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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re: MTS LAND, LLC, an Arizona limited liability company, Debtor. ☒ Affects this Debtor.	**CASE NO.: 2:12-bk-16257-EWH** **Chapter 11 Proceeding** **Jointly Administered with:** **2:12-bk-16259-EWH**
In re: MTS GOLF, LLC, an Arizona limited liability company, Debtor. ☒ Affects this Debtor.	

DISCLOSURE STATEMENT TO ACCOMPANY
DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION

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I.
INTRODUCTION

On July 19, 2012 (the "Petition Date"), MTS Land, LLC ("MTS Land") and MTS Golf, LLC ("MTS Golf") (collectively, "Debtors"), filed their voluntary Chapter[1] 11 bankruptcy petitions (the "Voluntary Petitions") in the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court"), thereby commencing case number 2:12-bk-16257-EWH for MTS Land and case number for 2:12-bk-16259-EWH for MTS Golf (the "Chapter 11 Cases" or "Bankruptcy Cases"). Debtors have prepared this Disclosure Statement (the "Disclosure Statement") in connection with the solicitation of votes on *Debtors' Second Amended Joint Plan of Reorganization* [ECF No. 465] (the "Plan")[2] to treat the Claims of Debtors' Creditors and the Persons holding Equity Securities in Debtors. The various exhibits to this Disclosure Statement included in the Appendix are incorporated into and are a part of this Disclosure Statement. The Plan is included as **Exhibit "1"** in the Appendix. After having reviewed the Disclosure Statement and the Plan, any interested party desiring further information may contact:

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Interested parties may also obtain further information from the Bankruptcy Court at its PACER website: http://www.azb.uscourts.gov.

II.
INFORMATION REGARDING THE PLAN AND DISCLOSURE STATEMENT

The following are answers to common questions about a Chapter 11 reorganization:

1. *What is Chapter 11?*

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code.

[1] Unless otherwise indicated herein, all references to "Chapters" or "Sections" refer to Title 11 of the United States Code (the "Bankruptcy Code"). All references to a "Bankruptcy Rule" shall be to the Federal Rules of Bankruptcy Procedure.

[2] Capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Plan.

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Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its creditors, and equity interest holders. The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor-in-possession."

2. *What is the objective of a Chapter 11 bankruptcy case?*

The objective of a Chapter 11 bankruptcy case is the confirmation (*i.e.* approval by the bankruptcy court) of a plan of reorganization.

3. *What is a plan of reorganization?*

A plan describes in detail (and in language appropriate for a legal contract) the means for satisfying claims against, and equity interests in, a debtor.

4. *What happens after a plan is filed?*

After a plan has been filed, the holders of such claims and equity interests that are impaired (as defined in Section 1124 of the Bankruptcy Code) and receiving some cash and/or property on account of such claims or equity interests are permitted to vote to accept or reject the plan.

5. *What is a disclosure statement and its purpose?*

Before a debtor or other plan proponent can solicit acceptances of a plan, Section 1125 of the Bankruptcy Code requires the debtor or other plan proponent to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable those parties entitled to vote on the plan to make an informed voting decision about whether to accept or reject the plan.

The purpose of this Disclosure Statement is to provide sufficient information about Debtors and the Plan to enable Holders of Impaired Claims to make an informed voting decision about whether to accept or reject the Plan. Holders of other Claims will be deemed to have accepted or rejected the Plan, as the case may be, without the need for them to vote.

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6. ***What will happen after the Bankruptcy Court approves this Disclosure Statement?***

This Disclosure Statement will be used to solicit acceptances of the Plan only after the Bankruptcy Court has found that this Disclosure Statement provides adequate information in accordance with Section 1125 of the Bankruptcy Code and has entered an order approving this Disclosure Statement. Approval by the Bankruptcy Court is not an opinion or ruling on the merits of the Plan or final approval of this Disclosure Statement and it does not mean that the Plan has been or will be approved by the Bankruptcy Court. Approval of the Disclosure Statement does not constitute certification by the Bankruptcy Court that the Disclosure Statement is not without inaccuracies.

7. ***Who may vote to accept or reject a plan?***

Generally, holders of allowed claims or equity interests that are "impaired" under a plan of reorganization and who are receiving some cash or property on account of such claims or equity interests are permitted to vote on the plan. A claim is defined by the Bankruptcy Code and the Plan to include a right to payment from a debtor. An equity security is defined by the Bankruptcy Code and the Plan to include an ownership interest in Debtors. In order to vote, a creditor or an equity security holder must have an Allowed Claim or an Allowed Equity Security. The solicitation of votes on the Plan will be sought only from Holders of Allowed Claims and Allowed Equity Securities whose Claims or Equity Securities are Impaired and who will receive property or rights under the Plan. As explained further below, to be entitled to vote, a Person must be a Holder of a Claim that is both an "Allowed Claim" and "Impaired."

8. ***Do I have an Allowed Claim?***

You have an Allowed Claim if: (i) you or your representative timely files a proof of Claim and no objection has been filed to your Claim within the time period set for the filing of such objections; (ii) you or your representative timely files a proof of Claim and an objection is filed to your Claim upon which the Bankruptcy Court has ruled and allowed your Claim; (iii) your Claim is listed by Debtors in their Schedules or any amendments thereto (which are on file with the Bankruptcy Court as a public record) as liquidated in amount and undisputed and no

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objection has been filed to your Claim; or (iv) your Claim is listed by Debtors in their Schedules as liquidated in amount and undisputed and an objection was filed to your Claim upon which the Bankruptcy Court has ruled to allow your Claim. Under the Plan, the deadline for filing objections to Claims is 90 days following the Effective Date. If your Claim is not an Allowed Claim, it is a Disputed Claim and you will not be entitled to vote on the Plan unless the Bankruptcy Court temporarily or provisionally allows your Claim for voting purposes pursuant to Bankruptcy Rule 3018. If you are uncertain as to the status of your Claim or if you have a dispute with Debtors, you should check the Bankruptcy Court record carefully, including the Schedules of Debtors, and seek appropriate legal advice. Neither Debtors nor their professionals can advise you about such matters.

9. *Is my Claim or Equity Security Impaired?*

Impaired Claims and Equity Securities include those whose legal, equitable, or contractual rights are altered by the Plan, even if the alteration is beneficial to the Creditor or Equity Security Holder, or if the full amount of the Allowed Claims will not be paid under the Plan. Holders of Claims and Equity Securities which are not Impaired under the Plan will be deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code, and Debtors need not solicit acceptance of the Plan by Holders of such Unimpaired Claims and Equity Securities. Holders of Claims and Equity Securities which are to receive nothing under the Plan will be deemed to have voted to reject the Plan. Consequently, only Impaired Holders of Claims in Classes 1, 2, 3, 4, and 8 are entitled to vote on the Plan.

10. *How generally is a plan approved?*

In order for a plan to be confirmed, it must be accepted by at least one impaired class of claims, excluding the votes of any Insiders within that class. A class of claims is deemed to have accepted the plan if and when allowed votes representing at least two-thirds in amount and a majority in number of the claims of the class actually voting cast votes in favor of the plan.

11. *What is the general construct of Debtors' Plan?*

The primary objective of the reorganization and restructuring under the Plan is to maximize returns to those Creditors entitled to recoveries from the Estates. Debtors desire to

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achieve this objective through a restructuring of their debts, the sale of Parcels and the infusion of funds, which will result in full repayment of all Allowed Administrative Claims, Allowed Secured Claims, Allowed Priority Claims, and Allowed General Unsecured Claims, with present equity retaining their interest in Debtors.

12. ***Will Reorganized Debtor be able to meet the financial terms of the Plan?***

As set forth in Debtors' Financial Projections, included in the Appendix as **Exhibit "6**" (the "Projections"), and discussed in Section X(B)(2) *infra*, Debtors believe that their projected revenues are sufficient to satisfy all of their obligations under the Plan.

13. ***Which Creditors get to vote on the Plan?***

Impaired Classes of Claims in Class 1 (Allowed USB Loan Claim), Class 2 (Allowed Hertz Loan Claim), Class 3 (Allowed Bookbinder Automobile Loan Claim), Class 4 (Allowed Bookbinder Equipment Loan Claim), and Class 8 (Allowed General Unsecured Claims) are entitled to vote. Debtors are soliciting votes from Holders of these Claims.

Unimpaired Classes of Claims and Equity Securities in Class 5 (Secured Tax Claims), Class 6 (Other Secured Claims), Class 7 (Priority Unsecured Claims), and Class 9 (Equity Securities) will not vote on the Plan.

A VOTE FOR ACCEPTANCE OF THE PLAN BY HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE IS MOST IMPORTANT. DEBTORS BELIEVE THAT THE TREATMENT OF HOLDERS OF IMPAIRED CLAIMS UNDER THE PLAN IS THE BEST ALTERNATIVE FOR EACH OF THEM, AND DEBTORS RECOMMEND THAT THE HOLDERS OF THOSE ALLOWED CLAIMS VOTE IN FAVOR OF THE PLAN.

EACH HOLDER OF AN IMPAIRED CLAIM WHO IS ENTITLED TO VOTE SHOULD CAREFULLY REVIEW THE PLAN, THIS DISCLOSURE STATEMENT, AND THE EXHIBITS TO BOTH DOCUMENTS IN THEIR ENTIRETY BEFORE CASTING A BALLOT.

14. ***What happens after the voting is completed?***

After the appropriate Persons have voted to accept or reject the Plan, there will be a Confirmation Hearing to determine whether the Plan should be confirmed by the Bankruptcy

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Court. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the requirements of the Bankruptcy Code. The Bankruptcy Court will also receive and consider a Ballot summary, which will present a tally of the votes cast by those Classes of Creditors entitled to vote on the Plan.

15. ***What is the effect of plan confirmation?***

Confirmation of a plan of reorganization by the Bankruptcy Court makes the Plan binding upon Debtors, any issuer of securities under the Plan, any person acquiring property under the Plan, and any creditor of Debtors, regardless of whether such creditor: (i) is impaired under, or has accepted, the Plan; or (ii) receives or retains any property under the Plan. Subject to certain limited exceptions, and other than as provided in the Plan itself or the confirmation order, the confirmation order discharges Debtors from any debt that arose prior to the date of confirmation of the Plan and substitutes the obligations specified under the confirmed Plan.

16. ***Has the Securities Exchange Commission reviewed and approved this Disclosure Statement?***

This Disclosure Statement has been prepared in accordance with Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016(b) and not necessarily in accordance with federal or state securities laws or other non-bankruptcy laws.

This Disclosure Statement has not been approved or disapproved by the United States Securities and Exchange Commission (the "SEC"), nor has the SEC passed upon the accuracy or adequacy of the statements contained herein. Debtors are neither a public company nor do they have publicly-registered debt.

17. ***Can I rely upon the statements and financial information contained in this Disclosure Statement?***

DEBTORS MAKE THE STATEMENTS AND PROVIDES THE FINANCIAL INFORMATION CONTAINED HEREIN AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED. PERSONS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE DATE HEREOF.

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THE MANAGEMENT OF DEBTORS HAS REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH DEBTORS HAVE ENDEAVORED TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED.

18. ***Can I rely upon the Disclosure Statement for other purposes?***

THE INFORMATION IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. THIS DISCLOSURE STATEMENT THEREFORE DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT OR LIABILITY, A STIPULATION OR A WAIVER IN ANY PROCEEDING OTHER THAN THE SOLICITATION OF ACCEPTANCES OF THE PLAN AND CONFIRMATION OF THE PLAN. FOR ALL PURPOSES OTHER THAN THE SOLICITATION OF ACCEPTANCES OF THE PLAN, THIS DISCLOSURE STATEMENT SHOULD BE CONSTRUED AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS. APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE CERTIFICATION BY THE BANKRUPTCY COURT THAT THE DISCLOSURE STATEMENT IS WITHOUT INACCURACIES.

19. ***Who provided the information contained in this Disclosure Statement?***

This Disclosure Statement was put together by Debtors with information provided by Robert Flaxman, Jamie Sohacheski, Marc Artino, and Rick Carpinelli. Debtors' bankruptcy counsel, Gordon Silver, and special counsel for land use and zoning matters, Jorden Bischoff & Hiser also assisted with the preparation of the Disclosure Statement.

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20. *Should I consult with my own financial and legal advisors?*

This Disclosure Statement does not constitute legal, business, financial, or tax advice. All Persons desiring such advice or any other advice should consult with their own advisors.

21. *I have heard statements from the media regarding the Plan. Can I rely on these statements?*

Debtors have not authorized any representations about the Plan, themselves, or the value of their property other than those set forth in this Disclosure Statement. Holders of Claims proceed at their own risk to the extent they rely on any information, representations, or inducements made or given to obtain their approval of the Plan that differ from, or are inconsistent with, the information contained herein and in the Plan.

22. *What if there is an inconsistency between this Disclosure Statement and the Plan?*

This Disclosure Statement summarizes certain provisions of the Plan and certain other documents and financial information that are incorporated by reference herein (collectively, the "Incorporated Documents"). The summaries contained herein are qualified in their entirety by reference to the Incorporated Documents. In the event of any inconsistency or discrepancy between a description in this Disclosure Statement and the actual content of any of the Incorporated Documents, the Incorporated Documents shall govern for all purposes.

III.
GENERAL OVERVIEW OF THE PLAN

A. General Overview.

The following is a general overview of the provisions of the Plan, and is qualified in its entirety by reference to the provisions of the Plan itself. Although the Plan impairs certain Classes of Creditors, the Plan is a 100% payment plan. All Creditors with Allowed Claims will be paid the amount of their Allowed Claims in full through the Plan. The Plan's treatment of each Class of Claims is summarized in the following table:

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Class	Description	Treatment	Estimated Claim
Class 1	USB Loan Claim	Impaired. Solicitation required.	$32,450,046.03
Class 2	Hertz Loan Claim	Impaired. Solicitation required.	$565,000
Class 3	Bookbinder Automobile Loan Claim	Impaired Solicitation required	$5,248.95
Class 4	Bookbinder Equipment Loan Claim	Impaired Solicitation required	$7,199.99
Class 5	Secured Tax Claims	Unimpaired No solicitation required.	$1,344,037.53
Class 6	Other Secured Claims	Unimpaired No solicitation required	$0
Class 7	Priority Unsecured Claims	Unimpaired No solicitation required.	$0
Class 8	General Unsecured Claims	Impaired. Solicitation required.	$2,098,424.53 (Per the Schedules)[3]
Class 9	Equity Securities	Unimpaired. No solicitation required.	N/A

B. Treatment of Administrative Claims.

Pursuant to Section 1123(a)(1), Allowed Administrative Claims are not designated as a Class. The Holders of such unclassified Claims shall be paid in full under the Plan consistent with the requirements of Section 1129(a)(9)(A) and are not entitled to vote on the Plan. The

[3] The HOAs (and with regard to the MTS West Objection (as defined below), five MTS West Homeowners (as defined below) contend that they are Creditors because they allege their rights will be negatively altered as a result of the Plan and specifically by (1) the enforcement of the Development Agreement; (2) the unrestricted use of the Golf Course land; and (3) revisions related to Lot 68 (by the MTS East HOA (as defined below). As further set forth herein, the Development Agreement provides Debtors contractual rights to perform every act related to land use that is set forth in the Plan. Debtors' rights are further supported by the now expired Golf Course Restriction (as defined below). The HOAs' arguments are without merit. The Debtors believe that neither the HOAs nor any of the MTS West Homeowners (as defined below) or MTS East homeowners has allowed Claims in the Chapter 11 Cases, and if Claims are filed in the Chapter 11 Cases, Debtors will seek to disallow such Claims.

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amount of Administrative Claims incurred, but unpaid as of the Confirmation Hearing is estimated to be $1,800,000 as follows: DIP Loan Claims of $1,080,000 plus accrued interest addressed in Sections 2.3 of the Plan as well as the amount outstanding to Debtors' duly-retained professionals. Pursuant to Section 331 of the Bankruptcy Code, Debtors' duly-retained professionals are able to seek the allowance and payment of their incurred fees and costs and may do so prior to the Confirmation Hearing.; Debtor anticipates the following accrued but unpaid professional fees as the time of confirmation: (1) Debtors' then unpaid bankruptcy counsel's fees estimated to be $300,000; (2) Debtors' special counsel for land use and zoning matters fees estimated to be $100,000; (3) Ordinary Course Professional fees estimated to be $100,000; and (4) Debtors' interest rate and feasibility expert's fees estimated to be $50,000.

Each Allowed Administrative Claim shall be paid by Reorganized Debtor (or otherwise satisfied in accordance with its terms) upon the latest of: (i) the Effective Date or as soon thereafter as is practicable; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as practicable; (iii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon thereafter as practicable; and (iv) such date as the Holder of such Claim and Reorganized Debtor shall agree upon.

On the Effective Date, the DIP Loan Documents shall remain in full force and effect, save and except that without any further action by Reorganized Debtor or DIP Lender, all of the DIP Loan Documents shall be deemed to have been amended and modified (the "Restated DIP Loan Documents") and the DIP Loan Claims will be evidenced by the Restated DIP Promissory Note, which will be effective on the Effective Date and will generally incorporate the terms of the DIP Promissory Note as modified as follows: (a) the principal balance of the Restated DIP Promissory Note shall be the DIP Loan Claim as of the Effective Date; (b) interest shall accrue on the Restated DIP Promissory Note at the DIP Interest Rate; (c) beginning on the fourteenth (14th) Business Day of the first full calendar month following the Effective Date, and on the fourteenth (14th) Business Day of each subsequent month up to and including the twenty-fourth (24th) full month after the Effective Date, Reorganized Debtor shall distribute to the DIP Lender principal and interest payments on the outstanding balance of the Restated DIP Promissory Note

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amortized over a period of twenty (20) years at the DIP Interest Rate; (d) the unpaid balance of the Restated DIP Promissory Note shall be due and payable on December 31, 2016 (the "Restated DIP Loan Maturity Date"); and (e) there shall be no penalty for prepayment for all or part of the Restated DIP Promissory Note prior to the Restated DIP Loan Maturity Date.

C. Class 1 – USB Loan Claim.

Class 1 is comprised of the USB Loan Claim, which is calculated as follows: The outstanding principal and accrued interest at the non-default rate due and owing by Debtors to USB under the USB Note as of the Petition Date, which principal and interest totals $32,450,046.03, minus the Adequate Protection Payments tendered on account of the USB Note, if any, plus: (i) any accrued and unpaid interest from the Petition Date up to the Effective Date at the rate set forth in the USB Note; and (ii) reasonable attorney's fees, costs, and expenses incurred by USB post-petition and prior to the Effective Date, solely to the extent that such fees, costs, and expenses are approved by entry of a Final Order of the Bankruptcy Court.[4]

On the Effective Date, all pre-Effective Date defaults under the Loan Documents shall be deemed to have been cured and on the Effective Date, Debtors and/or Reorganized Debtor shall be current and in good standing under the USB Loan Documents. Additionally, on the Effective Date, the USB Loan Documents shall remain in full force and effect, save and except that: (i) without any further action by Debtors, Reorganized Debtor, or USB all of the USB Loan Documents shall be deemed to have been amended and modified (the Restated USB Loan Documents) as follows; and (ii) the Class 1 Allowed USB Loan Claims will be evidenced by the Restated USB Note, which will be effective on the Effective Date and will generally incorporate the terms of the USB Note as modified as follows:

1. Principal Balance. The principal balance of the Restated USB Note shall be the Allowed USB Loan Claim less the Guarantor Contribution.

2. Lien. From and after the Confirmation Date, the Holder of the Allowed USB Loan Claim shall retain its Lien in the USB Collateral consistent with the applicable Restated USB Loan Documents and the Restated USB Note until the Restated USB Note is repaid in full.

[4] To the extent Debtors enter into an agreement with U.S. Bank regarding the treatment of the USB Loan Claim, the Plan will be modified accordingly and Debtors will comply with the requirement of Section 1125 in this regard.

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3. **Post-Effective Date Interest.** Interest shall accrue on the Restated USB Note at the Restated USB Interest Rate of 3.75% per annum.

