and other services	21,916	1,730	—	23,646	26,449	4,714	—	31,163
Consolidated resort operations	23,972	—	—	23,972	22,456	—	—	22,456
Loan portfolio	1,025	9,541	—	10,566	954	8,881	—	9,835
General and administrative	—	—	67,905	67,905	—	—	71,306	71,306
Gain on disposal of assets	—	—	(1,923)	(1,923)	—	—	(137)	(137)
Depreciation and amortization	—	—	11,939	11,939	—	—	13,366	13,366
Interest, net of capitalized interest	—	18,203	48,959	67,162	—	24,396	44,119	68,515
Loss on extinguishment of debt	—	—	1,081	1,081	—	—	10,903	10,903

EXHIBIT D

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SIZING UP SMALL CAPS

Diamond Resorts Is a Bargain Among Time-Share Concerns

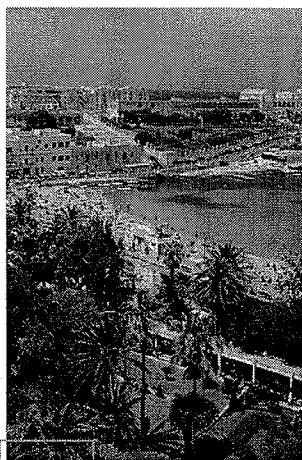
The time-share operator's stock is cheap, and its growth prospects are attractive.

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By DAVID ENGLANDER
September 12, 2015

After worries about the global economy erupted last month, investors have grown nervous about companies tied to leisure pursuits. That includes travel, and the time-share industry, in particular, which fell on hard times during the 2008-09 recession. Shares of all four publicly traded time-share companies—[Wyndham Worldwide](#), [Marriott Vacations Worldwide](#), [Interval Leisure Group](#), and [Diamond Resorts International](#)—are off sharply since earlier in the summer.



St. George's Bay, Malta, is one of Diamond Resorts' timeshare destinations. Photo: WRIGHT/RelaXimages/AGEFotostock

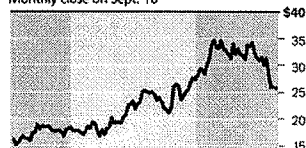
Diamond Resorts International (ticker: DRJI), with a \$1.8 billion market cap and 93 managed properties, is perhaps the most unpopular of the group. Its shares have fallen 30% from a June high, to a recent \$24.50, and look most deserving of investor interest.

Diamond fetches an enterprise value of 5.6 times next year's Ebitda, or expected earnings before interest, taxes, depreciation, and amortization. That is a deep discount to close peer Marriott Vacations (VAC), which sells for 7.8 times. Some of the discount relates to Diamond's lack of a name brand, but it still seems too severe.

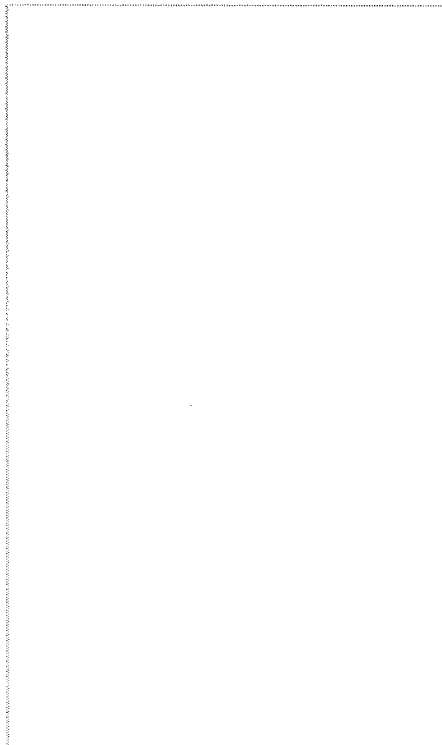
Ebitda will rise 13% this year, and 9% in 2016. He values the shares at \$43, based on his sum-of-the-parts analysis.

Based in Las Vegas, Diamond took advantage of the recession to roll up, or buy smaller time-share operators at cheap prices. It acquired Sunterra, a troubled time-share business, in 2007. Under CEO David Palmer, Diamond has made seven acquisitions since 2010. Its recent deal for Gold Key, a six-resort operator, was inked last month. With a solid balance sheet and strong free cash flow, more acquisitions are likely, which would fuel growth.