4. **Monthly Payments.**

a. Beginning on the fourteenth (14th) Business Day of the first full calendar month following the Effective Date, and on the fourteenth (14th) Business Day of each subsequent month up to and including the twelfth (12th) full month after the Effective Date, Reorganized Debtor shall distribute to USB interest-only payments on the Restated USB Note at the USB Restated Interest Rate.

b. Beginning on the fourteenth (14th) Business Day of the thirteenth (13th) full month after the Effective Date, and on each subsequent month up to and through the Restated UBS Loan Maturity Date, Reorganized Debtor shall distribute to USB monthly principal and interest payments on the outstanding balance of the Restated USB Note amortized over a period of thirty (30) years at the USB Restated Interest Rate.

5. **Restated USB Loan Maturity Date.** The Restated USB Loan Maturity Date shall mean the fifth (5th) anniversary of the Effective Date, provided that at the option of Reorganized Debtor, the Restated USB Loan Maturity Date may be extended for up to four (4) additional periods of six (6) months each, subject to the following terms and conditions for each such extension:

a. USB shall have received from Reorganized Debtor written notice of the requested extension at least thirty (30) days before commencement of the extension period.

b. Reorganized Debtor shall have paid to USB in cash or immediately available funds on or before the commencement of the extension period, an extension fee in an amount equal to one-quarter percent (.25%) of the then outstanding principal balance of the Restated USB Note.

c. No Event of Default and no uncured event, for which notice has been given by USB, that, with the passage of time, would be an Event of Default, shall have occurred and be continuing on the date of Reorganized Debtor's notice of extensions to USB or on the commencement of the extension period.

6. **Prepayment.** There shall be no penalty for prepayment of all or part of the Restated USB Note prior to the Maturity Date.

7. **Refinancing.** Prior to the Maturity Date, Reorganized Debtor shall have the absolute right to refinance the Restated USB Note; provided, however, that the proceeds of such refinancing loan are sufficient to pay, and are utilized to pay, all sums then due and owing under the Restated USB Note at the time of closing of such refinancing, unless USB otherwise agrees.

8. **Sale of the Real Property.**

a. **Single Sale**. Prior to the Restated USB Loan Maturity Date, Reorganized Debtor shall have the absolute right to sell the Real Property in one sale transaction free and clear of USB's Liens; provided, however, that the proceeds of such sale are sufficient at the time of closing of such sale to pay, and are utilized to pay, all sums then due and owing under the Restated USB Note, unless USB otherwise agrees.

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b. **Partial Sales and Releases**. Prior to the Restated USB Loan Maturity Date, Reorganized Debtor shall have the absolute right to obtain a release of one or more Parcels free and clear of the Lien of the Restated USB Loan Documents for the Release Price applicable to each such Parcel as set forth on **Schedule 1.196** of the Plan on the following conditions:

i. USB shall have received from Reorganized Debtor written notice of the request of the release at least thirty (30) days before commencement of the extension period.

ii. Reorganized Debtor shall have paid the Release Price to USB in cash or immediately available funds on or before the closing of the release transaction.

iii. No Event of Default and no uncured event, for which notice has been given by USB, that, with the passage of time, would be an Event of Default, shall have occurred and be continuing on the date of Reorganized Debtor's notice of extensions to USB or on the commencement of the extension period.

c. **Cooperation.** Subject to the terms and conditions herein, the Reorganized Debtor and USB shall use their commercially reasonable best efforts to cooperate and to consummate each such proposed Parcel sale, including any reasonable requests for information or execution of applicable documents, including releases and reconveyances from the Liens of the Restated USB Loan Documents that are needed to effectuate such a Parcel sale.

9. **Court Jurisdiction.** In the event of a dispute regarding the operation or satisfaction of any terms regarding the Restated USB Loan Documents, the parties shall be required to meet and confer in a good faith attempt to resolve any such disputes; if the parties are unable to resolve such disputes, the Bankruptcy Court shall retain jurisdiction to determine the satisfaction of the conditions in this subsection governing Parcel sales and both Reorganized Debtor and USB hereby consents to an order shortening time for the adjudication such issues.

10. **Insolvency and Bankruptcy Relief.** Debtors' pre-Effective Date insolvency, inability to pay its debts as they mature, the making of an assignment for the benefit of creditors by Debtors or the USB Guarantor, the appointment of a receiver of the property of Debtors or the USB Guarantor, or the filing of a voluntary or involuntary petition under the Bankruptcy Code or similar proceeding under law against Debtors or the USB Guarantor shall not constitute an event of default under the Restated USB Loan Document, including a violation of Section 6.14 of the USB Loan Agreement.

11. **USB Loan Documents, USB Loan Agreement and USB Modification Agreement.**

a. The USB Loan Documents, including the USB Loan Agreement and USB Modification Agreement are modified to reflect the modification and amendments thereto effectuated by this Plan as of the Effective Date.

b. To the extent inconsistent with the provisions of this Plan, on the Effective Date, each of the USB Loan Documents shall be deemed modified, amended and restated to the extent necessary to be consistent with and in accordance with the provisions of this Plan, including (i) with respect to the USB Loan Agreement (and all related provisions of the USB Loan Documents, including the USB Deed

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of Trust) Sections 6.1, 6.6, 6.8, 7.4, 7.5, 7.7(b) and (c), 7.9, 7.1, 7.14 and 11.1(j), (l) and (m) are waived and deleted and of no further effect, (ii) Reorganized Debtor shall be deemed in compliance with Sections 6.7 of the USB Loan Agreement (including all related provisions of the USB Loan Documents, including the USB Deed of Trust), and (iii) the provisions of Section 2.5 of the Modification Agreement, Sections 8.1, 8.2, 7.17 and 7.18 of the USB Loan Agreement as modified by Sections 2.6, 2.7, 2.8 and 2.9 of the USB Modification Agreement, are waived and of no further force or effect (including with respect to the USB Loan Documents, including the USB Deed of Trust).

c. Reorganized Debtor's entitlements and authorization to develop the Real Property in accordance with the Development Agreement and the Development Agreement Entitlements as provided for in this Plan satisfies the provisions of Section 7.15 of the USB Loan Agreement as modified by the USB Modification Agreement (including with respect to the USB Loan Documents, including the USB Deed of Trust).

d. Section 6.10 of the USB Loan Agreement (including with respect to the USB Loan Documents, including the USB Deed of Trust) is amended to read as follows:

All financial statements, profit and loss statements of Borrower, statements as to ownership and other financial statements or financial reports (excluding any third party reports separately obtained by Lender) provided to Lender by or on behalf of Borrower after the Effective Date, shall be true, complete and correct in all material respects as of the date thereof.

e. Section 6.11 of the USB Loan Agreement (including with respect to the USB Loan Documents, including the USB Deed of Trust) is amended to read as follows:

Subject to the provisions of the Plan, Borrower has filed all required federal, state and local tax returns and has paid all of its current obligations before delinquency, including all federal, state and local taxes and all other payments required under federal, state or local law.

f. Section 6.14 of the Loan Agreement (including with respect to the USB Loan Documents, including the USB Deed of Trust) is amended to read as follows:

Each entity comprising Borrower (i) confirms that as of the Effective Date Borrower will be able to pay its debts as they become due in accordance with the Plan, (ii) confirms that, following the Effective Date, each Borrower has and will continue to have sufficient capitals as and when required to operate its business, and (iii) confirms that, based upon its assets and its anticipated business performance, each Borrower will be able to pay its debts in accordance with the Plan.

g. Section 8.4 of the Loan Agreement (including with respect to the USB Loan Documents, including the USB Deed of Trust) is amended to read as follows:

Inclusion in Community Facilities District. Consent to, or vote in favor of, the inclusion of all or any part of the Real Property in any Community Facilities District formed pursuant to the Community Facilities District Act, A.R.S. Section

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48-701, et seq., as amended from time to time.

h. With specific regard to Section 2.5 of the Modification Agreement (including with respect to the USB Loan Documents, including the USB Deed of Trust), as of the Effective Date, Reorganized Debtor is authorized and allowed to make any and all Planned Improvements which Reorganized Debtor determines in its sole discretion are in accordance with the Development Agreement and the Development Agreement Entitlements without USB consent or approval.

The Holder of the USB Loan Claim shall not be entitled to any default interest, late fees, or other charges resulting from a default occurring prior to the Effective Date under the USB Loan Documents. On the Effective Date, all pre-Effective Date defaults under the USB Loan Documents shall be deemed to have been cured and on the Effective Date, Debtors and/or Reorganized Debtor shall be current and in good standing under the Restated USB Loan Documents.

Class 1 is impaired under the Plan. The Holder of the USB Loan Claim is entitled to vote on the Plan.

D. Class 2 – Hertz Loan Claim.

On the Effective Date, the Hertz Loan Documents shall remain in full force and effect, save and except that: (i) without any further action by Debtors, Reorganized Debtor, or Hertz, all of the Loan Documents shall be deemed to have been amended and modified (the "Restated Hertz Loan Documents") as follows; and (ii) the Allowed Hertz Loan Claims will be evidenced by the Restated Hertz Note, which will be effective on the Effective Date and will generally incorporate the terms of the Hertz Note as modified as follows:

1. Principal Balance. The principal balance of the Restated Hertz Note shall be the Allowed Hertz Loan Claims.

2. Lien. From and after the Confirmation Date, the Holder of the Allowed Hertz Loan Claims shall retain its Lien in the Hertz Collateral consistent with the applicable Hertz Loan Documents and the Restated Hertz Note until the Restated Hertz Note is repaid in full.

3. Post-Effective Date Interest. Interest shall accrue on the Restated Hertz Note at the Restated Hertz Interest Rate.

4. Monthly Payments. Beginning on the fourteenth (14th) Business Day of the first full calendar month following the payment in full of the Restated USB Loan and Senior Exit Loan, and on the fourteenth (14th) Business Day of each subsequent month for eleven (11) months shall distribute to Hertz interest-only payments on the Restated

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Hertz Note at the Restated Hertz Interest Rate.

5. Maturity Date. The unpaid balance of the Restated Hertz Note shall be due and payable on the Restated Hertz Loan Maturity Date which is the last day of the twelfth (12th) month after the commencement of interest payments on the Restated Hertz Loan.

6. Prepayment. There shall be no penalty for prepayment for all or part of the Restated Hertz Note prior to the Restated Hertz Loan Maturity Date.

7. Refinancing. Prior to the Restated Hertz Loan Maturity Date, Reorganized Debtor shall have the absolute right to refinance the Restated Hertz Note; provided, however, that the proceeds of such refinancing loan are sufficient to pay, and are utilized to pay, all sums due and owing under the Restated Hertz Note at the time of closing of such refinancing, unless Hertz otherwise agrees.

8. Sale of the Real Property. Reorganized Debtor shall have the absolute right to sell the Real Property free and clear of Hertz's Liens; provided, however, that the proceeds of such sale are sufficient at the time of closing of such sale to pay, and are utilized to pay, all sums due and owing under the Restated Hertz Note, unless Hertz otherwise agrees.

9. Insolvency and Bankruptcy Relief. Debtors' pre-Effective Date insolvency, inability to pay its debts as they mature, the making of an assignment for the benefit of creditors by Debtors or the Hertz Guarantor, the appointment of a receiver of the property of Debtors or the Hertz Guarantor, or the filing of a voluntary or involuntary petition under the Bankruptcy Code or similar proceeding under law against Debtors or the Hertz Guarantor shall not constitute an event of default under the Loan Documents.

The Holder of the Hertz Loan Claims shall not be entitled to any default interest, late fees, or other charges resulting from a default occurring prior to the Effective Date under the Hertz Loan Documents. On the Effective Date, all pre-Effective Date defaults under the Hertz Loan Documents shall be deemed to have been cured and on the Effective Date, Debtors and/or Reorganized Debtor shall be current and in good standing under the Restated Hertz Loan Documents.

Class 2 is impaired under the Plan. The Holder of the Hertz Loan Claims is entitled to vote on the Plan.

E. Class 3 – Bookbinder Automobile Loan Claim.

On the Effective Date, the Bookbinder Automobile Loan Documents shall remain in full force and effect, save and except that: (i) without any further action by Debtors, Reorganized Debtor, or Bookbinder, all of the Bookbinder Automobile Loan Documents shall be deemed to have been amended and modified (the "Restated Bookbinder Automobile Loan Documents") as

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follows; and (ii) the Allowed Bookbinder Automobile Loan Claim will be evidenced by the Restated Automobile Note, which will be effective on the Effective Date and will generally incorporate the terms of the Automobile Note as modified as follows:

1. Principal Balance. The principal balance of the Restated Automobile Note shall be the Allowed Bookbinder Automobile Loan Claim.

2. Lien. From and after the Confirmation Date, the Holder of the Allowed Bookbinder Automobile Loan Claim shall retain his Lien in the collateral consistent with the applicable Bookbinder Automobile Loan Documents and the Restated Automobile Note until repaid in full.

3. Post-Effective Date Interest. Interest shall accrue on the Restated Automobile Note at the presently stated interest rate.

4. Monthly Payments. Payments of the Restated Automobile Loan shall be on the same amortization schedule as set forth in the Automobile Note.

5. Maturity Date. The maturity date of the Restated Automobile Note shall remain May 14, 2016.

6. Other Charges. The Holder of the Bookbinder Automobile Loan Claim shall not be entitled to any default interest, late fees, or other charges resulting from a default occurring prior to the Effective Date under the Bookbinder Automobile Loan Documents,

7. Cure of Defaults. On the Effective Date, all pre-Effective Date defaults under the Bookbinder Automobile Loan Documents shall be deemed to have been cured and on the Effective Date, Debtors and/or Reorganized Debtors shall be current and in good standing under the Restated Bookbinder Automobile Loan Documents.

Class 3 is Impaired under this Plan. The Holder of the Bookbinder Automobile Loan Claim is entitled to vote on this Plan.

F. Class 4 – Bookbinder Equipment Loan Claim.

On the Effective Date, the Bookbinder Equipment Loan Documents shall remain in full force and effect, save and except that: (i) without any further action by Debtors, Reorganized Debtors, or Bookbinder, all of the Bookbinder Equipment Loan Documents shall be deemed to have been amended and modified (the "Restated Bookbinder Equipment Loan Documents") as follows; and (ii) the Allowed Bookbinder Equipment Loan Claim will be evidenced by the Restated Equipment Note, which will be effective on the Effective Date and will generally incorporate the terms of the Equipment Note as modified as follows:

1. Principal Balance. The principal balance of the Restated Equipment Note shall be the Allowed Bookbinder Equipment Loan Claim.

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2. Lien. From and after the Confirmation Date, the Holder of the Allowed Bookbinder Equipment Loan Claim shall retain his Lien in the collateral consistent with the applicable Bookbinder Equipment Loan Documents and the Restated Equipment Note until repaid in full.

3. Post-Effective Date Interest. Interest shall accrue on the Restated Equipment Note at the presently stated interest rate.

4. Monthly Payments. Payments of the Restated Equipment Loan shall be on the same amortization schedule as set forth in the Equipment Note.

5. Maturity Date. The maturity date of the Restated Equipment Note shall remain May 14, 2015.

6. Other Charges. The Holder of the Bookbinder Equipment Loan Claim shall not be entitled to any default interest, late fees, or other charges resulting from a default occurring prior to the Effective Date under the Bookbinder Equipment Loan Documents,

7. Cure of Defaults. On the Effective Date, all pre-Effective Date defaults under the Bookbinder Equipment Loan Documents shall be deemed to have been cured and on the Effective Date, Debtors and/or Reorganized Debtors shall be current and in good standing under the Restated Bookbinder Equipment Loan Documents.

Class 4 is Impaired under this Plan. The Holder of the Bookbinder Equipment Loan Claim is entitled to vote on this Plan.

G. Class 5-Secured Tax Claims.

Each Allowed Secured Tax Claim, if any, shall, in full and final satisfaction of such Claim, be paid in full in Cash by Reorganized Debtor from the proceeds of the Senior Exit Loan upon the latest of: (i) the Effective Date or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the fourteenth (14th) Business Day after such Claim is Allowed; and (iv) such date as agreed upon by the Holder of such Secured Tax Claim and Debtors, and after the Effective Date, Reorganized Debtor.

Class 5 is Unimpaired under this Plan, and therefore the Holders of Class 5 Secured Tax Claims are deemed to have accepted this Plan and are not entitled to vote on this Plan.

H. Class – Other Secured Claims.

Each Allowed Other Secured Claim,[5] if any, shall, in full and final satisfaction of such

[5] "Other Secured Claims" are any Secured Claim, other than the USB Loan Claims, the Hertz Loan Claims, the Bookbinder Automobile Loan Claim and the Bookbinder Equipment Loan Claim.

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Claim, be paid in full in Cash or otherwise left Unimpaired by Debtors or Reorganized Debtors, as the case may be, upon the latest of: (i) the Effective Date or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the fourteenth (14th) Business Day after such Claim is Allowed; and (iv) such date as agreed upon by the Holder of such Claim and Debtors, and after the Effective Date, Reorganized Debtor.

Class 6 is Unimpaired under the Plan. The Holders of Claims in Class 5 are not entitled to vote on the Plan.

I. Class 7 – Priority Unsecured Claims.

Each Priority Unsecured Claim,[6] if any, shall, in full and final satisfaction of such Claims, be paid in full in Cash on the latest of: (i) the Effective Date, or as soon thereafter as is practical; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as is practicable; (iii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder of such Claim and Reorganized Debtors have agreed or shall agree.

Class 7 is Unimpaired under the Plan. The Holders of Claims in Class 6 are not entitled to vote on the Plan.

J. Class 8 – General Unsecured Claims.

A General Unsecured Claim is a Claim, including a Claim arising under Section 502(g) of the Bankruptcy Code that is not secured by a charge against or interest in property in which the Estate has an interest and is not an unclassified Claim, Administrative Claim, or Priority Unsecured Claim.

Except to the extent that a Creditor with an Allowed General Unsecured Claim agrees to less favorable treatment, each Creditor with an Allowed General Unsecured Claim, shall, in full and final satisfaction of such Claim, be paid in full in Cash, plus post-Effective Date interest at the Unsecured Interest Rate, on the latest of: (i) the first (1st) anniversary of the Effective Date, as soon thereafter as is practical; (ii) such date as may be fixed by the Bankruptcy Court, or as

[6] "Priority Unsecured Claims" is defined in the Plan as "[a]ny and all Claims accorded priority in right of payment under Section 507(c) of the Bankruptcy Code."

soon thereafter as is practicable; (iii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder of such Claim and Reorganized Debtor have agreed or shall agree.

Class 8 is Impaired under the Plan. The Holders of Class 8 Claims are entitled to vote on this Plan.

Class 8 includes the Claims of insiders; specifically, Crown Development. Unless these Holders of Claims elect to forego payment or accept a reduced payout, these Holders will be treated in pari passu with all other Holders of Class 8 Claims.

K. Class 9 – Equity Securities.

On the Effective Date, the Holders of Equity Securities of Debtors shall retain all of their legal interests. The Holders of the Class 9 Equity Securities are Unimpaired, and are therefore deemed to have accepted the Plan and are not entitled to vote on the Plan

IV.
SUMMARY OF VOTING PROCESS

A. Who May Vote To Accept or Reject the Plan.

Generally, holders of allowed claims or equity interests that are "impaired" under a plan are permitted to vote on the plan. A claim is defined by the Bankruptcy Code and the Plan to include a right to payment from a debtor. An equity security represents an ownership stake in a debtor, such as a membership interest. In order to vote, a creditor must first have an allowed claim.

The solicitation of votes on the Plan will be sought only from those Holders of Allowed Claims whose Claims are impaired and which will receive property or rights under the Plan. As explained more fully below, to be entitled to vote, a Claim must be both "Allowed" and "Impaired."

B. Summary of Voting Requirements.

In order for the Plan to be confirmed, the Plan must be accepted by at least one non-insider, impaired class of claims, excluding the votes of insiders. A class of claims is deemed to have accepted a plan when allowed votes representing at least two-thirds (2/3) in amount and a

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majority in number of the claims of the class actually voting cast votes in favor of a plan. A class of equity securities has accepted a plan when votes representing at least two-thirds (2/3) in amount of the outstanding equity securities of the class actually voting cast votes in favor of a plan.