Diamond Resorts (DRJI - NYSE)
Monthly close on Sept. 10



Diamond's chairman and founder, Steven Cloobek, is an industry veteran who owns 15.9% of the stock. He brought Diamond public in 2013. Palmer, who has been at the helm since the initial public offering, has a private-equity background and holds 5.3% of the shares.



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Diamond owners buy points in its system for an annual vacation at a resort. The average price for an annual one-week getaway is \$27,000. The company also

charges an annual management fee of \$1,500 for services that include housekeeping and running the front desk. Owners seeking access to 230 affiliated resorts pay another annual fee to belong to what the company dubs "clubs." Like competitors, Diamond provides financing, a profitable operation in itself.

IN ADDITION TO acquisitions, Diamond builds its inventory of vacation ownership interests by reclaiming VOIs from owners who can't pay fees. This asset-light model generates hefty profit margins and differentiates Diamond from operators that develop properties. Diamond has a high free-cash-flow yield of over 12%, with expected free cash flow of about \$230 million this year.

Time-share sales and financing accounted for 75% of last year's revenue of \$775 million. Revenue is expected to rise 17% this year, and earnings, 30%, to \$118 million, or \$1.58 a share. Earnings could reach \$2.08 a share in 2016.

Diamond's shares have risen 75% since the IPO, yet skeptics abound. Short interest stands at over 20% of the stock's float, much higher than competitors. There have been doubts about the company's ability to continue sourcing inventory, among other concerns. So far, the company has had few problems. "We can perpetually resupply our inventories through inventory reclamations to support \$800 million to \$850 million in annual VOI sales," Palmer said in an interview Friday. That doesn't include the benefit of Gold Key.

The Bottom Line

Based on a sum-of-the-parts analysis, Diamond Resorts International could be worth \$43, more than 70% above the stock's current price.

This year, Diamond is expected to generate roughly \$700 million in VOI sales.

In July, Diamond announced a partnership with Och-Ziff, which will develop a 144-unit resort in Kona, Hawaii. Diamond will buy the units, manage the property, and

handle the sale of VOIs. The project could generate \$400 million in VOI sales, and is likely to be finished early in 2017.

Diamond's management has been good at integrating acquisitions. With Gold Key, it is buying six resorts in Virginia and North Carolina, with 30,000 owners. There is also an opportunity to increase management fees by upgrading the properties. As costs rise, so do the fees.

Diamond has had success with sales presentations, or "tours," which showcase time-share opportunities to prospective buyers; about 14% of tour participants become owners. Owner additions and rising prices have helped lift annual ownership sales by 50% over the past two years, as of the June quarter. In that quarter, sales of vacation interests rose 16% from a year earlier. Management fees rose 7%. On the July earnings call, Chief Financial Officer Alan Bentley reaffirmed earnings guidance for 2015, noting that results probably would be toward "the high end" of the company's range.

The time-share industry is highly fragmented, and Palmer says he sees continued consolidation, even among the top players. In the past year, [Hyatt Hotels \(H\)](#) sold its timeshare business to Interval (ILG), and [Starwood Hotels & Resorts Worldwide \(HOT\)](#) filed to spin off its time-share business under the name Vistana Signature.

Given Diamond's discounted share price, investors might want to check in.

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Time for a Reappraisal

Diamond's shares have fared worst this year among the time-share industry's biggest players. Yet, the company has the biggest free-cash-flow yield in the group, owing largely to its asset-light business model.

Company/Ticker	Recent Price	YTD Change	Market Value (bil)	Net Debt (mil)	EV/2016E Ebitda	2015E FCF Yield
Diamond Resorts Int'l / DRII	\$24.53	-12%	\$1.8	\$367	5.6	12.5%
Interval Leisure Group / ILG	19.60	-6	1.1	353	7.9	8.8
Marriott Vacations Worldwide / VAC	70.07	-6	2.2	248	7.8	10.8
Wyndham Worldwide / WYN	77.98	-9	9.1	2,830	8.7	7.4

E=Estimate Sources: Bloomberg, Imperial Capital

E-mail: editors@barrons.com