Debtors are soliciting votes from Holders of Allowed Claims in the following Classes:

Class	**Description**
Class 1	USB Loan Claims
Class 2	Hertz Loan Claims
Class 3	Bookbinder Automobile Loan Claim
Class 4	Bookbinder Equipment Loan Claim
Class 8	General Unsecured Claims

Debtors have the right to supplement this Disclosure Statement as to additional Impaired Classes, if any.

V.
INFORMATION ABOUT DEBTORS' BUSINESS AND THE CHAPTER 11 CASES

A. Description of Debtors' Business and Acquisition History.

In January 2007, Debtors jointly obtained a loan for the purchase of the Mountain Shadows Resort including a resort hotel (the "Hotel") and the Mountain Shadows Golf Club (the "Club") located at 56th Street and Lincoln Drive in Paradise Valley, Arizona. Debtors now own the approximately 68 acres of real property nestled at the base of Camelback Mountain (the "Real Property" or "Resort") and seek to revitalize the Resort, elevating it to a level of excellence that will surpass its past glory.

The Resort is situated along both sides of 56th Street south of Lincoln Drive in Paradise Valley, Arizona. The Maricopa County Assessor's Parcel numbers as of October 1, 2012, include: 169-43-004C, 169-30-071, 169-43-005, 169-43-006, 169-30-068A, 169-30-068B, 169-30-067A, 169-30-072, 169-30-067B, 169-30-070, 169-30-073, and 169-30-063. The Resort is described in the Development Agreement (as defined herein) as 67.04 acres with a square footage of 2,920,262 and the SUP as 68.48 acres with a square footage of 2,982,771.

The east and west portions of the Resort are generally rectangular with the exception of

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the existing Mountain Shadows East and Mountain Shadows West residential subdivisions. Primary road frontage along Lincoln Drive is 1,170 feet; secondary road frontage along 56th Street is 2,348 feet. The site is generally level and at street grade with Lincoln Drive and 56th Street. The topography of the Real Property does not present development issues for future development. The Real Property has panoramic views of Camelback Mountain and Mummy Mountain. According to the Flood Control District of Maricopa County, the subject property is located within an X Flood Hazard Area. Flood insurance is not required (Community No. 040049 Panel No. 1690 of 4350 Suffix C Map No. 04013C Panel Date September 30, 2005).

Legal and physical access to the subject property is by means of Lincoln Drive, a major east/west arterial roadway that is improved with two lanes of traffic in each direction. Street improvements include asphalt paving and concrete curbs, gutters, sidewalks and street lights. 56th Street is a collector street that is improved with two lanes of traffic. It is a paved roadway without concrete curbs, gutters and sidewalk.

MTS Land generally owns the real property on which the Hotel portions of the Resort sit. The Hotel has been closed since 2004. Additionally, MTS Land also currently owns part of the Club. Specifically, the Club's first three golf holes, driving range and tennis courts, and adjacent parking are located on the MTS Land portion of the real property. In addition, the only ingress and egress to the Club is through the MTS Land portion of the real property.

MTS Golf generally owns the real property on which portions of the Club is located. The Club hosts an 18 hole, par 56, 3,081-yard executive course (the "Golf Course"), restaurant & grille, pro shop, fitness center, tennis courts, and a driving range. The Club is located west of 56th Street and south of Lincoln Drive and is an executive golf course with two sets of tee boxes with distances of 2,606 and 3,081 yards. It was designed by Arthur Jack Snyder.

Although the Hotel is closed the Club is open to the public and also includes about 142 convenience memberships with an additional eight memberships having access to the fitness facility only. The memberships are open to the public for purchase and include members from surrounding residential properties.

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A separate but affiliated company, MTS Beverages, LLC ("MTS Beverages"), owns the liquor licenses necessary for the operation of the Resort.

Debtors, along with MTS Beverages, are each owned by Cool Mountain Holdings, LLC *fka* Mountain Shadows Holdings, LLC ("Cool Mountain"), which is in-turn owned by Crown MTS, LLC ("Crown MTS") which is solely owned by Jaime Sohacheski. MTS Land was formed on August 31, 2005, MTS Golf and Crown MTS were each formed on December 19, 2006, and MTS Beverages was formed on January 5, 2007. Each entity was formed under the laws of the State of Delaware.

In January 2007, Debtors appointed MTS Beverages as their manager under a *Property Management Agreement*. As a result, much of the activity for MTS Golf and MTS Land is conducted by MTS Beverages. On that same date, MTS Beverages appointed Crown Realty & Development, LLC ("Crown Development") as sub-manager to provide all services and oversee the day-to-day operations of MTS Beverages pursuant to the *Sub-Management Agreement*. Additionally, in March 2010, Debtors and MTS Beverages entered into a *Contribution Agreement*.[7] The Contribution Agreement authorizes each of the signatories to advance money on behalf of each other and to share in all debts. The Contribution Agreement explicitly recognized that while Debtors were separate legal entities, they have been and remain mutually dependent for integrated operations, unified businesses, and jointly and severally liable for all debts.

Based on these various operating documents as well as course of conduct since their inception, despite their generally separate ownership of the Hotel and the Club, Debtors operate as a consolidated joint entity with the continued joint purpose of operating as one resort and working towards redeveloping the Hotel and the Club as one property.

Since January 31, 2007, the Club has been operated by In Celebration of Golf Management, LLC ("ICOG"), a well-known golf facilities manager that currently operates nine Arizona golf courses. ICOG took control of all operational duties associated with the Club

[7] In March of 2012, Crown MTS was added as a signatory to the Contribution Agreement.

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pursuant to a Golf Facility Management Agreement ("Golf Management Agreement"). The Golf Management Agreement was amended in March 2009 to extend the termination date from December 31, 2011 to a date provided with ninety days' notice.

1. Debtors' Property - Related Leases.

Potomac Hotel Limited Partnership ("Potomac") was the owner of the Resort from which Debtors purchased the Resort. The Resort was previously operated by Marriott Motor Hotels, Inc., which was subsequently merged into Marriott Corporation ("Marriott'), as general partner of Potomac.

Debtors have certain rights under existing leases, being (a) a lease dated August 7, 1968 (the "Folkman Lease") for the property as set forth in the Folkman Lease (the "Folkman Property") between Lawyer's Title of Arizona, formerly Arizona Title Insurance and Trust Company, as lessor, and Marriott, as lessee, and (b) a lease dated March 22, 1978 the (the "Mummy Mountain Lease") for the property set forth in the Mummy Mountain lease (the "Mummy Mountain Property") between Marriott, as lessee, and Mummy Mountain Development Corporation, as lessor. Marriott caused the construction of an 18 hole golf course on the Folkman Property (the "Camelback Course"). Marriott also caused the construction of an 18 hole golf course on the Mummy Mountain Property (the "North Course").

Under the Assignment of Lease and Agreement (the "F&M Agreement") made on July 13, 1982 and effective on July 16, 1982 by and between Marriott and Potomac regarding the Folkman Lease and the Mummy Mountain Lease, Marriott "irrevocably and unconditionally" granted to the "guests of Mountain Shadows the right to exercise all of the privileges of Inn Members" at the Camelback Country Club. Resort guests "shall have the present and continuing right to ingress and egress to and the use and enjoyment" of the Camelback Course and North Course, including all ancillary facilities (the "Camelback Courses") based upon "an equitable sharing of use privileges between guests of the Camelback Inn and guests of Mountain Shadows."

The F&M Agreement also provides that "no modification, amendment, waiver or release made in the provisions of this Agreement or any right, obligation, claim or cause of action

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arising hereunder or any termination or cancellation of this Agreement shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted…" Moreover, the F&M Agreement "shall run with the land" and "inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns…"

Debtors are successors-in-interest to Potomac with respect to the ownership of the Resort. Under the Assignment and Assumption dated January 31, 2007 between Potomac and Debtors, Potomac sold, assigned, conveyed, and granted to Debtors all of Potomac's right, title, and interest in, to and under the F&M Agreement.

2. Debtors' Deed Restrictions.

The Resort is subject to certain deed restrictions as follows:

a. Mountain Shadows West Declaration of Restrictions.

Mountain Shadows West is Lots 69-127 of Mountain Shadow Resort Unit Two-Amended recorded on June 6, 1961, at Book 95 of Maps, page 3, of the records of Maricopa County, Arizona. A declaration of restrictions was recorded by Paul Construction Co. on September 6, 1961, in Docket 3832, page 453, and re-recorded on April 24, 1962, in Docket 4115, page 43, of the records of Maricopa County, Arizona (the "Mountain Shadows West Declaration of Restrictions"). The Mountain Shadows West Declaration of Restrictions generally provide that the owners of lots in Mountain Shadows West ("MTS West Homeowners") have a right of access to the general club facilities at the Resort on the east side of 56th Street that include the use of cocktail lounge, dining room, recreational areas and general park areas without charges of dues or special charges other than such charges as may be specifically incurred for use of guest-residence facilities, food, drink, and special services, such as barber, maid, valet, and catering. Having no ownership in the Real Property east of 56th Street at the time the Mountain Shadows West Declaration of Restrictions was first recorded, Paul Construction Co. had no authority to affect the Real Property east of 56th Street by recording the Mountain Shadows West Declaration of Deed Restrictions. Therefore, the portion of the Mountain Shadows West Declaration of Restrictions that purports to give a right of access to MTS West Homeowners to the general

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facilities located on the East side of 56th Street is ineffective.

The Mountain Shadows West Declaration of Restrictions also provides that the MTS West Homeowners have a right of access to the golf club house, driving range, tennis courts, swimming pool, and golf course, without charge other than those charges incurred as green fees, food, drink, and special services. Although this provision of the Mountain Shadows West Declaration of Restrictions provides a right of access to these amenities if they are available, this provision does not require Debtors to build, operate, or maintain any or all of these amenities, nor does it require that any such existing amenities remain. In addition, Debtors may put in place rules and regulations regarding the exercise of this right of access as Debtors deems necessary or appropriate, in their sole discretion, from time to time.

As successor in interest to Mountain Shadow Co., Debtors may exercise the rights granted to Mountain Shadow Co. in the Mountain Shadows West Declaration of Restrictions including, but not limited to, to: (i) appoint a member to the Mountain Shadow West Management Board; (ii) grant or deny permission to changes in the exterior design by enlarging, remodeling or adding to residences, patios, and patio fences; (iii) grant or deny permission to changes by adding to or taking from the original landscape within lots, and (iv) swimming pools are only allowed on lots 75, 117, 85, 109, and 95 of Mountain Shadows West.

b. Golf Course Restriction.

The developers of Mountain Shadows West. James P. Paul ("Paul") and Del E. Webb Motor Hotel Co., an Arizona corporation, copartners doing business as Feeney Joint Venture, recorded a Declaration of Restrictions on April 24, 1962, in Docket 4115, page 48, of the records of Maricopa County, Arizona (the "Golf Course Restriction"). The Golf Course Restriction limited the use of the Golf Course to certain uses, including golf course, county club, club house, certain recreational facilities, and certain buildings. The Golf Course Restriction expressly excluded existing holes #1 and #2 and most of the existing driving range and existing hole # 3. The Golf Course Restriction states that it was "effective and binding upon said real property until December 31, 1987, at which time the same shall terminate." The Golf Course Restriction was recorded prior to the recordation of any deeds in favor of MTS West

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Homeowners.

In a deposition conducted on December 15 and 16, 2004 of James Pope Paul, one of the developers of Mountain Shadows West (the "Paul Deposition"),[8] Paul stated that he was aware that the Golf Course Restriction had a 25-year term when he signed it and that he probably would have told prospective purchasers of Mountain Shadows West about the 25-year term of the Golf Course Restriction when he was selling lots, even though he also said that he had intended that the MTS West Homeowners enjoy the golf course "forever." See Paul Deposition at pg. 76. Paul also stated that he told the MTS West Homeowners prior to the 1987 expiration date of the Golf Course Restriction that they should "keep on top of dates and keep renewing the deal" with regards to restrictions affecting the golf course that would expire. See Paul Deposition at pg. 84. In fact, Paul made a concerted effort to organize the MTS West Homeowners in efforts to seek an extension of the pending expiration. Those efforts failed, and the then owner of the Golf Course had no interest in an extension of the restriction. See Paul Deposition, Ex. 27. Additionally, Paul had conversations with the board of the MTS West HOA, which declined to seek any extensions. See Paul Deposition at pgs. 172, 173. Paul also had conversations with the then owner of the Golf Course, which also declined to seek any extension.

Finally, Paul informed each MTS West Homeowner when he met with each of them prior to buying a lot, that he wanted them to know everything that was important about the purchase, and the Golf Course Restriction limiting the use of the golf course property for a golf course terminated in 1987. "…[t]here was no sneaky-Ricky about this, everything was out in the open." See Paul Deposition at pgs. 159, 160.

On February 1, 2013, the Mountain Shadows West Homeowners Association (the "MTS West HOA") and MTS West Homeowners Jay Stuckey, William Mallener, Patrick Dickinson, Gerald Ritt and Roger Nelson (collectively, with the MTS West HOA, the "MTS West Objectors") filed their *Mountain Shadows West Homeowners Association, Inc. Objection to the*

[8] A copy of the deposition in Case No. CV2004-015482 in the Superior Court of the State of Arizona in and for the County of Maricopa and conducted by Francis J. Slavin of Francis J. Slavin, P.C. on behalf of the Petitioners in the proceeding is attached to the Appendix hereto as Exhibit "2".

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Disclosure Statement to Accompany Debtors' First Amended Joint Plan of Reorganization (the MTS West Objection") [ECF No. 451].

The MTS West Objectors assert that the existing golf course and driving range cannot be used for any other purpose unless the MTS West Homeowners agree. This assertion is based on a 1984 Arizona Court of Appeals case of *Shalimar Association vs. D.O.C. Enterprises, Ltd*., 142 Ariz. 36, 688 P.2d 682 (Ct. App. 1984). In *Shalimar*, homeowners surrounding a Tempe golf course brought an action against the new owners of the golf course who intended to develop the property for other purposes. An oral agreement for an interest in land (such as a restriction to golf course use) is usually **unenforceable** under the Statute of Frauds. In *Shalimar*, however, the appellate court found an exception, holding that a covenant could be implied from the specific facts and circumstances of the case, such as the new owners (i) being told by the seller that the property was restricted to use as a golf course and (ii) seeing the existence and operation of the golf course. In *Shalimar*, the appellate court also found that a covenant could be implied because its terms did not vary the terms of a written contract. Courts generally find that express written covenants cannot be varied or contradicted by implication. The appellate court also found that no written restriction regarding the land on which the Shalimar golf course was situated was ever entered into or recorded in the public records.

In the Chapter 11 Cases, unlike *Shalimar,* the Golf Course Restriction provided a specific termination date for the restriction in 1987 and was recorded prior to the conveyance of any home sites to MTS West Homeowners. Not only was the 1987 termination a matter of record, but Mr. Paul remembered advising the MTS West Homeowners that the restriction affecting Mountain Shadows West expired and would need to be renewed. See Paul Deposition at pg. 84, 107-09, 169-70. In cases with facts similar to those in this case, courts have refused to find an implied covenant that would extend the term of an express, recorded covenant that has expired on its face. *See Owens v. Ousey*, 241 S.W.3d 124 (Tex. Ct. App. 2007)(finding a restrictive covenant prohibiting mobile homes could not be renewed or amended after it had expired on its face and the theory of implied easements could not be used to continue its effects); *Sampson v. Kaufman*, 75 N.W.2d 64 (Mich. 1956)(holding that an express restriction regarding construction

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of homes could not be extended after expiration and could not be extended by implication based upon uniform development); *Frazer v. Tyson*, 587 So.2d 330 (Ala. 1991)(holding that an expired covenant with an express prohibition on subdividing parcels could not be implied to extend in perpetuity); *Hardy v. Aiken*, 631 S.E.2d 539 (S.C. 2006)(holding that a restriction prohibiting commercial use could not be extended beyond its expiration date); RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 7.2 (2000) (commenting that if the terms of the servitude include an express expiration date or provide for termination on the occurrence of a condition, the terms will be given effect (except under certain non-relevant circumstances)). Therefore, the Golf Course Restriction is no longer in effect because it expired on December 31, 1987.

c. Mountain Shadows East Deed Restrictions.

Mountain Shadows East is Lots 2-6, 8-13, 15-23, 25-37, 39-45, 47-52, and 54-66, of Mountain Shadow Resort Amended recorded on January 20, 1958, in Book 75 of Maps, page 34, of the records of Maricopa County, Arizona. The recorded deeds from Mountain Shadows Resort, Inc., as grantor, for the lots within Mountain Shadows East included deed restrictions (the "Mountain Shadows East Deed Restrictions"), which generally provide that the owners of lots in Mountain Shadows East have a right of access to the general club facilities at the Resort on the east side of 56th Street that includes use of cocktail lounge, dining room, recreational areas and general park areas without charges of dues or special charges other than such charges as may be specifically incurred for use of guest-residence facilities, cabanas, food, drink, and special services, such as barber, maid, valet, and catering. Although this provision of the Mountain Shadows East Deed Restrictions provides a right of access to these amenities if they are available, this provision does not require Debtors to build, operate, or maintain any or all of these amenities, nor does it require that any such existing amenities remain. In addition, Debtors may put in place rules and regulations regarding the exercise of this right of access as Debtors deem necessary or appropriate, in their sole discretion, from time to time. These Mountain Shadows East Deed Restrictions do not affect the Real Property west of 56th Street and are thus ineffective thereto.

As successor in interest to Mountain Shadow Resort Inc., Debtors may exercise the rights

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granted to Mountain Shadow Resort Inc. in the Mountain Shadows East Deed Restrictions including, but not limited to, to appoint a member to the Mountain Shadow Estates Management Board. Pursuant to the Mountain Shadows East Deed Restrictions, office space for use by the Mountain Shadow Estates Management Board will be provided when available as determined by the Debtors, subject to rules and regulations regarding such use as Debtors deems necessary or appropriate from time to time.

3. Lot 68.

Lot 68 of Mountain Shadow Resort Amended, recorded on January 20, 1958, in Book 75 of Maps, page 34, of the records of Maricopa County, Arizona, generally provides access to the Property and Mountain Shadows East. Lot 68 is the private roadway system shown on the recorded plat for Mountain Shadows East. Originally, each of the 59 lots and the Resort owner had a 1/60th interest in Lot 68. Within the past few years, approximately 55 of the separate interests in Lot 68 have been transferred to the homeowner's association for Mountain Shadows East (the "MTS East HOA," and together with the MTS West HOA, the "HOAs"). A depiction of the three segments of Lot 68 being, (i) the Circular Entrance Area, (ii) the Loop Road, and (iii) the Interior Roads, is included as **Exhibit "**3**"** in the Appendix. Debtors may relocate this access as described in Section VI A. 10(e) *infra*.

4. Lots 130 and 130-A.

Lots 130 and 130-A are private roadways and are shown on the recorded plat for Mountain Shadows West. Debtors own 130-A, but not 130. Lots 130 and 130-A of Mountain Shadow Resort Unit Two-Amended recorded on June 6, 1961, at Book 95 of Maps, page 3, of the records of Maricopa County, Arizona, are private roadways that generally provide access to the Real Property and Mountain Shadows West. Debtors may relocate this access as described in Section VII.A.10(f) *infra*.

B. Resort Entitlements.

1. Mountain Shadows East Guest Ranch Restrictions.

The deed restrictions recorded on August 12, 1957, in Docket 2250, page 207, of the records of Maricopa County, Arizona (the "Mountain Shadows East Guest Ranch Restrictions")

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generally provide that the portion of the Resort east of 56th Street (along with the Mountain Shadows East lots) will be operated as a single guest ranch operation with common facilities for all of the buildings on the property. There is a restriction on sales being subject to the approval of the guest ranch management. There is another restriction as to streets or road. Finally, there is a restriction on the number of units per acre if the property is no longer used a guest ranch.

The MTS West Objectors argue that the existing entitlements are not enforceable and that the Mountain Shadows East Guest Ranch Restrictions adopted in 1957 for the east side of the Property and Maricopa County zoning are applicable to and limit the use of the Real Property. However, the facts and applicable law do not support this position.

First, private covenants have nothing to do with the administration of zoning ordinances. 5 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 82:3 (4th ed. 2012); *Whiting v. Seavey*, 188 A.2d 276, 279-80 (Maine 1963)(noting that the law is well established that restrictive covenants are distinct and separate from the provisions of a zoning law and have no influence or part in the administration of a zoning law). A restrictive covenant does not affect a developer's ability to have property rezoned or be granted a variance, special exception, or building permit even if the private covenant would prohibit the use. 5 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 82:3; *Sills v. Walworth County Land Management Committee*, 648 N.W.2d 878, 887-89 (Ct. App. Wis. 2002)(holding that a private restrictive covenant was not grounds for denial of a proposed use).

Prior to annexation into the Town of Paradise Valley ("PVT"), the Property was zoned Rural-43 with a special use permit by Maricopa County. The MTS West Objectors argue that the zoning adopted by PVT in 1992 is invalid and therefore the Property remains subject to the Maricopa County's Rural-43 with a special use permit classification. However, the general rule is that upon annexation, the regulations of the jurisdiction from which the property came no longer apply and the property is received by the new jurisdiction unzoned, unless otherwise provided by statute. 83 AM. JUR. 2D *Zoning and Planning* § 98 (2013); 41 A.L.R.2d 1463

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(2013); 101A C.J.S. *Zoning & Land Planning* § 103 (2012); 1 AM. LAW ZONING § 6:27 (5th ed. 2012); 3 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 35:9 (4th ed. 2012)(noting that Mississippi appears to be the only state in which the contrary is held except where zoning carries over by statute)[9]; *see e.g., Burt v. City of Idaho Falls*, 665 P.2d 1075, 1077 (Idaho 1983)(noting that upon annexation, the annexed land was not rezoned, but initially zoned); *Louisville & Jefferson County Planning and Zoning Com'n v. Fortner*, 243 S.W.2d 492, 494 (Ky. Ct. App. 1951)(stating that territory, upon being annexed by the city, goes into the city with the status of unzoned property regardless of its zoning status before annexation); *City of South San Francisco v. Berry*, 260 P.2d 1045 (Cal. Ct. App. 1953)(finding that county single-family zoning ordinance did not "run with the land" when the land left the county upon being annexed to a city). Therefore, according to the majority rule, invalidation of PVT's zoning and entitlements would leave the Property unzoned.[10]

The MTS West Objectors also assert that they have "vested property rights" warranting enforcement of the original Maricopa County zoning and use permit. To obtain vested rights in a project, one must apply for a permit or other approval and then, once approved, rely upon existing zoning to substantially change position in furtherance of completing construction under that permit. *See Town of Paradise Valley v. Gulf Leisure Corp.*, 27 Ariz. App. 600, 608, 557 P.2d 532, 540 (1976)(finding that owners had vested rights in a use permit that prevented the town

[9] States have addressed zoning upon annexation in a variety of ways. *See* 3 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 35:9. For example, Ohio statutes provide that upon annexation, zoning regulations remain in effect and shall continue to be enforced by the jurisdiction from which the property is annexed until the new jurisdiction adopts the existing zoning or enacts new zoning for the property. *Id.* at n.4. Another example is the Illinois statute that authorizes municipalities to provide by ordinance that when property is annexed, it is automatically classified to the highest restrictive uses under the annexing municipality's ordinance. *Id.* at n.5. Arizona has addressed this by allowing municipalities to carry over county zoning by ordinance for up to six months after annexation. ARIZ. REV. STAT. § 9-462.04(E).

[10] In the past, Maricopa County and the City of Page were left unzoned when there was a failure to follow zoning procedures. *Specht v. City of Page*, 128 Ariz. 593, 598, 627 P.2d 1091, 1096 (Ct. App. 1981)(finding the City of Page's zoning ordinance invalid for insufficient notice); *see Hart v. Bayless*, 86 Ariz. 379, 390-91, 346 P.2d 1107, 1109-10 (1959)(holding Maricopa County zoning ordinances invalid for failure to follow notice and hearing requirements). Of course, if zoning is found invalid and property is left unzoned, a municipality is always free to initiate proceedings to establish new zoning on the property. *Schwartz v. City of Flint*, 395 N.W.2d 678, 692 (Mich. 1986).

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from denying an extension and allowed the court to order an extension to allow the completion of construction of a resort hotel);4 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 70:10 (4th ed. 2012); *City of Parkland v. Septimus*, 428 So.2d 681, 683-84 (Fla. Dist. Ct. App. 1983)(refusing to apply equitable estoppel or find vested rights where the plaintiffs were not owners when the land received its permitted density, nor were they in privity with the governmental unit that fixed the density, nor did they substantially change position in reliance upon the government act, although the change may have affected their investment). Vested rights in a particular zoning classification generally cannot accrue to neighboring property owners. 4 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 70:10; *Spiker v. City of Lakewood*, 603 P.2d 130, 133 (Colo. 1979)(holding that property owners did not have vested rights that were impaired when the time for approving a neighbor's plat was extended); *Bentley v. Valco, Inc*., 741 P.2d 1266, 1269 (Colo. Ct. App. 1987)(holding that adjacent landowners did not have vested rights in the denial of a special use permit, nor would equitable estoppel prevent its issuance).

A municipality has the right to amend its zoning ordinances and one who purchases land is charged with the understanding that zoning classifications may change. *1350 Lake Shore Associates v. Randall*, 928 N.E.2d 181, 187 (Ill. App. Ct. 2010). Therefore, although property owners may have an interest in opposing zoning changes affecting adjacent land, or their own land for that matter, that interest does not amount to a vested right. 4 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 70:10; *see Dawe v. City of Scottsdale*, 119 Ariz. 486, 487, 581 P.2d 1136, 1137 (1978)(noting that a subdivision lot becomes legally established as to size and description when a plat containing it is recorded but does not remain unaffected by subsequent zoning enactments).

2. <u>Development Agreement</u>.

As set forth in the Declaration of Charles G. Ollinger, III dated November 28, 2012 (the

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"Ollinger Declaration"), included as Exhibit "4" in the Appendix, there came a time when PVT sought to annex the Property to enhance tax revenues and to eliminate "County Islands" within the boundaries of PVT. Mr. Ollinger was then Town Attorney for PVT.[11] The Real Property was annexed into PVT pursuant to Ordinance Number 339 adopted March 26, 1992. Ordinance Number 339 states that the Property "is zoned as R-43 pursuant to the Zoning Ordinance of the Town of Paradise Valley and subject to a development agreement signed by [PVT] …." On the same day that Ordinance Number 339 was adopted, PVT also adopted Ordinance Number 341, which authorized the mayor to sign a development agreement. Prior to the annexation, PVT had adopted Ordinance Number 336 on March 12, 1992, which also had authorized the mayor to sign a development agreement for the Property. On or about April 10, 1992, PVT and Potomac, Debtors' predecessors in interest, entered into a development agreement setting forth certain rights for the use and development of the Resort (the "Development Agreement"). The Development Agreement was recorded as document number 92-0191356 on April 10, 1992, and re-recorded as document number 92-262862 on May 14, 1992, in the records of Maricopa County Recorder.[12] The Development Agreement includes allowances for rights regarding, *inter alia*, property use, density and height of new construction, and parking requirements. In particular, the Development Agreement provides as follows:

a. For purposes of the Development Agreement, the "Gross Acreage" of the Property is 67.0414 acres. ¶ 1.[13]

[11] Despite this statement of the then PVT Attorney, PVT now seeks to reinvent history by asserting that the then-owner of the Property sought annexation, not that PVT sought the annexation. The process of annexing in the "County Islands" began shortly after PVT came into existence. With regard to Mountain Shadows, the process began approximately 10 years prior to the actual annexation and culminated because PVT finally provided the assurances and approvals that the then-owner of the Property required - R-43 zoning and the Development Agreement.

[12] As such, the Development Agreement runs with the property and is in full force and effect so long as all or a portion of the Resort is devoted to Resort Uses (as defined in the Development Agreement). See Development Agreement, ¶ 11. As further set forth in the Development Agreement, in the event the Development Agreement were not to be valid or enforceable, PVT is required to issue a special use permit containing rights and obligations which are identical to those contained in the Development Agreement. See, Development Agreement, ¶ 13.

[13] According to a survey prepared by Wood/Patel dated February 23, 2005, job no. WP#042324.80, the total acreage of the Property is 68.48 acres

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b. Allows the Property to be used "for Resort Uses, or for residential uses, or both." ¶ 3.

c. Resort Uses is itself a defined term that includes "residential use." ¶ 2(d). A density of one Resort Unit per 5,000 square feet of land (calculated based upon the Gross Acreage) is allowed, for a total of up to 584 Resort Units. ¶ 4(a).

d. The Development Agreement does not include a maximum or minimum lot size. Resort Units may be clustered. ¶ 4(b).

e. Resort Units may be "(1) under common ownership with all or any portion of other Resort Units and facilities on the Property; (2) commercially operated, or utilized in whole or in part as a private residence; (3) subject to a horizontal Property Regime; (4) subject to joint or divided ownership under rent-pooling; or (5) subject to any other form, method or structure of ownership." ¶ 2(c).

f. The maximum ground coverage allowed for "fully enclosed" buildings devoted to Resort Uses is 13.41 acres (20% of the Gross Acreage); the area of buildings is calculated based on the building footprint excluding "overhangs, patios and the like." ¶ 4(c).

g. The maximum ground coverage allowed for "additional improvements for Resort Uses" (excluding streets, sidewalks, and parking areas) is 6.70 acres (10% of the Gross Acreage); the area of buildings is calculated based on the building footprint excluding "overhangs, patios and the like." ¶ 4(c).

h. Public Areas (a defined term) are limited to 30% of the lot coverage allowed by ¶¶ 4(c), 4(b). Existing improvements are deemed legally conforming and may be restored in their existing location and configuration. ¶ 5(a).

i. New construction may be done without amendment to the site plan or Development Agreement, provided such new development does not exceed the height of similar buildings, structures, or improvements and does not encroach on the setback lines shown on Exhibit B to the Development Agreement. ¶ 5(b).

j. Exhibit B shows a 132-foot setback along Lincoln Drive; as to setbacks

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other than Lincoln Drive, 40-foot side and rear yard setbacks are required. Exhibit B; Olllinger Decl. ¶ 9.

k. One parking space is required for each Resort Unit plus one parking space for each 250 square feet of Public Area. ¶ 8.

The Development Agreement is unique and favorable to Debtors because new construction may be commenced and completed without amendment to the site plan or the Development Agreement provided that the new construction does not exceed the height of similar buildings, structures, or improvements and does not encroach on the setback lines in the Development Agreement. See Development Agreement, ¶ 5(b). The Development Agreement, despite its more than twenty year existence, remains a blueprint for the future development of the Resort and is in line with Debtors' ultimate visions and expectations for the Resort. The Development Agreement governs development of the Resort in its entirety.

3. Special Use Permit.

Despite the provisions set forth in the binding and effective Development Agreement, in approximately 2005, even prior to, but in anticipation of, acquiring the Resort, Debtors sought a special use permit[14] (the "SUP") whereby Debtors, in conjunction with its issuance, would agree to alter and amend the Development Agreement for several reasons: (a) certain specifics of the Development Agreement such as the setback from Lincoln Avenue, height restrictions and the allowed density of 584 units, did not comport with the development plans for the Property 20 years later; (b) to ensure that their development goals were in line with those of PVT; and (c) to further foster an expeditious and collaborative working relationship with PVT and the Property's neighbors. Despite third-party statements to the contrary, the Debtors consider Ordinances 336, 339 and 341 valid and enforceable.

The SUP envisions development of the whole Resort to include a hotel, residences, and a golf course. However, following their acquisition of the Resort and due to the general economic decline, Debtors put their discussions with PVT on hold pending potential sales of the Resort. In

[14] In Paradise Valley, a special use permit is more akin to establishing general zoning requirements rather than seeking an exception to an established zoning designation.

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2012, Debtors reactivated their SUP application process to continue with their ultimate goal of developing the Resort.[15]

PVT has a lengthy process for requesting and obtaining a SUP. After a SUP application is filed, the PVT Council reviews the application and issues a Statement of Direction ("SOD") that is intended to provide guidance to the PVT Planning Commission ("PC") in reviewing the SUP application. After holding several public meetings/public hearing to discuss the SOD, the PVT Council issued the SOD on June 28, 2012. The PC held its first meeting to consider the SUP application on June 29, 2012 and thereafter held seven public meetings to consider the SUP application and to receive input from the public. On September 24, 2012, the PC voted to recommend to the PVT Council approval of the SUP, subject to over 100 stipulations/conditions. After receipt of the PC recommendation on the SUP, the PVT Council then holds additional public meetings to consider the SUP. One such public meeting was held on February 14, 2013, and it is anticipated that several additional public meetings will be held. In addition to the public meetings, numerous meetings have been held and will be held with PVT staff to discuss a new development agreement. At some point, the PVT Council will vote to approve or disapprove the SUP and a new development agreement. Debtors believe this will occur in March, 2013.

If the SUP is approved by the PVT Council, there remains the possibility that persons opposing the approval of the SUP may attempt to process a referendum to overturn the SUP approval. The approval of a new SUP in PVT is generally considered to be the same as a rezoning of property, which in Arizona is a legislative act that is subject to referendum. The right of referendum is established by the Arizona Constitution and Arizona statutes further set forth requirements and procedures applicable to referenda. In general, if 10% of the persons who voted in a recent PVT election sign referendum petitions, such petitions are submitted to PVT within 30 days after the PVT Council adopts the SUP, and other requirements are met, the SUP approval is held in abeyance until a vote of the PVT electorate is held. At such vote, the PVT electorate will either approve or disapprove the granting of the SUP. Based on certain statutory

[15] PVT and the MTS East HOA now assert that the Debtors electing to pursue a SUP is a recognition on the Debtors part that the Development Agreement is not enforceable. Debtors dispute this assertion.

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requirements and whether the PVT Council decides to schedule the vote at a special election or the next regular PVT election, such vote could be held anywhere from 4-6 months to approaching two years after the PVT Council votes to approve the SUP. There is also a possibility that persons opposing the approval of the SUP may attempt a judicial challenge to overturn the SUP approval and the new development agreement.

4. Objections and Debtors' Reply.

PVT, the MTS West Objectors and MTS East HOA have asserted that the Development Agreement is unenforceable as result of PVT's failure to follow proper zoning procedures. Debtors submit that these arguments are incorrect. PVT specifically states in the PVT Objection that the Development Agreement does not comply with the approved zoning for the Property (R-43) and that PVT in enacting the various ordinances did not act in compliance with the notice and hearing requirements imposed by Arizona law. Mr. Ollinger, the PVT attorney at the time, states in the Ollinger Declaration that the Development Agreement as adopted by PVT was in compliance with then-applicable law and ordinances and is enforceable in all respects. He goes on to state that he discussed the validity and enforceability of the Development Agreement with the then owner's legal counsel. Despite this, PVT now claims that the Development Agreement was adopted in violation of applicable PVT ordinances and Arizona law.

The Development Agreement is authorized by ARIZ. REV. STAT. § 9-500.05, which expressly allows a municipality to contractually agree to specify permitted uses, height, anddensity within a property. Although there are no Arizona decisions addressing whether a development agreement can rezone property, a number of courts, including those in the Ninth Circuit, have held that a local government may contractually agree to establish zoning or rezone property so long as it retains some control as to the zoning and does not promise not to rezone the property in the future. *See Stevens v. City of Vista*, 994 F.2d 650, 655 (9th Cir. 1993) (holding that a city could contract for a guaranteed density without surrendering control of all of its land use authority); *Santa Margarita Area Residents Together et al. v. San Louis Obispo County*, 100 Cal.Rptr.2d 740, 747-48 (Ct. App. 2000) (finding that a the zoning freeze for a proposed development project pursuant to a development agreement between a developer and the

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county was not an improper "surrender" of the county's police power); *City of Orange Beach v. Perdido Pass Dev., Inc.*, 631 So.2d 850, 854 (Ala. 1993) (holding that an annexation or zoning agreement is permissible if the city does not abdicate its legislative responsibility and the city is involved in the negotiations and development of the property); *Geralnes B.V. v. City of Greenwood Village*, 583 F. Supp. 830, 840 (D. Colo. 1984) (noting that a preannexation agreement that imposed zoning restrictions without promising that land would never be rezoned was a valid exercise of police powers); *Save Elkhart Lake, Inc. v. Village of Elkhart Lake*, 512 N.W.2d 202, 205 (Wis. Ct. App. 1993) (finding that a city may agree to cooperate with a property owner to further the objectives of a development agreement without engaging in unlawful contract zoning or bargaining away of its police powers).

Courts have allowed restrictions on the exercise of a local government's police power when the restrictions are set out in a contract that is expressly authorized by statute. *See Santa Margarita Area Residents Together*, 100 Cal. Rptr.2d at 748 (finding county had statutory authority to enter into a development agreement to carry out the function of land use regulation) ; *Housing Authority of Los Angeles v. City of Los Angeles*, 243 P.2d 515, 523 (Cal. 1952) (agreement entered into between city and housing authority pursuant to the housing authority law is not an unauthorized attempt by the city to bind itself as to the exercise of governmental functions; it is simply an authorized contract to cooperate in the performance of those functions and as such is valid).

As a contract authorized under Arizona statutes, PVT properly entered into and executed the Development Agreement after lengthy negotiations and a public hearing, and it remains a valid and binding contract.

PVT and the MTS East HOA have suggested that Debtors' pursuit of the SUP is an admission by Debtors that the Development Agreement is unenforceable. Debtors request for a SUP is not an admission that the Development Agreement is unenforceable. Rather, despite acknowledging that Debtors are within their legal rights to enforce the Development Agreement, Debtors have chosen to pursue the SUP (i) because certain development parameters (e.g. heights and setbacks from Lincoln Drive) are being requested that are not allowed by the Development

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Agreements and (ii) as a goodwill gesture and in the hopes that Debtors can work with PVT and the neighboring homeowners in order to present a development plan that is workable for all parties involved.

If the SUP is not approved, Debtors intend to move forward with development of the Resort under the Development Agreement. Although Debtors have not formulated detailed development plans should they be required to proceed under the Development Agreement, Debtors envision a mixed use development similar to that proposed with the SUP in that it is anticipated that the development with contain residential, resort, and commercial components.

However, as the Development Agreement contains certain limitations that would not allow the configuration of the development as proposed under the proposed SUP. The unit density of up to 584 units, together with the height restrictions under the Development Agreement would necessitate that the development would require the removal of the Golf Club and the close proximity of the new development to the existing homes. Debtors are committed to working with PVT and neighboring homeowners to decrease the density of the development and provide greater setbacks from existing homes. Since Debtors have been committed to a mutually beneficial development for the Resort, Debtors have not spent significant resources on detailed development plans under the Development Agreement.

A. Entitlements Granted in the Development Agreement Are Enforceable Even If Procedural Defects Are Found.

1. Equitable Estoppel (and/or Promissory Estoppel).

"Where municipalities have received and accepted the benefits of a contract, they are estopped to deny validity of the very contract through which they received benefits." *Mahoney Grease Service, Inc. v. City of Joliet*, 406 N.E.2d 911, 915 (Ill. App. Ct. 1980). Three elements must generally be present to establish the defense of estoppel: "(1) the party to be estopped commits acts inconsistent with a position it later adopts; (2) reliance by the other party; and (3) injury to the latter resulting from the former's repudiation of its prior conduct." *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 576-77, 959 P.2d 1256, 1267-68 (1998). When asserting estoppel against a government, a person must also prove that the government's

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wrongful conduct threatens to work a serious injustice and the public interest would not be unduly damaged by allowing estoppel. *Freightways, Inc. v. Arizona Corp. Comm'n*, 129 Ariz. 245, 248, 630 P.2d 541, 544 (1981). Only an affirmative act that bears a degree of formalism can form the basis for applying estoppel against the government. *Id*. at 248, 630 P.2d at 544.

In Arizona, a 2008 Court of Appeals decision applied estoppel in a zoning case to effectively rezone property. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 181 P.3d 219 (App. 2008). The city had issued a permit to construct a billboard in a zone that did not allow billboards. *Id* at 192, 181 P.3d at 239. The appellate court found that the billboard company had a right to rely a the permit issued by the department with permitting authority and that the permit satisfied the requirement for a formal act. *Id*. at 192-93, 181 P.3d at 239-40. The appellate court concluded that it had been reasonable for the trial court to find that construction of the billboard pursuant to the permit and loss of income after relying on the permit for 20 years would constitute an injury sufficient to invoke estoppel without frustrating the public interest. *Id*. at 194, 181 P.3d at 241 The appellate court also found that the trial court had not abused its discretion in fashioning an equitable remedy by allowing the billboard to remain rather than ordering its removal. *Id*. at 187, 181 P.3d at 235.[16]

Equitable estoppel has also been applied in other instances, such as to prevent a city from denying the validity of a rezoning ordinance because of its failure to hold public hearings after the city had received the benefits of a settlement agreement in which it agreed to rezone land. *Mahoney Grease Service*, 406 N.E.2d at 915; *see Branigar v. Village of Riverdale*, 72 N.E.2d 201, 205 (Ill. 1947)(holding that where a party has performed in good faith under a contract with a municipality that the municipality has the power to make, but the contract was irregularly made (*i.e*., notice was failed to be published), a municipality cannot use the irregularity as a basis for refusing to perform, otherwise a municipality could set up irregularities as a basis for refusing to pay); *Benson v. City of DeSoto*, 510 P.2d 1281, 1288 (Kan.

[16] A similar theory that may also prove applicable is promissory estoppel, which rests on a promise to do something in the future rather than reliance on a present or past fact. *See Gorman v. Pima County*, 287 P.3d 800, 804-05, 230 Ariz. 506 (Ct. App. 2012)(finding the theory of promissory estoppel as a valid basis for awarding contract damages absent a valid contract).

1973)(holding that on principles of estoppel, a municipality can be precluded from asserting the invalidity of its zoning ordinances, especially where the municipality is objecting to procedural irregularities); *O.P. Corporation v. Village of North Palm Beach*, 278 So.2d 593, 594-95 (Fla. 1973)(applying estoppel to prevent a village from denying a permit on a claim that its zoning ordinance was invalid due to failure to comply with notice procedures after it had held out the zoning to the public for ten years; also applying estoppel to neighboring property owners who knew of the zoning on the subject property at the time of their purchase); *Northville Area Non-Profit Housing Corp. v. City of Walled Lake*, 204 N.W.2d 274, 280 (Mich. Ct. App. 1972)(concluding that it would be contrary to public policy to permit a municipality to invalidate a zoning ordinance amendment due to a failure to publish notice after four years had elapsed and noting that it is essential that people buying and selling real estate must be able to rely on the validity of the public record).

Similarly, the Arizona Supreme Court has held that estoppel could be applied against the government where there were procedural irregularities in the issuance of a motor carrier's certificate of convenience, but the government knew (i) that irregularities existed, (ii) that the certificate would be used by the certificate-holder and his successors in interest, (iii) that the certificate would be recognized by the public, and (iv) that the certificate had, in fact, been used and relied upon for over fifty years. *Freightways, Inc. v. Arizona Corp. Comm'n*, 129 Ariz. 245, 247-48, 630 P.2d 541, 543-44 (1981). Likewise, the Arizona Court of Appeals has estopped a municipality from applying a new zoning ordinance that would prevent a party from building a residence planned on a site where the municipality had previously issued a variety of permits and a variance to allow the party to build at its desired location. *Pingitore v. PVT of Cave Creek*, 194 Ariz. 261, 265, 981 P.2d 129, 133 (Ct. App. 1998).

If PVT were to take the position that the land use entitlements granted in the recorded Development Agreement were invalid, estoppel will prevent PVT from refusing to abide by the Development Agreement. The then-owners agreed to annexation and entered into the Development Agreement in reliance on the PVT's grant of land use entitlements, which have been relied on by subsequent owners and owners of neighboring property. The invalidation of

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the Development Agreement over 20 years after the annexation would result in unfair injury to Debtors much greater than any injury to the public interest. As to injury to the public, the virtually identical deal between the PVT and Camelback Inn negates any such claim by the PVT.

2. Laches.

Laches is a defense similar to estoppel, but is based on unreasonable delay by one party and either acquiescence in the act of which that party complains or prejudice to the other party resulting from the delay. *People v. Dep't of Housing & Community Dev*., 119 Cal. Rptr. 266, 273 (Cal. Ct. App. 1975). For example, laches prevented a building permit from being rescinded five months after its issuance for failure to obtain a statement of environmental impact required by statute because the applicant had waited several months for a decision regarding the applicability of the requirement and had spent $40,000 after receiving the permit. *Id*. at 273-76. Here, PVT and the HOAs cannot complain about procedural defects 20 years after the Development Agreement was entered into and recorded.[17]

B. Remedies if the Development Agreement is Valid but PVT Refuses to Acknowledge It.

3. Specific Performance.

To receive the remedy of specific performance, which orders a party to perform as promised in a contract, (1) there must be a valid contract; (2) the terms of that contract must be certain and fair; (3) the party seeking specific performance must not have acted inequitably; (4) specific enforcement must not inflict hardship on the other party or public that outweighs the anticipated benefit to the party seeking specific performance; and (5) there must be no adequate remedy at law. *See The Power P.E.O., Inc. v. Employees Ins. of Wausau*, 201 Ariz. 559, 563, 38 P.3d 1224, 1228 (App. 2002). The remedy of specific performance is one remedy that has been granted in the context of annexation agreements. *See Morrison Homes Corp. v. City of Pleasanton*, 130 Cal. Rptr. 196, 201 (Cal. Ct. App. 1976)(affirming the order of the trial judge

[17] These arguments and claims are presented for the purposes of this Disclosure Statement, but are not meant to be an exhaustive list of all potential arguments, claims, and defenses, or a complete response to the claims of PVT and the HOAs. Debtors do not waive other arguments, claims, and defenses that may apply.

which ordered the city to specifically perform its promise in an annexation agreement to furnish sewer connections and improve facilities as necessary for such purposes); *and see Housing Authority of City of Los Angeles v. City of Los Angeles*, 243 P.2d at 524 (requiring the city to perform the terms of agreements entered into with the housing authority and exercise the promises it agreed to undertake in cooperating with that authority, such as acquiring land and vacating streets). Therefore, if PVT refused to recognize the land use entitlements granted in the Development Agreement a court could order PVT to comply.

4. Breach of Contract.

In light of the PVT objection, Debtors have amended Schedule 1.1.85 to the First Amended Plan to provide for a retained cause of action against PVT for damages related to the Development Agreement. While Debtors cannot yet ascertain with certainty the damages which will accrue as a result of a breach of the Development Agreement, Debtors believe that damages will exceed $59,000,000, which represents the difference between the value of the Property with the Development Agreement in place and with the Development Agreement not being effective as a result of the actions of PVT.

An example of damages that can be awarded for breach of contract is found in the case of Stephens v. City of Vista. 944 F.2d 650 (9th Cir. 1993). Stephens sued the city after the city down-zoned its property. Id. at 652. Stephens then entered into a settlement agreement with the city in which the city agreed to approve a rezoning of his property. Id. The Ninth Circuit held that the city's subsequent failure to rezone was a breach of the settlement agreement, which entitled Stephens to monetary damages of $727,500, equaling the difference between the fair market value of the property with a density of 140 units as promised and the fair market value of the property without such entitlements. Id. at 657. Another example can be found in *City of Orange Beach v. Perdido Pass Dev., Inc.*, 631 So.2d 850, 852 (Ala. 1993), which involved an action for breach of an annexation agreement. 631 So.2d 850, 852 (Ala. 1993). The property owner had agreed to annexation on the understanding that the property would subsequently be zoned to allow a certain planned development. *Id*. at 853. The property owner was awarded $4.5 million based upon expert testimony as to the amount of lost profits calculated from

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estimates on lot values and development costs. *Id*. at 854.

In a final example, where a town had not yet breached a development agreement but had repudiated it by refusing to allow the project to move forward, the developer was awarded damages of $30 million based on expert opinions of the current value of the project (and $2,361,130 in attorneys' fees). *Mammoth Lakes Land Acquisition, LLC, v. Town of Mammoth Lakes*, 120 Cal. Rptr.3d 797, 812 (Ct. App. 2010). Therefore, monetary damages representing the difference in value of the property with density contemplated by the Development Agreement versus R-43 (single family residential) may be available to Debtors if PVT was found in breach of the Development Agreement.

5. Breach of Implied Covenant of Good Faith and Fair Dealing.

Arizona law implies a covenant of good faith and fair dealing in every agreement. *Enyart v. Transamerica Ins. Co.,* 195 Ariz. 71, 76, 985 P.2d 556, 561 (App. 1998). Implied terms are as much a part of a contract as are the express terms. *Golder v. Crain*, 7 Ariz. App. 207, 209, 437 P.2d 959, 961 (1968). The duty arises by operation of law but exists by virtue of a contractual relationship. *See Rawlings v. Apodaca*, 151 Ariz. 149, 158, 726 P.2d 565, 574 (1986). The implied covenant of good faith and fair dealing prohibits a party from doing anything to prevent other parties to the contract from receiving the benefits and entitlements of the agreement and provides a basis for imposing contract damages. *Wells Fargo Bank v. Arizona Laborers*, 201 Ariz. 474, 490-91, 38 P.3d 12, 28-29 (2002); *Burkons v. Ticor Title Insurance Co*., 168 Ariz. 345, 355, 813 P.2d 715, 720 (1991). A party may breach its duty of good faith without actually breaching an express covenant in the contract if a party manipulates bargaining power to its own advantage. *Id*. at 491, 38 P.3d at 29. Good faith requires faithfulness to an agreed common purpose and consistency with the justified expectations of the other party. *Id*. at 492, 38 P.3d at 30. For example, in *Tooele Associates Ltd. Partnership v. Tooele City*, the Utah Court of Appeals found that a city had breached the covenant of good faith and fair dealing, in part by hindering a developer's completion of public improvements and withholding approval for phases of development. 284 P.3d 709, 719 (Utah Ct. App. 2012). The court noted that the covenant encompassed an implied duty that the parties would refrain from taking actions that would intentionally destroy or injure the other party's right to receive the fruits of the contract. *Id*. at

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718. Therefore, PVT may be liable for contract damages for breaching the covenant of good faith and fair dealing by making promises regarding land use entitlements when it annexed the Property and entered into the Development Agreement, if it later refuses to perform those promises, especially after receiving the benefits (such as tax revenue and jurisdictional powers) from the Property's annexation for over 20 years.

C. Detailed Description of the Mountain Shadows Resort.

1. Paradise Valley Background.

The 16-square mile town stretches north of Camelback Mountain to Shea Blvd. and from Scottsdale Road west to 32nd Street. PVT is zoned exclusively for single-family residential use with non-residential uses which include resorts, medical office, religious facilities, private schools, non-profit organizations, historical/entertainment sites and public/quasi-private facilities. On May 24, 1961, incorporation was granted and PVT was established. With a population of approximately 2,000, the first PVT Council was formed. During the early years of PVT's history, the PVT Council spent most of its time establishing the Planning and Zoning Commission, the Board of Adjustment, redefining zoning ordinances, and annexing property. By 1968, the boundaries of PVT were pretty well set with only a few scattered county islands and a handful of neighborhoods adjacent to PVT boundaries that would eventually be annexed. In 2000, with a population over 13,000, only two county islands remained: a portion of the community of Clearwater Hills west of Tatum Boulevard and the Franciscan Renewal Center on Lincoln Drive.

2. Personal Property Owned by Debtors.

Debtors owned the following personal property on the Petition Date with a total value of approximately $530,149. Except for cash, membership receivables, and a security deposit, the values were determined by ether historical cost or fair market value determined by Bill Corn of ICOG.

a. Money in bank accounts and cash on hand of $104,481;

b. A security deposit with Arizona Public Service of $3,660;

c. Golf Club membership receivables totaling $12,149;

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d. Food and beverage inventory of $6,253;

e. Inventory of clothing, golf balls and other golf paraphernalia worth approximately $51,988;

f. Machinery and equipment used for the Golf Club operations on the Golf Course, in the Clubhouse, fitness center, kitchen and locker rooms valued at $291,220;

g. 2006 Chevrolet Silverado 2500 worth approximately $5,600;

h. John Deere fairway mower worth approximately $9,792;

i. 60 EZ Go golf carts worth approximately $30,000;

j. MTS Golf separately owns a 1999 Ford F-350 dump truck worth $15,000

3. Valuation of the Resort.

Debtors obtained an appraisal of the Resort from Peter Martori, (the "Martori Appraisal") a qualified expert on the value of real property in Arizona. The Martori Appraisal appraised the fee interest of the Real Property. The purpose of the Martori Appraisal was to estimate the market value of the Real Property under two scenarios;

Scenario 1

> The "As Is" value of the Property using the land use rights as set forth in the Development Agreement excluding the golf course. This assumes the Development Agreement is in place; valid and enforceable in its entirety.

Scenario 2

> A prospective valuation of the Property under a "new SUP." This valuation includes the existing golf course operations after a realignment.

The Martori Appraisal concludes that as of October 1, 2012, the value in Scenario 1 is $59,783,700, and the value under Scenario 2 is $45,337,200.

Since obtaining the Martori Appraisal, Debtors have received multiple sale offers for various portions of the Resort. As the of the date of this Disclosure Statement, assuming Debtors are granted an SUP roughly in the form proposed, and based on the purchase offers received, Debtors believe the value of the Resort to be approximately $77,000,000.

/ / /

4. Current Budget and Operations.

Current daily operations at the Resort involve only the Golf Club. The Hotel has been closed the entire time that Debtors have owned the Resort and is only used minimally for Debtors' own secondary office space at the Resort. For the first six months of 2012, the Golf Club had a net operating profit of approximately $214,000 without accounting for any debt service or taxes for the Real Property. Ultimately, due to a decrease in Golf Club revenues during the summer months, the Golf Club suffered a net loss of approximately $5,000 for all of 2012. The Golf Club income is not sufficient to service the debt secured by the Resort nor the real property taxes. The Golf Club income must be supplemented by additional revenue sources.

The value of the Resort lies in its redevelopment, and, as a result, the Resort has incurred significant costs that are not included in the Golf Club operations. During the first six months of 2012, Debtors incurred approximately $546,000 in other expenses seeking to protect and redevelop the Resort. Current operations of the Golf Club will not support redevelopment of the Resort, and any redevelopment must be funded by additional loans to or investment in Debtors. As described in Section V(G)(2) of this Disclosure Statement, post-petition Debtors have borrowed $1.08 million dollars to pay ongoing administrative expenses which include those professionals working to position the Resort for redevelopment. The Plan provides for additional funding for redevelopment after confirmation that is not otherwise available to Debtors.

Debtors' current budget and operations were prepared by Crown Development and are based on the accrual method. The latest Monthly Operating Report filed with the Court is included as **Exhibit** "**7**" in the Appendix. A Debtors' proposed budget from January 1, 2013 through April 21, 2013 is attached hereto as **Exhibit "8."**

5. Causes of Action.

At the time of the purchase of the Resort, Debtors obtained a title policy from Lawyers Title of Arizona, Inc., being policy number 1664452 (the 'Title Policy"), insuring Debtors' interests in and right to the Resort. To the extent claims are made against Debtors, including any claims neighboring landowners may assert regarding the development of the Resort, Debtors will

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seek redress against the Title Policy.

In addition, Debtors retain the right to pursue litigation against PVT arising from the Development Agreement if a SUP and new development agreement acceptable to Debtors is not approved and becomes effective and PVT chooses to breach the Development Agreement by not issuing building permits as provided for in the Development Agreement. Debtors' damages would be the difference between what the Resort is worth with the Development Agreement and what it is under whatever land use rights PVT asserts apply, expected to be no less than $59,000,000.

D. Debtors' Secured Loan Obligation.

1. The USB Loan.

In order to secure funding to acquire the Resort, on or about January 26, 2007, Debtors entered into a Loan Agreement, pursuant to which San Diego National Bank ("San Diego Bank") agreed to lend Debtors the principal sum of $32,000,000 (the "USB Loan"). The Loan, which is evidenced by a Promissory Note, originally had a maturity date of January 26, 2009, with two options for six month extensions at San Diego Bank's option. In connection with the Loan, Jaime Sohacheski executed an Unconditional Limited Guarantee of Payment (the "Guaranty") which purports to obligate Jamie Sohacheski in an amount up to $11 million of the total USB Loan amount.[18]

The USB Loan is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "USB Deed of Trust") on the Resort which is recorded as document number 20070126023 in the records of Maricopa County Recorder. The USB Deed of Trust granted San Diego Bank a first priority consensual lien upon all of Debtors' real and personal property, which includes "all income, receipts, revenues, rents, and profits arising from the use or enjoyment of all or any portion of the Premises."

On March 20, 2009, Debtors and San Diego Bank entered into a Modification Agreement which allowed generally for the transfer of the loan to a new borrower under certain conditions.

[18] Subsequently, Jaime Sohacheski made a voluntary payment to USB and reduced the outstanding obligation under the Guaranty to $7 million.

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Consistent therewith, on March 20, 2009, Debtors also executed a Modification of Deed of Trust.

On October 20, 2009, San Diego Bank was closed by the Office of the Comptroller of the Currency and was taken over by the Federal Deposit Insurance Corporation (the "FDIC").

Debtors failed to make the USB Loan payments commencing with the March 2010 Loan payment.

On or about October 7, 2010, U.S. Bank National Association ("USB") acquired the USB Loan, Promissory Note, Guaranty, and other loan documents from the FDIC. On October 27, 2010, USB delivered a Payment Event of Default and Acceleration Notice to Debtors. On April 11, 2012, Debtors further received an Event of Default Notice; Loan to MTS Land, LLC and MTS Golf, LLC.

2. The Hertz Loan.

Pursuant to a Secured Promissory Note (the "Hertz Note") dated July 11, 2012, by and between Debtors and MTS Beverages, as borrowers, and Chavi Hertz, an individual, as lender ("Hertz"), Hertz tendered a loan to Debtors and MTS Beverages in the principal amount of $565,000 (the "Hertz Loan"). The proceeds of the Hertz Loan were utilized, in part: (1) to pay amounts owed for goods and services provided to Debtors and MTS Beverages, for payments to the Arizona Department of Revenue, and to fund anticipated cash needs of MTS Beverages; (2) to purchase sixty electric golf carts (the "Golf Carts") from ICOG necessary for the operation of Club; (3) to fund Debtors' ongoing business operations; and (4) certain other pre-Petition Date obligations.

On the same date, Debtors also entered into a Security Agreement (the "Hertz Security Agreement"), thereby granting Hertz a purchase money security interest in the Golf Carts, as well as any attachments or replacements, and any proceeds from the sale or other disposition of the Golf Carts and a continuing security interest in all of Debtors'[19] personal property. UCC-1 financing statements were subsequently filed with the Delaware Secretary of State. To the extent that USB has a lien in the Hertz Collateral other than the Golf Carts, the lien of the Hertz

[19] The Hertz Security Agreement also includes a continuing security interest in MTS Beverages' personal property.

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Security Agreement is in second position behind the lien of USB.

On July 11, 2012, Debtors also executed a Deed of Trust and Fixture Filing (the "Hertz Deed of Trust") as trustor for the benefit of Hertz, which recorded on July 11, 2012 as document number 20120605005 in the records of the Maricopa County Recorder. The Deed of Trust is in second position behind the USB Deed of Trust.

On the Petition Date, the balance due and owing on the Hertz Loan was approximately $565,000.

3. The Bookbinder Loans.

Roger S. Bookbinder ("Bookbinder") made two secured loans to Debtors.

a. John Deere Fairway Mower Purchase Money Loan.

The first Bookbinder loan, in the amount of $7,833.60 was made on May 15, 2012 ("Bookbinder Equipment Loan"). The Bookbinder Equipment Loan is secured by a John Deere 3253C Fairway mower evidenced by a signed security agreement and a UCC-1 filed in the State of Delaware. As of the Petition Date, the amount owing on the Bookbinder Equipment Loan was $7,199.99.

b. Chevrolet Silverado 2500 Purchase Money Loan.

The second Bookbinder loan in the amount of $9,498 was made on July 15, 2010 (the "Bookbinder Automobile Loan" and together with the Bookbinder Equipment Loan, the "Bookbinder Loans"). The Bookbinder Automobile Loan is secured by a 2006 Chevrolet Silverado 2500 as evidenced by a lien on the vehicle's title and a UCC-1 filed in Arizona. As of the Petition Date $5,248.95.

4. Secured Tax Claim.

Maricopa County Treasurer has prepetition statutory liens on the Resort for property taxes in the total amount of $1,344,037.53 for tax years 2009 - 2012. The proof of claim filed against MTS Land is in the amount of $1,313,910.59. The proof of claim filed against MTS Golf is $30,126.94.

/ / /

E. The Events Necessitating the Commencement of the Chapter 11 Cases.

Beginning in 2007, the real estate market in Maricopa County, Arizona, as well as across the southwestern United States, experienced a significant downturn due to plummeting real estate values, substantially reduced mortgage loan originations and securitizations, increased residential mortgage foreclosures, and more generalized credit market dislocations and significant contraction in available liquidity. In fact, Arizona's foreclosure and unemployment rates have consistently been among the highest in the country. These factors, combined with declining business and consumer confidence and significantly increased unemployment, precipitated the recession resulting in significant delays in development of the Resort and a decrease in the expected revenue from the Golf Club.

These market-driven challenges negatively impacted Debtors' ability to pay the monthly USB Loan obligations as they became due as well as to obtain necessary funding to further develop the Resort. Additionally, Debtors' difficulties in obtaining a SUP from PVT made redevelopment of the Resort difficult. As a result, in early 2010, Debtors defaulted on their USB Loan obligations.

In an effort to reach a consensual resolution with respect to modification of the US Bank Loan terms, on or about February 26, 2010, Debtors executed a *Pre-Negotiation Letter* seeking to commence discussions on term modifications for the USB Loan with San Diego Bank. Subsequently, Debtor sought to negotiate with USB to resolve the defaults and satisfy the Loan. In particular, Debtors spent significant time seeking a buyer for the Resort on terms acceptable to USB.

As a result of their efforts to locate a purchaser for the Resort, on or about December 6, 2011, Debtors and JDM Mt Shadows, LLC ("JDM") entered into an *Agreement of Purchase and Sale and Joint Escrow Instructions* for the sale of the Resort (the "JDM Agreement").

In March 2012, USB approved the JDM Agreement through a *Consent Agreement*. USB's execution of the Consent Agreement was a material term of the JDM Agreement.

Despite the four months it had to close the transaction, JDM failed to do so. During that period of time, JDM and USB were in communication about the Resort and Consent Agreement. On

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April 4, 2012, JDM unilaterally served a notice of termination of the JDM Agreement. Debtors performed all their obligations under the JDM Agreement.

As a result of the failed sale transaction with JDM, Debtors ultimately decided to proceed with their plans for redevelopment of the Resort. Importantly, while the Development Agreement already provides for the redevelopment of the Resort, in order to cooperate with PVT and Debtors' neighbors and adjacent homeowners, as discussed in greater detail above, Debtors have sought the SUP on an expedited basis. As of the Petition Date, PVT has issued a Statement of Direction but has not yet issued final approval of the SUP.

Furthermore, Debtors informed USB that it would substantially meet the terms approved for the sale to JDM without contingency. In other words, Debtors would invest substantial funds (at least equal to the amount offered by JDM), without delay or need for further approvals from PVT.

USB rejected this request outright and has refused to negotiate with Debtors toward a meaningful resolution regarding the terms of the loan since Debtors' offer.

On April 19, 2012, USB recorded and served a notice setting a foreclosure sale on the Resort for July 26, 2012.

Despite the fact that there was significant equity in the Property, in order to preserve the value of Debtors' Estates for the benefit of all of their creditors and equity security holders, Debtors commenced their Chapter 11 Cases on July 19, 2012.

F. Commencement of the Chapter 11 Cases and Significant Events in the Cases.

1. The Initial Filings and UST Requirements.

Soon after filing the petitions for relief on July 19, 2012, Debtors filed their *Schedules and Statements of Financial Affairs*. See ECF Nos. 66 & 133; Case No. 2:12-bk-16259-EWH, ECF Nos. 16 & 27.

Debtors attended an initial debtor interview with the U.S. Trustee's office and they concluded their Section 341 meetings of creditors. See *Minutes of Meeting* [ECF No. 99; Case No. 2:12-bk-16259-EWH, ECF No. 24]. Debtors have also filed all monthly operating reports required to date. See *Monthly Operating Reports* [ECF Nos. 170-173, 224, 225, 312, 313, 386,

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387].

2. First Day Motions and DIP Financing.

Debtors sought and obtained relief in First Day Motions necessary to continue their normal operations. These motions included Debtors' *Emergency Motion for Entry of an Interim Order Pursuant to Bankruptcy Rule 4001(b) and LR 4001-3: (1) Initially Determining Extent of Cash Collateral and Authorizing Interim Use of Cash Collateral by Debtors; and (2) Scheduling a Final Hearing to Determine Extent of Cash Collateral and Authorizing Use of Cash Collateral by Debtors* [ECF No. 11] (the "Cash Collateral Motion"), *Emergency Application for Order Authorizing Maintenance of Prepetition Cash Management System and Maintenance of Prepetition Bank Account* [ECF No. 13], *Emergency Motion Pursuant to 11 U.S.C. §§ 105(a) and 366 for an Order Determining that Adequate Assurance Has Been Provided to the Utility Companies* [ECF No. 12], and *Emergency Motion for Order Directing Joint Administration of Debtors' Chapter 11 Cases Under Federal Rule of Bankruptcy Procedure 1015(b) and Motion to Transfer Assignment of Cases to a Single Judge* [ECF No. 9]. The First Day Motions were supported by the *Omnibus Declaration of Robert Flaxman in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [ECF No. 10] complete with extensive exhibits. Despite several objections from USB and two from Maricopa County, Debtors received the relief requested in the First Day Motions to continue operating. See Orders [ECF No. 41, 42, & 149]. A final hearing on the Cash Collateral Motion was originally set for October 29, 2012. See *Minute Entry* [ECF No. 103]. The Court entered an order allowing the use of cash collateral through October 29, 2012. See *Order Authorizing the Continued Use of Cash Collateral in Accordance with the Stipulated Order for Interim Use of Cash Collateral* [ECF No. 148]. A second stipulation was also entered and ordered by the Court to continue the use of cash collateral through December 31, 2012. A third stipulation is in the process of being negotiated between USB and Debtors.

The cash on hand, cash collateral, and cash from existing operations were insufficient to allow Debtors to continue operations and prepare the Resort for redevelopment. To further the goals of the Chapter 11 Cases, Debtors obtained a commitment from their ultimate owner, Jamie

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Sohacheski, for $1.08 million of unsecured debt to help fund Debtors' operations during the projected course of Bankruptcy Cases and sought approval of the loan through their *Emergency Motion Seeking Interim and Final Orders (1) Authorizing Debtors to Obtain Post-Petition Financing, (2) Allowing the DIP Lender's Claim as an Administrative Expense Pursuant to Section 364(b) of the Bankruptcy Code, and (3) Setting and Prescribing the Form and Manner of Notice for a Final Hearing* [ECF No. 50] (the "DIP Financing Motion"). The DIP Financing Motion was supported by the *Declaration of Robert Flaxman in Support of Emergency Motion Seeking Interim and Final Orders (1) Authorizing Debtors to Obtain Post-Petition Financing, (2) Allowing the DIP Lender's Claim as an Administrative Expense Pursuant to Section 364(b) of the Bankruptcy Code, and (3) Setting and Prescribing the Form and Manner of Notice for a Final Hearing* [ECF No. 51]. Debtors' DIP Financing Motion was granted on an interim basis on September 19, 2012 [ECF No. 149] and then on a final basis on December 17, 2012 [ECF No. 391].

3. Litigation with USB in the Chapter 11 Cases

Debtors have addressed numerous and significant contested matters from USB from the outset of these Chapter 11 Cases. On the day after the Debtors filed their petitions for relief, USB filed a *Motion to Determine that MTS Land is a Single Asset Entity* (the "SARE Motion") [ECF No. 7]. Debtors filed a *Motion for Substantive Consolidation of the Bankruptcy Estate of MTS Land, LLC and MTS Golf, LLC Nunc Pro Tunc to the Petition Date* (the "Consolidation Motion") [ECF No. 29]. The Court ultimately granted the SARE Motion [ECF No. 323] and denied the Consolidation Motion without prejudice [ECF No. 324].

USB filed an *Emergency Motion to Modify and Terminate the Automatic Stay, and for Related Relief, With Respect to 68 Acres of Real Property in Paradise Valley, Arizona* [ECF No. 55] that was heard and denied at a hearing on August 22, 2012. See, *Minute Entry* [ECF No. 103]. USB also filed *U.S. Bank's Motion to Dismiss or Convert Bankruptcy Cases* [ECF No. 169] which was heard and denied on October 29, 2012. See, *Minute Entry* [ECF 274]. USB filed a second *Motion to Modify and Terminate the Automatic Stay, and for Related Relief, With Respect to 68 Acres of Real Property in Paradise Valley, Arizona* [ECF No. 106] which came on

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for hearing on November 8, 2012 and December 7, 2012, and was ultimately denied. See, _____ [ECF No. ___].

4. Additional Motions.

Although there are technically 330 "parties-in-interest" in the Bankruptcy Cases, the majority of these parties do not have claims against the Estates or interest in receiving notice of all documents filed in the Chapter 11 Cases. As a result the noticing requirements were burdensome on Debtors and other parties. Therefore, Debtors filed an *Application for Order Limiting Service Pursuant to Bankruptcy Rule 2002(m)* [ECF No. 180] which was granted by the Bankruptcy Court on October 25, 2012. See *Order Limiting Service Pursuant to Bankruptcy Rule 2002(m)* [ECF No. 249]. Pursuant to the order, service is limited to Debtors, the twenty largest unsecured creditors, or creditors committee, and any parties requesting notice on all matters, except that all interested parties will still receive notice of motions to convert, dismiss, or to appoint a trustee, a motion to set a bar date for filing objections to and the hearing to approve a disclosure statement, for filing objections to and the hearing to conclude the confirmation of a plan of reorganization, motions to sell substantially all Debtors' assets, and for such other hearings as the Bankruptcy Court may otherwise order.

Debtors filed their *Motion for Order Extending the 180 Day Exclusivity Period for Obtaining Acceptances of a Plan of Reorganization* [ECF No. 260] (the "Exclusivity Motion"), seeking up to an including March 16, 2013 to obtain acceptances in favor of their Plan. Debtors filed the Exclusivity Motion because Debtors do not anticipate a decision from PVT related to the Development Agreement or SUP until late January 2013 or February 2013. The Exclusivity Motion was approved on December 17, 2012. See ECF No. 392.

On October 5, 2012, Debtors filed a *Motion to Enforce Automatic Stay Pursuant to 11 U.S.C. § 362(a*) [ECF No. 191] (the "Enforcement Motion") against PVT as a result of PVT's denial of two building permit applications submitted pursuant to the Development Agreement. Debtors and PVT have agreed to postpone any briefing and the hearing while they further negotiate the SUP. Debtors and PVT have entered into several stipulated orders extending the briefing schedule on the Enforcement Motion, which is not scheduled for hearing but is

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anticipated to be set after March 2013. See ECF Nos. 211, 282, 228, 291, 402, 403.

On December 14, 2012, Debtors filed a *Motion for Entry of an Order Fixing Bar Date and Procedures for Filing Proofs of Claim* [ECF No. 385] (the "Bar Date Motion"), which sought to establish a bar date of January 31, 2013 as the deadline to file proofs of claims. The Bar Date Motion was approved on January 9, 2013. See ECF No. 416.

5. Adversary Proceeding.

Debtors filed an adversary proceeding (the "Adversary Proceeding") seeking an injunction against USB to prevent USB from pursuing a writ of attachment or execution on a judgment against Debtors' guarantor, Jamie Sohacheski. See 2:12-ap-01781-EWH. In the Adversary Proceeding, Debtors sought a temporary restraining order and a preliminary injunction. The preliminary injunction was granted on December 7, 2012. See, _____ [ECF No. ___].

6. Debtors' Employment of Professionals.

On July 23, 2012, Debtors filed an *Application for Order Approving Employment of Gordon Silver as Attorneys for Debtors Nunc Pro Tunc to the Petition Date* [ECF No. 25] (the "GS Retention Application") seeking to employ Gordon Silver as their bankruptcy counsel in their Chapter 11 Cases. On August 26, 2012, the Bankruptcy Court entered an order approving the GS Retention Application *nunc pro tunc* to the Petition Date. See *Order Approving Employment of Gordon Silver as Attorneys for Debtors Nunc Pro Tunc to the Petition Date* [ECF No. 48].

On August 13, 2012 Debtors filed an *Application for Order Authorizing Employment of Jorden Bischoff & Hiser as Special Land Use and Zoning Counsel for Debtors Nunc Pro Tunc to the Petition Date* (the "JBH Retention Application") [ECF No. 60] seeking to employ Jorden, Bischoff & Hiser as special counsel to assist with zoning issues related to the Resort in the Chapter 11 Cases. On August 17, 2012, the Bankruptcy Court entered an order approving the JBH Retention Application *nun pro tunc* to the Petition Date. See *Order Authorizing Employment of Jorden Bischoff & Hiser as Special Land Use and Zoning Counsel for Debtors Nunc Pro Tunc to the Petition Date* [ECF No. 83].

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On August 22, 2012, Debtors filed an *Application for Order Authorizing Employment of Squire Sanders as Special Real Estate Counsel for Debtors* (the "Squires Retention Application") [ECF No. 94] seeking to employ Squires Sanders as special counsel on real estate issues related to the Resort in the Chapter 11 Cases. On August 23, 2012, the Bankruptcy Court entered an order approving the Squires Retention Application. See *Order Authorizing Employment of Squire Sanders as Special Real Estate Counsel for Debtors* [ECF No. 94]. Squires Sanders subsequently determined that it had a conflict and could not represent Debtors.

On September 14, 2012, Debtors filed an *Application for Order Authorizing the Employment of Oz Architects, Inc. as Architect for the Debtors Nunc Pro Tunc to the Petition Date* (the "Oz Retention Application") [ECF No. 134] seeking to employ Oz Architects, Inc. as an architect on the Resort in the Chapter 11 Cases. On September 17, 2012, the Bankruptcy Court entered an order approving the Oz Retention Application *nunc pro tunc* to the Petition Date. See Amended *Order Authorizing the Employment of Oz Architects, Inc. as Architect for the Debtors Nunc Pro Tunc to the Petition Date* [ECF No. 150].

On September 14, 2012, Debtors filed an *Application for Order Authorizing the Employment of Forrest Richardson & Associates as Golf Course Architect for the Debtors Nunc Pro Tunc to the Petition Date* (the "FRA Retention Application") [ECF No. 138] seeking to employ Forrest Richardson & Assoc. as golf course architect on the Resort in the Chapter 11 Cases. On September 18, 2012, the Bankruptcy Court entered an order approving the FRA Retention Application *nunc pro tunc* to the Petition Date. See *Amended Order Authorizing the Employment of Forrest Richardson & Associates as Golf Course Architect for the Debtors Nunc Pro Tunc to the Petition Date* [ECF No. 151].

On September 14, 2012, Debtors filed an *Application for Order Authorizing the Employment of Fleet-Fisher Engineering Inc. as Civil Engineer for the Debtors Nunc Pro Tunc to the Petition Date* (the "FFE Retention Application") [ECF No. 142] seeking to employ Fleet-Fisher Engineering, Inc. as a civil engineer on the Resort in the Chapter 11 Cases. On September 18, 2012, the Bankruptcy Court entered an order approving the FFE Retention Application *nunc pro tunc* to the Petition Date. See *Order Authorizing the Employment of Fleet-Fisher*

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Engineering Inc. as Civil Engineer for the Debtors Nunc Pro Tunc to the Petition Date [ECF No. 152].

On October 25, 2012, Debtors filed an *Application for Order Authorizing the Employment of Kenneth B. Funsten as Debtors' Interest Rate and Feasibility Expert* (the "Funsten Retention Application") [ECF No. 254] seeking to employ Kenneth B. Funsten as an interest rate and feasibility expert in support of confirmation on Debtors' Plan. On October 30, 2012, the Bankruptcy Court entered an order approving the Funsten Retention Application *nunc pro tunc* to the Petition Date. See *Amended Order Authorizing the Employment of Kenneth B, Funsten as Debtors' Interest Rate and Feasibility Expert* [ECF No. 276].

On December 7, 2012, Debtors filed an *Application for Entry of an Order Authorizing the Employment and Retention of Nathan & Associates Inc.as Real Estate Broker for Debtors Pursuant to U.S.C. 327(a) and 328(a)* [ECF No. 375] (the "Nathan Retention Application") seeking to employ Nathan & Associates as Debtors' broker to list and sell various parcels of the Resort. On December 12, 2012, the Bankruptcy Court entered an order approving the Nathan Retention Application. See *Order Authorizing the Employment of Nathan & Associates as Real Estate Broker for Debtors Pursuant to U.S.C. 327(a) and 328(a).* [ECF No. 382].

7. Applications for Authority to Pay Professionals.

To Date, Debtors have filed the following employment compensation applications:

Date	Application	Amount	Status
October 25, 2012	*First Monthly Application of Forrest Richardson & Associates Seeking Interim Compensation for Services Rendered as Debtors' Golf Course Architect Through September 25, 2012* [ECF No. 250]	$2,084.48.	Approved
October 29, 2012	*First Monthly Application of Jorden, Bischoff & Hiser P.L.C. Seeking Interim Compensation for Services Rendered as Special Land Use and Zoning Counsel to Debtors Through September 30, 2012* [ECF No. 269]	$86,009.41.	Approved
November 1, 2012	*First Monthly Application of Fleet-Fisher Engineering, Inc. Seeking Interim Compensation for Services Rendered as Debtors' Civil Engineer*	$28,931.93	Approved

	Through September 30, 2012 [ECF No. 285]		
November 1, 2012	*First Monthly Application Seeking Interim Compensation of Oz Architects, Inc. for Services Rendered as Debtors' Architect Through September 30, 2012* [ECF No. 288]	$61,357.36	Approved
January 7, 2013	*Second Interim Application of Fleet Fisher Engineering Inc. Seeking Compensation for Services Rendered as Civil Engineer for Debtors from October 1, 2012 through November 30, 2012* [ECF No. 407]	$20,931.38	Pending
January 8, 2013	*First Interim Fee Application of Gordon Silver, as Attorneys for Debtors, for Allowance of Compensation for Professional Services Rendered and Reimbursement of Expenses* [ECF No. 413]	$486,829.47	Pending
January 24, 2013	*Second Interim Application of Jorden, Bischoff & Hiser P.L.C. Seeking Compensation for Services Rendered as Special Land Use and Zoning Counsel to Debtors from October 1, 2012 Through November 30, 2012* [ECF No. 442]	$95,313.51	Pending

VI.
DETAILED DESCRIPTION OF THE PLAN

A. Means of Implementation of the Plan.

1. Effective Date.

On the Effective Date, without any further action by Debtors or Reorganized Debtor, the following events shall occur in the following sequence:

a. MTS Golf shall be merged and consolidated into MTS Land, as the Reorganized Debtor. MTS Land's existing articles of organization, by-laws, and operating agreement (as amended, supplemented, or modified) will continue in effect following the Effective Date, except to the extent that such documents are amended in conformance with this Plan or by proper governance action after the Effective Date.

b. All of Debtors' assets shall vest in Reorganized Debtor.

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c. The Reorganized Debtor shall execute and deliver: (a) the Restated USB Notes and other Restated USB Loan Documents to the USB Lender, (b) the Restated Hertz Note and other Restated Hertz Loan Documents to the Hertz Lender, (c) the Restated DIP Loan Note and other Restated DIP Loan Documents, (d) the Restated Automobile Note to the Holder of the Bookbinder Automobile Loan Claim, and (e) the Restated Equipment Note to the Holder of the Bookbinder Equipment Loan Claim.

d. The Exit Loan Documents shall be executed by the Reorganized Debtor and the Exit Loan Lender. The Senior Exit Loan Promissory Note and Junior Exit Loan Promissory Note Notes are to be executed and delivered to the Exit Loan Lender, the Exit Loan Security Documents are to be executed and recorded in the records of the Maricopa County Recorder and UCC-1 financing statements are to be filed with the DL SOS, and the Reorganized Debtor is authorized to commence drawing the Exit Loan proceeds.

2. Post Effective-Date Events and Financing.

There will be two loans from the Exit Loan Lender to the Reorganized Debtor approved in accordance with and pursuant to the Plan. One Exit Loan (the "Senior Exit Loan") shall be secured by a first Lien on the Real Property senior in priority to the Restated USB Loan and Restated Hertz Loan in an amount not to exceed $6,860,000. The Second Exit Loan (the "Junior Exit Loan") shall be secured by a Lien on the Real Property junior to the Restated USB Loan and Restated Hertz Loan in an amount not to exceed $1,170,000. The two exit loans are in addition to a $7 million dollar paydown to USB by the Guarantor, which will be paid by the Guarantor, Jamie Sohacheski, and provide a $7 million dollar credit to Reorganized Debtor.

Debtors have a commitment for the Exit Financing from Robert Flaxman and the Guarantor is ready willing and able to pay down the USB Loan. Once the obligation to USB has been reduced the Resort may be redeveloped with additional payments to secured lenders triggering lien release provision provided in the Plan.

The Exit Loans will be repaid by Reorganized Debtor over a period of five years from net operating profits and sale proceeds obtained by Reorganized Debtor through the sale of various parcels of the Resort.

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3. The Amended and Restated Notes and Loan Documents.

On the Effective Date, the Restated DIP Loan Documents, Restated USB Loan Documents, Restated Hertz Loan Documents, Restated Bookbinder Automobile Loan Documents and Restated Bookbinder Equipment Loan Documents shall remain in full force and effect, save and expect that without any further action by Reorganized Debtor or the DIP Lender, USB Lender or Hertz Lender, as applicable, all of the DIP Loan Documents, USB Loan Documents, Hertz Loan Documents, Bookbinder Equipment Loan Documents, and Bookbinder Automobile Loan Documents shall be deemed to have been amended and restated as set forth in Sections 2.3, 2.4, 4.1 4.2 4.3 and 4.4 of the Plan. All amendments necessary to implement and effectuate the provisions of this Plan shall be deemed to have been made. All potential discrepancies or inconsistencies between the DIP Loan Documents, USB Loan Documents, Hertz Loan Documents, Bookbinder Automobile Loan Documents, Bookbinder Equipment Loan Documents, Restated DIP Loan Documents, Restated USB Loan Documents Restated Hertz Loan Documents, Restated Bookbinder Automobile Loan Documents, and Restated Bookbinder Equipment Loan Documents and this Plan shall be construed and resolved in favor of the effectuation and implementation of the provisions and intentions of this Plan.

4. Articles of Organization, By-Laws, Operating Agreement.

The articles of organization, by-laws, and/or operating agreement, as applicable, of Debtors shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code and shall include, among other things, pursuant to Section 1123(a)(6), a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by Section 1123(a)(6).

5. Effectuation of Transactions.

On and after the Effective Date, the appropriate managers or members of Debtors are authorized to issue, execute, deliver, and consummate the transactions contemplated by or described in the Plan in the name of and on behalf of Debtors or Reorganized Debtor, as the case may be, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, rule, or any requirements of further action, vote, or other approval or

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authorization by any Person.

6. Notice of Effectiveness.

When all of the steps for effectiveness have been completed, Reorganized Debtor shall file with the Bankruptcy Court and serve upon all Creditors and all potential Holders of Administrative Claims known to Reorganized Debtor (whether or not disputed), a notice of Effective Date of Plan. The Notice of Effective Date of Plan shall include notice of the Administrative Claim Bar Date.

7. No Governance Action Required.

As of the Effective Date: (i) the adoption, execution, delivery, and implementation or assignment of all contracts, leases, instruments, releases, and other agreements related to or contemplated by the Plan; and (ii) the other matters provided for under or in furtherance of the Plan involving corporate action to be taken by or required of Debtors shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without further order of the Bankruptcy Court or any requirement of further action by the members or managers of Debtors.

8. Filing with the Delaware Secretary of State.

To the extent applicable, in accordance with DE ST TI 8 § 104, on or as soon as practical after the Effective Date, appropriate documents shall be filed with the Delaware Secretary. Again, to the extent applicable, Debtors, from the Confirmation Date until the Effective Date, are authorized and directed to take any action or carry out any proceeding necessary to effectuate the Plan pursuant to DE ST TI 8 § 104.

9. Proposed Post-Effective Date Management of Reorganized Debtor.

From and after the Effective Date, Reorganized Debtor will continue to be managed by Debtors' pre-petition manager, MTS Beverages as manager and Crown Development as sub-manager, which management may subsequently be modified to the extent provided by Reorganized Debtor's articles of organization, by-laws, operating agreement (as amended, supplemented, or modified) and management agreements. ICOG will continue to manage the day to day operations. ICOG will continue to be paid under the terms of the Golf Management

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Agreement.[20] The individuals responsible for continued management decisions will be Robert Flaxman and Jamie Sohacheski. Neither Mr. Flaxman nor Mr. Sohacheski will directly draw a salary from Debtors but rather, are compensated through Crown Development, which is paid a fee of 3% of the monthly Gross Revenues for the preceding month for any month during the term of the Sub-Management Agreement or (ii) $1,000 from MTS Beverages as a result of the *Sub-Management Agreement*. Crown is also entitled to reimbursement of its costs and expenses related to management of the Property pursuant to the *Sub-Management Agreement* and *Agreement of Appointment of Administrative Agent*, as amended.

On and after the Effective Date, the appropriate managers or members of Reorganized Debtor are authorized to issue, execute, deliver, and consummate the transactions contemplated by or described in the Plan in the name of and on behalf of Reorganized Debtor without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, rule, or any requirements of further action, vote, or other approval or authorization by any Person.

The continuation of management post-confirmation is consistent with the interests of Creditors, Holders of Equity Securities, and public policy pursuant to Section 1129(a)(5) because the current management is intimately knowledgeable about Debtors' properties, their operations, and the Greater Phoenix real estate market and thus are uniquely qualified to effectuate Debtors' Plan and thereby maximize the value for all Creditors of the Estates.

10. <u>Development Agreement, PVT Approvals, Golf Course Development, and Property Restrictions</u>.

The Plan provides that as part of the Confirmation Order the following events, stipulations or changes must occur:

a. <u>Development Agreement</u>.

The Development Agreement runs with the Property and is in full force and effect so long as all or a portion of the Property is devoted to "Resort Uses" (as defined in the

[20] Due to ICOG's presence in the State of Arizona and competitive nature of its contents, ICOG's contract has been treated under a protective order and confidentiality agreement since the commencement of this case.

Development Agreement), subject to being superseded by the PVT Approvals set forth in part (b) infra. Portions of the Property have been continuously devoted to Resort Uses since the Development Agreement was adopted. Based on the Development Agreement, the Property can be developed in accordance with the Development Agreement and the Development Agreement Entitlements. On the Effective Date, if the PVT Approvals are not in place and binding on the Property, the Reorganized Debtor shall be entitled and authorized to develop the Real Property in accordance with the Development Agreement and the Development Agreement Entitlements as set forth in Schedule 5.3.1 to the Plan.

PVT shall promptly approve all building plans and permits as contemplated in the Development Agreement and the Development Agreement Entitlements in accordance with Ordinances 336, 339 and 341 and applicable building codes.

b. PVT Approvals.

With regard to the PVT Approvals, the Confirmation Order shall provide that:

1. If the PVT Approvals are approved by PVT and Debtors or Reorganized Debtor, as applicable, and in effect by March 31, 2013, then the Reorganized Debtor shall be entitled and authorized to develop the Real Property in accordance with the PVT Approvals, which shall supersede and replace the Development Agreement and the Development Agreement Entitlements.

i. If any improvements are constructed under and in accordance with PVT Approvals, then in the event of a subsequent invalidation, such improvements will be considered legal non-conforming uses under the Development Agreement.

ii. If the PVT Approvals are not approved by PVT and Debtors or Reorganized Debtor, as applicable. and in effect by March 31, 2013 or such PVT Approvals are determined to be invalid in whole or in part for any reason, including but not limited to as a result of a referendum or by the final order of a court of competent jurisdiction, then the Reorganized Debtor shall be entitled and authorized to develop the Real Property in accordance with the Development Agreement and the Development Agreement Entitlements.

c. Golf Course Restrictions.

With regard to the Golf Course development, the Confirmation Order shall provide that:

i. Any express or implied restriction that limits any portion of the Property to golf course use or that requires the Reorganized Debtor to build, operate, or maintain the Golf Course, whether arising from the Property Restrictions or otherwise, terminated on December 31, 1987, in accordance with the express terms of the Golf Course Restriction.

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ii. Any zoning or similar land use entitlement granted by Maricopa County, Arizona prior to the annexation of the Property in 1992 does not prevent or in any way restrict development of the Property, including the Golf Course.

iii. As part of the PVT Approvals, the Reorganized Debtor may agree to restrict a portion of the Property to use as a golf course or open space. Unless new restrictions are imposed by the Reorganized Debtor, there is no restriction that requires a portion of the Property to be used as a golf course and the Golf Course may be developed in accordance with the PVT Approvals or the Development Agreement, as applicable.

d. Mountain Shadows East and Mountain Shadows West Restrictions.

With regard to the Mountain Shadows East Deed Restrictions, the Mountain Shadows East Guest Ranch Restrictions, and the Mountain Shadows West Deed Restrictions, the Confirmation Order shall provide that such restrictions relate to the Property, Mountain Shadows East, and Mountain Shadows West as set forth on Schedule 5.3.4 to the Plan

e. Lot 68 Restrictions.

With regard to the use of Lot 68, the Confirmation Order shall provide that:

i. The owners of Mountain Shadows East (a) currently use portions of Lot 68 and property owned by Mountain Shadows East to access the driveway to Lincoln Drive and (b) currently use portions of Lot 68 and portions of the Real Property to access the driveway to 56th Street. The Debtors (a) currently use portions of Lot 68 and property owned by Mountain Shadows East to access the driveway to Lincoln Drive, (b) currently use portions of Lot 68 to access the Real Property, and (c) currently use portions of Lot 68 and portions of the Real Property to access Lincoln Drive and 56th Street. Such current access is generally depicted on **Exhibit "3**" included in the Appendix.

ii. After the Effective Date, the Reorganized Debtor (a) may, at its option, continue to use portions of Lot 68 and property owned by Mountain Shadows East to access Lincoln Drive (i.e., use the existing easterly access driveway to Lincoln Drive), (b) may at its option, continue to use portions of Lot 68 to access the Real Property, (c) shall, it its option, provide continuous paved access to Mountain Shadows East over either the existing access to the driveway to 56th Street as generally depicted on an **Exhibit "3"** included in the Appendix or over relocated access to 56th Street, as determined by the Reorganized Debtor in its sole discretion.

iii. Currently Debtors, and after the Effective Date the Reorganized Debtor, shall have a right to use the Lot 68-Loop Road and Lot 68-Interior Roads for all purposes, including but not limited to vehicular and pedestrian ingress and egress, utilities, and emergency access.

iv. Other than as provided in (i) and (ii) above, with regard to Lot 68-Circular Entrance Area, the Reorganized Debtor shall have the right to:

(a) Demolish existing improvements, including buildings, curb, gutter, striping, lighting, and landscaping;

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(b) Construct new improvements, including driveways and parking (including but not limited to medians, lighting, striping, curbs, and gutters); landscaping (including but not limited to irrigation equipment and lines, lighting, trees, shrubs, and other plants); drainage facilities (including but not limited to storm drains and drain inlets); underground utilities (including but not limited to water, sewer, gas, electric, telephone, and cable TV/internet); signage; port cocheres and similar structures, which to not materially and adversely impede access provided for in (i) above; encroachment of building improvements, which to not materially and adversely impede access provided for in (i) above; swimming pools, pool houses, restrooms, fitness areas, and other recreational amenities useable by Mountain Shadows East residents, Mountain Shadows West residents, owners of the Read Property, and guests of the Resort; and related improvements, equipment, and installations from time to time; and

(c) Fully and exclusively utilize such area.

f. Lot 130 and Lot 130-A Restrictions.

With regard to the use of Lot 130-A, the Confirmation Order shall provide that the Mountain Shadows West Homeowners shall have continuous paved access (i) from the northernmost part of Lot 130 to the driveway to Lincoln Drive and 56th Street as such access exists on the Effective Date or (ii) from the northernmost part of Lot 130 to either Lincoln Drive or 56th Street or both, as such access may be relocated and constructed after the Effective Date by the Reorganized Debtor at its sole cost and discretion. Upon completion of the access contemplated by (ii), the owners of Mountain Shadows West shall thereafter have no right to use Lot 130-A. With regard to the existing guardhouse used by Mountain Shadows West and located on Lot 130-A, such guardhouse may remain in its current footprint as constructed as of the Effective Date, provided that Mountain Shadows West shall (i) continue to own the guardhouse improvements (ii) be solely responsible for all cost and expenses relating to the ownership, use, maintenance, and repair of the guardhouse, and (iii) to the fullest extent allowed by law, indemnify, defend, and hold harmless Debtors and Reorganized Debtor for, from, and against all claims, costs, and expenses (including attorneys' fees) arising from or related to the guardhouse. The Confirmation Order shall further provide that Reorganized Debtor may record new plats which eliminate Lot 130-A and create such new lots as allowed by applicable approvals as provided for in the Plan.

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g. Sewers.

With regard to the Sewer Locations-Recorded, the Confirmation Order shall provide that such sewer lines may be relocated at the cost of the Reorganized Debtor, with any further maintenance performed at the cost of owners of Mountain Shadows West. With respect to the Sewer Locations-Recorded, all other terms of the Sewer Easement recorded on September 28, 1961, in Docket 3863, page 75, of the records of Maricopa County, Arizona, shall remain in effect. With regards to the Sewer Locations-Unrecorded, the Confirmation Order shall provide that such sewer lines may be relocated at the cost of the owners of Mountain Shadows West, that the owners of Mountain Shadows West shall indemnify the Reorganized Debtor for matters arising from such relocation, and that owners of Mountain Shadows West shall be responsible for all further maintenance.

h. Camelback Golf Course Leases.

With regard to the Camelback Golf Course Leases and the Golf Course Leases Assignment, the Confirmation Order shall provide that:

i. Under the Assignment and Assumption dated January 31, 2007, between Potomac Hotel Limited Partnership and the Debtors, Potomac Hotel Limited Partnership sold, assigned, conveyed, and granted to the Debtors all of Potomac Hotel Limited Partnership's right, title, and interest in, to and under the Golf Course Leases Assignment.

ii. The Debtors are the successors-in-interest to Potomac Hotel Limited Partnership with respect to the ownership of the Real Property then known as the Mountain Shadows Resort.

iii. The Golf Court Leases Assignment is valid and enforceable by Debtors as the successors-in-interest to Potomac Hotel Limited Partnership.

B. Executory Contracts and Unexpired Leases.

1. Executory Contracts.

Except for Executory Contracts and Unexpired Leases specifically addressed in the Plan or set forth on the schedule of rejected Executed Contracts and Unexpired Leases attached as Schedule 6.1 to the Plan (which may be supplemented and amended up to the date that the Bankruptcy Court enters the Confirmation Order), all Executory Contracts and Unexpired Leases that exist on the Confirmation Date shall be deemed assumed by Debtors on the Effective Date.

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Debtors, up to the Effective Date, may modify the schedule of rejected executory contracts, with notice to the non-debtor party to the contract affected by such modification. All executory contracts and unexpired leases not identified on Schedule 6.1 to the Plan shall be deemed assumed on the Effective Date. Debtors have not scheduled any Executory Contracts or Unexpired Leases on Schedule 6.1 to the Plan.

2. Approval of Assumption or Rejection.

Entry of the Confirmation Order shall constitute as of the Effective Date: (i) approval, pursuant to Section 365(a), of the assumption by Reorganized Debtor of each Executory Contract and Unexpired Lease to which Debtors are a party that is not listed on Schedule 6.1 to the Plan, not otherwise provided for in the Plan, and neither assigned, assumed and assigned, nor rejected by separate order of the Bankruptcy Court prior to the Effective Date; and (ii) rejection by Debtors of each Executory Contract and Unexpired Lease to which Debtor is a party that is listed on Schedule 6.1 to the Plan. Upon the Effective Date, each counter party to an assumed Executory Contract or Unexpired Lease listed shall be deemed to have consented to an assumption contemplated by Section 365(c)(1)(B), to the extent such consent is necessary for such assumption. To the extent applicable, all Executory Contracts or Unexpired Leases of Reorganized Debtor assumed pursuant to Article 6 of the Plan shall be deemed modified such that the transactions contemplated by the Plan shall not be a "change of control," regardless of how such term may be defined in the relevant Executory Contract or Unexpired Lease and any required consent under any such Executory Contract or Unexpired Lease shall be deemed satisfied by confirmation of the Plan.

3. Cure of Defaults.

Reorganized Debtor shall Cure any defaults respecting each Executory Contract or Unexpired Lease assumed pursuant to Section 6.1 of the Plan upon the latest of: (i) the Effective Date or as soon thereafter as practicable; (ii) such dates as may be fixed by the Bankruptcy Court or agreed upon by Debtors, and after the Effective Date, Reorganized Debtor; or (iii) the fourteenth (14th) Business Day after the entry of a Final Order resolving any dispute regarding: (a) a Cure amount; (b) the ability of Reorganized Debtor to provide "adequate assurance of

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future performance" under the Executory Contract or Unexpired Lease assumed pursuant to the Plan in accordance with Section 365(b)(1); or (c) any matter pertaining to assumption, assignment, or the Cure of a particular Executory Contract or an Unexpired Lease.

4. Objection to Cure Amounts.

Any party to an Executory Contract or Unexpired Lease who objects to the Cure amount determined by Debtors to be due and owing must file and serve an objection on Debtors' counsel no later than thirty (30) days after the Effective Date. Failure to file and serve a timely objection shall be deemed consent to the Cure amounts paid by Debtors in accordance with Section 6.3 of the Plan. If there is a dispute regarding: (i) the amount of any Cure payment; (ii) the ability of Reorganized Debtor to provide "adequate assurance of future performance" under the Executory Contract or Unexpired Lease to be assumed or assigned; or (iii) any other matter pertaining to assumption, the Cure payments required by Section 365(b)(1) will be made following the entry of a Final Order resolving the dispute and approving the assumption.

5. Confirmation Order.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the assumptions described in Article 6 of the Plan pursuant to Section 365 of the Bankruptcy Code as of the Effective Date. Notwithstanding the forgoing, if, as of the date the Bankruptcy Court enters the Confirmation Order, there is pending before the Bankruptcy Court a dispute concerning the cure amount or adequate assurance for any particular Executory Contract or Unexpired Lease, the assumption of such Executory Contract or Unexpired Lease shall be effective as of the date the Bankruptcy Court enters an order resolving any such dispute and authorizing assumption by Debtors.

6. Post-Petition Date Contracts and Leases.

Executory Contracts and Unexpired Leases entered into and other obligations incurred after the Petition Date by Debtors shall be assumed by Debtors on the Effective Date. Each such Executory Contract and Unexpired Lease shall be performed by Debtors or Reorganized Debtor, as applicable, in the ordinary course of its business.

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7. Bar Date for Executory Contracts and Unexpired Leases Rejection.

All proofs of Claims with respect to Claims arising from the rejection of any executory contract or unexpired lease shall be filed no later than thirty (30) days after the Effective Date. Any Claim not filed within such time shall be forever barred.

C. Manner of Distribution of Property Under the Plan.

Reorganized Debtor shall be responsible for establishing and maintaining the Disputed Claim Reserve and making the Distributions described in the Plan. Reorganized Debtor may make such Distributions before the allowance of each Claim and Equity Securities has been resolved if Reorganized Debtor has a good faith belief that the Disputed Claims Reserve or Disputed Equity Security Reserve is sufficient for all Disputed Claims and Disputed Equity Securities. Except as otherwise provided in the Plan or the Confirmation Order, the Cash necessary for Reorganized Debtor to make payments pursuant to the Plan may be obtained from Exit Loans, Debtor in Possession financing, existing Cash balances and Debtors' operations.

Reorganized Debtor shall maintain a record of the names and addresses of all Holders of Allowed General Unsecured Claims as of the Effective Date and all Holders as of the Record Date of Equity Securities of Debtors for purposes of mailing Distributions to them. Reorganized Debtor may rely on the name and address set forth in Debtors' Schedules and/or proofs of Claim and the ledger and records regarding Holders of Equity Securities as of the Record Date as being true and correct unless and until notified in writing.

D. Conditions to Confirmation of the Plan.

1. Conditions to Confirmation.

The Confirmation Order shall have been entered and be in form and substance reasonably acceptable to Debtors.

2. Conditions to Effectiveness.

The following are conditions precedent to occurrence of the Effective Date:

i. The Confirmation Order shall be a Final Order, except that Debtors reserve the right to cause the Effective Date to occur notwithstanding the pendency of an appeal of the Confirmation Order;

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ii. No request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending, including any appeal; and

iii. All documents necessary to implement the transactions contemplated by the Plan shall be in form and substance reasonably acceptable to Debtors.

3. Waiver of Conditions.

Debtors, in their sole discretion, may waive any and all of the other conditions set forth in the Plan and specifically Sections 8.1 and 8.2 of the Plan without leave of or order of the Bankruptcy Court and without any formal action.

VII.
RISK FACTORS

In addition to risks discussed elsewhere in this Disclosure Statement, the Plan involves the following risks, which should be taken into consideration.

A. Bankruptcy Court Jurisdiction to Enter Confirmation Order Regarding the Development Agreement.

MTS East HOA, MTS West HOA, and PVT has asserted that this Court does not have jurisdiction to enter a Confirmation Order as requested in the Plan as those parties contend that the Bankruptcy Court will be issuing "land use orders" or participating in "contract zoning." However, Debtors do not seek to have this Bankruptcy Court zone or rezone the Real Property through the Plan. Rather, Debtors are merely asking the Bankruptcy Court to recognize their rights under the Development Agreement, a valid and enforceable contract between Debtors and PVT which has been in existence for over 20 years. Debtors contend the Development Agreement is valid, enforceable, and binding for the reasons set forth in Section V(C) of this Disclosure Statement.

The commencement of a case in bankruptcy creates an estate which contains all of a debtor's legal and equitable interest in property. Property of the estate pursuant to 11 U.S.C. § 541 is defined "very broadly" to include all possible assets in the debtor's estate for reorganization. *See United States v. Whiting Pool, Inc*., 462 U.S. 198, 205, 103 S.Ct. 2309, 2313

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(1983) (the Supreme Court broadly defines what constitutes property of the "estate" under Section 541); *see also Stringer v. Huet (In re Stringer),* 847 F.2d 549, 551 (9th Cir. 1988). The determination of what constitutes "property of the estate" under Section 541 is a federal question, however, courts look to state law to determine when property rights arise. *Zurich American Ins. Co. v. Trans Cal Associates,* 2011 WL 6329959 at 3 (E.D.Cal. 2011*); In re Loughnane, 28 B.R. 940 (Bankr.D.Colo. 1983).*

The property interests at stake in the present case are Debtors' interest in the Property and Debtors' rights in the bargained for Development Agreement.

Certainly, the Resort constitutes property of Debtors' estates and the Development Agreement runs with that land to the benefit of Debtors. The Development Agreement provided that it inured to the benefit of the owners and its' successors. *See* Development Agreement at ¶12. The Development Agreement was recorded with the Maricopa County Recorders' Office on the Real Property. *Id.* The rights and entitlements of the Development Agreement run with, and are an integral part of Debtors' primary asset, the Resort.

Moreover, "[c]ourts have consistently held that contract rights are property of the estate, and that therefore those rights are protected by the automatic stay." *Elder-Beerman Stores Corp. v. Thomasville Furniture Indus. Inc. (In re Elder-Beerman Stores Corp.),* 195 B.R. 1019, 1023 (Bankr.S.D.Ohio 1996) (holding attempts to terminate sale distribution contract which was property of the estate in violation of the automatic stay); *Computer Communication v. Codex,* 824 F.2d 725, 731-32 (9th Cir. 1987) (holding that executory contract is property of the bankruptcy estate and attempts to unilaterally terminate constituted violation of automatic stay).

Furthermore, a debtor's interest in a building permit has been held to constitute as asset of the bankruptcy estate. *Island Club Marina, Ltd. v. Lee County Florida,* 33 B.R. 331, 335 (Bankr.N.D.Ill. 1983). Similarly, in Arizona a landowner may have vested rights in an issued building permit or special use permit. *See Town of Paradise Valley v. Gulf Leisure Corporation,* 27 Ariz.App. 600, 608, 557 P.2d 532, 540 (App. 1976). The Development Agreement was entered into by PVT and Debtors' predecessors in 1992 and provided for the continued use and redevelopment of the Real Property for "Resort Uses". As a bargained for and enforceable

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contract with PVT, Debtors have the right to enforce the Development Agreement through these Chapter 11 Cases.

B. Debtors Have No Duty To Update This Disclosure Statement.

The statements in this Disclosure Statement are made by Debtors as of the date hereof, unless otherwise specified herein. The delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. Debtors have no duty to update this Disclosure Statement unless ordered to do so by the Bankruptcy Court.

C. Information Presented Is Based on Debtors' Books and Records, and Is Unaudited.

While Debtors have endeavored to present information fairly and accurately in this Disclosure Statement, there is no assurance that Debtors' books and records upon which this Disclosure Statement is based are complete and accurate. The financial information contained herein has not been audited.

D. Projections and Other Forward-Looking Statements Are Not Assured, and Actual Results Will Vary.

Certain information in this Disclosure Statement is, by nature, forward looking, and contains estimates and assumptions which might ultimately prove to be incorrect, and projections which may differ materially from actual future results. There are uncertainties associated with all assumptions, projections, and estimates, and they should not be considered assurances or guarantees of the amount of Claims in the various Classes that will be allowed. The allowed amount of Claims in each Class, as well as Administrative Claims, could be significantly more than projected, which in turn, could cause the value of Distributions to be reduced or to be tendered over a longer period of time than anticipated.

E. No Assurance of Sale or Capital Infusions.

The Plan contemplates various payments to Holders of Allowed Claims, including the Restated USB Loan, Restated Hertz Loan, Restated Automobile Note, Restated Equipment Note, Exit Loan, DIP Loan and Allowed General Unsecured Claims. While Debtors believe that revenues will be sufficient to meet all of these obligations on a timely basis, there is no assurance

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that Reorganized Debtor will be able to refinance its obligations, sell Parcels of Property or infuse sufficient working capital to insure these payments.

F. No Legal or Tax Advice Is Provided to You By this Disclosure Statement.

The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each Creditor or Holder of an Equity Interest should consult his, her, or its own legal counsel and accountant as to legal, tax, and other matters concerning his, her, or its Claim or Equity Interest.

G. No Admissions Made.

Nothing contained herein shall constitute an admission of any fact or liability by any party (including Debtors) or shall be deemed evidence of the tax or other legal effects of the Plan on Debtors or on Holders of Claims or Equity Interests.

H. No Waiver of Right to Object or Right to Recover Transfers and Estate Assets.

A Creditor's vote for or against the Plan does not constitute a waiver or release of any claims or rights of Debtors (or any other party in interest) to object to that Creditor's Claim, or recover any preferential, fraudulent, or other voidable transfer or Assets, regardless of whether any claims of Debtors or their Estates is specifically or generally identified herein.

I. Bankruptcy Law Risks and Considerations.

1. Confirmation of the Plan Is Not Assured.

Confirmation requires, among other things, a finding by the Bankruptcy Court that it is not likely there will be a need for further financial reorganization and that the value of distributions to dissenting members of Impaired Classes of Creditors and Holders of Equity Interests would not be less than the value of distributions such Creditors and Holders of Equity Interests would receive if Debtors were liquidated under Chapter 7 of the Bankruptcy Code. Although Debtors believe that the Plan will not be followed by a need for further financial reorganization and that dissenting members of Impaired Classes of Creditors and Holders of Equity Interests will receive distributions at least as great as they would receive in a liquidation under Chapter 7, there can be no assurance that the Bankruptcy Court will conclude that this test has been met.

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Although Debtors believe the Plan satisfies all additional requirements for Confirmation, the Bankruptcy Court might not reach that conclusion. It is also possible that modifications to the Plan will be required for Confirmation and that such modification would necessitate a resolicitation of votes.

2. The Effective Date Might Be Delayed or Never Occur.

There is no assurance as to the timing of the Effective Date or that it will occur. If the conditions precedent to the Effective Date have not occurred or been waived within the prescribed time frame, the Confirmation Order will be vacated. In that event, the Holders of Claims and Equity Interests would be restored to their respective positions as of the day immediately preceding the Confirmation Date, and Debtors' obligations for Claims and Equity Interests would remain unchanged as of such day.

3. No Representations Outside of this Disclosure Statement are Authorized.

No representations concerning or related to Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with this Disclosure Statement should not be relied upon by you in arriving at your decision.

4. The Projected Value of Estate Assets in the Event of Liquidation Might Not Be Realized.

In the Best Interests Analysis discussed herein, Debtors have projected the value of the Assets that would be available for payment of expenses and Distributions to Holders of Allowed Claims, as set forth in the Plan in the event of liquidation of the Assets. Debtors have made certain assumptions in their Best Interests Analysis in arriving at a liquidation distribution, which should be read carefully.

J. Risks Related to Debtors' Business Operations.

The following discussion of risks that relate to Debtors' business should be read as also being applicable to the business of Reorganized Debtor on and after the Effective Date.

1. Effect of the Chapter 11 Cases.

If the Chapter 11 Cases continue for a prolonged period of time, the proceedings could adversely affect Debtors business and operations. The longer the Chapter 11 Cases continue, the more likely it is that Debtors' customers, suppliers, and agents as well as prospective purchasers of the Real Property and funding sources could lose confidence in Debtors' ability to successfully reorganize their business and will seek to establish alternative commercial relationships. Consequently, Debtors might lose valuable business in the course of the Chapter 11 Cases.

So long as the Chapter 11 Cases continue, Debtors management will be required to spend a significant amount of time and effort dealing with Debtors' reorganization instead of focusing exclusively on business operations. Furthermore, so long as the Chapter 11 Cases continue, Debtors will be required to incur substantial costs for professional fees and other expenses associated with the proceedings.

2. Force Majeure.

Debtors' financial performance may be negatively affected by environmental disaster, outbreak of disease, or other global, regional, or local destabilizing events.

3. Leadership and Management.

Debtors' projected financial performance is conditioned upon their ability to retain their dedicated and knowledgeable ownership and management team.

4. Changes to Applicable Tax Laws Could Have a Material Adverse Effect on Debtors' Financial Condition.

From time to time, federal, state, and local legislators and other government officials have proposed and adopted changes in tax laws, or in the administration of those laws affecting commerce. It is not possible to determine the likelihood of changes in tax laws or in the administration of those laws. If adopted, changes to applicable tax laws could have a material adverse effects on Debtors' business, financial condition, and results of operations. Any increase in taxes may impact Debtors' future profitability.

5. Enforceability of Development Agreement.

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While Debtors are seeking a SUP approval from PVT, in the event that PVT does not agree to issue a SUP acceptable to Debtors or Reorganized Debtor, as applicable, alternatively, Debtors believe that the Development Agreement is valid and enforceable, and in such event will seek to enforce the Development Agreement and develop the Real Property in accordance therewith. However, there is no assurance that PVT will agree and issue building permits in accordance with the Development Agreement. In such event, Debtors, or Reorganized Debtor, as applicable, would seek judicial review, but there is no assurance as to the timing or outcome of such review.

6. Regulatory Approvals.

There is no assurance as to the timing of the entitlement process by the PVT. If the SUP is approved by the PVT, there remains the possibility that persons opposing the approval of the SUP may attempt to process a referendum to overturn the SUP approval or seek judicial review.

VIII.
POST EFFECTIVE DATE OPERATIONS AND PROJECTIONS

A. Summary of Title to Property and Dischargeability.

1. Vesting of Assets.

Subject to the provisions of the Plan, pursuant to Section 5.1 of the Plan and as permitted by Section 1123(a)(5)(B) of the Bankruptcy Code, the Assets shall be transferred to Reorganized Debtor on the Effective Date following substantive consolidation. As of the Effective Date, all such property shall be free and clear of all Liens, Claims, and Equity Securities except as otherwise provided herein. On and after the Effective Date, Reorganized Debtor may operate its business and may use, acquire, and dispose of property and compromise or settle any Claim without the supervision of or approval of the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by the Plan or the Confirmation Order.

2. Preservation of Avoidance Actions and Litigation Claims.

In accordance with Section 1123(b)(3) of the Bankruptcy Code, and except as otherwise expressly provided in the Plan, all Litigation Claims shall be assigned and transferred to

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Reorganized Debtor pursuant to Section 5.1 of the Plan. Notwithstanding the foregoing, on and after the Effective Date, the prosecution of the Litigation Claims lies in the sole and absolute discretion of Reorganized Debtor.

There may also be other Litigation Claims which currently exist or may subsequently arise that are not set forth in this Disclosure Statement because the facts underlying such Litigation Claims are not currently known or sufficiently known by Debtors. The failure to list any such unknown Litigation Claim in the Disclosure Statement is not intended to limit the rights of Debtors or Reorganized Debtor to pursue any unknown Litigation Claim to the extent the facts underlying such unknown Litigation Claim become more fully known in the future. Furthermore, any potential net proceeds from Litigation Claims identified in the Disclosure Statement or any notice filed with the Bankruptcy Court, or which may subsequently arise or otherwise be pursued, are speculative and uncertain.

Unless Litigation Claims against any individual or entity are expressly waived, relinquished, released, compromised, or settled by the Plan or any Final Order, Debtors expressly reserve for its benefit, and the benefit of Reorganized Debtor, all Litigation Claims, including, without limitation, all unknown Litigation Claims for later adjudication and therefore no preclusion doctrine (including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches) shall apply to such Litigation Claims after the confirmation or consummation of the Plan. In addition, Debtors expressly reserve for their benefit, and the benefit of Reorganized Debtor, the right to pursue or adopt any claims alleged in any lawsuit in which Debtors are a defendant or an interested party, against any individual or entity, including plaintiffs and co-defendants in such lawsuits.

3. Discharge.

On the Effective Date, unless otherwise expressly provided in the Plan or the Confirmation Order, Debtors shall be discharged from any and all Claims to the fullest extent provided in the Bankruptcy Code, including Sections 524 and 1141 of the Bankruptcy Code. All consideration distributed under the Plan or the Confirmation Order shall be in exchange for, and

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in complete satisfaction, settlement, discharge, and release of all Claims of any kind or nature whatsoever against Debtors or any of their Assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, Debtors shall be deemed discharged and released under and to the fullest extent provided under Section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

4. Injunction.

From and after the Effective Date, and except as provided in the Plan and the Confirmation Order, all entities that have held, currently hold, or may hold a Claim or an Equity Security or other right of an Equity Security Holder that is terminated pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions on account of any such Claims or terminated Equity Securities or rights: (i) commencing or continuing in any manner any action or other proceeding against Reorganized Debtor or its property; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against Reorganized Debtor or its property; (iii) creating, perfecting, or enforcing any Lien or encumbrance against Reorganized Debtor or its property; (iv) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to Reorganized Debtor or its property; and (v) commencing or continuing any action, in any manner or any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.

5. Exculpation.

From and after the Effective Date, neither Debtors, Reorganized Debtor, the professionals employed on behalf of the Estate, nor any of their respective present or former members, directors, officers, managers, employees, advisors, attorneys, or agents, shall have or incur any liability, including derivative claims, but excluding direct claims, to

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any Holder of a Claim or Equity Security or any other party-in-interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or Affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of (from the Petition Date forward), the Chapter 11 Cases, Reorganized Debtor, the pursuit of confirmation of the Plan, or the consummation of the Plan, except for gross negligence and willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan or in the context of the Chapter 11 Cases.

To be clear, this exculpation is limited to any act or omission in connection with, relating to, or arising out of (from the Petition Date forward), the Chapter 11 Cases, Reorganized Debtor, the pursuit of confirmation of the Plan, or the consummation of the Plan. In addition, it is consistent with the indemnification provisions of the organizational documents of the Debtors. Finally, gross negligence and willful misconduct is excluded. Therefore, the exculpation has a very specific, temporal limitation and is narrow in scope to protect those that assisted with this Bankruptcy Case from liability arising from the actions taken in the Bankruptcy Case Similar exculpation provisions are routinely approved to protect those closely involved in proposing a plan. *See In re PWS Holding Corp*., 228 F.3d 224, 246–47 (3rd Cir.2000) (approved exculpation provision releasing debtors, reorganized debtors, committee, and their officers, directors, employees, advisors, professionals or agents from liability except from willful misconduct or gross negligence); *In re Western Asbestos Co*., 313 B.R. 832, 846–47 (Bankr.N.D.Cal.2003) (approved release provision in favor of debtors, committee, futures representative, and their respective agents except for willful misconduct); *In re Firstline Corp.*, 2007 WL 269086 (Bankr.M.D.Ga.2007)(approved exculpation clause for the debtor, trustee, the committee and its members, and their respective advisors, attorneys, consultants or professionals with exception for gross negligence, willful misconduct, or breach of fiduciary duty); *In re Enron Corp*., 326 B.R. 497 (S.D.N.Y.2005)(bankruptcy court approved exculpation provision in favor of debtors, creditors' committee, employee committee, trustees, and their respective officers, employees, attorneys, and agents that excluded gross negligence or willful misconduct).

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B. Post-Confirmation Reporting and Quarterly Fees to the UST.

Prior to the Effective Date, Debtors, and after the Effective Date, Reorganized Debtor, shall pay all quarterly fees payable to the UST consistent with the sliding scale set forth in 28 U.S.C. § 1930(a)(6) and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules. These fees accrue throughout the pendency of the Chapter 11 Case, until entry of a final decree. UST fees paid prior to confirmation of the Plan will be reported in operating reports required by Sections 704(8), 1106(a)(1), and 1107(a), as well as the UST Guidelines. All UST quarterly fees accrued prior to confirmation of the Plan will be paid on or before the Effective Date pursuant to Section 1129(a)(12). All UST fees accrued post-confirmation will be timely paid on a calendar quarterly basis and reported on post-confirmation operating reports. Final fees will be paid on or before the entry of a final decree in the Chapter 11 Cases.

IX.
CERTAIN FEDERAL INCOME TAX CONSEQUENCES

THE FOLLOWING SUMMARY DOES NOT CONSTITUTE EITHER A TAX OPINION OR TAX ADVICE TO ANY PERSON. NO REPRESENTATIONS REGARDING THE EFFECT OF IMPLEMENTATION OF THE PLAN ON INDIVIDUAL CREDITORS ARE MADE HEREIN OR OTHERWISE. RATHER, THE TAX DISCLOSURE IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. ALL CREDITORS ARE URGED TO CONSULT THEIR RESPECTIVE TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF THE PLAN.

Creditors, Equity Security Holders, and any Person affiliated with the foregoing are strongly urged to consult their respective tax advisors regarding the federal, state, local, and foreign tax consequences which may result from the confirmation and consummation of the Plan. This Disclosure Statement shall not in any way be construed as making any representations regarding the particular tax consequences of the confirmation and consummation of the Plan to any Person. This Disclosure Statement is general in nature and is merely a summary discussion of potential tax consequences and is based upon the Internal Revenue Code of 1986, as amended (the "IRC"), and pertinent regulations, rulings, court decisions, and treasury decisions, all of

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which are potentially subject to material and/or retroactive changes. Under the IRC, there may be federal income tax consequences to Debtors, its Creditors, its Equity Security Holders, and/or any Person affiliated therewith as a result of confirmation and consummation of the Plan.

Upon the confirmation and consummation of the Plan, the federal income tax consequences to Creditors and their affiliates arising from the Plan will vary depending upon, among other things, the type of consideration received by the Creditor in exchange for its Claim, whether the Creditor reports income using the cash or accrual method of accounting, whether the Creditor has taken a "bad debt" deduction with respect to its Claim, whether the Creditor received consideration in more than one tax year, and whether the Creditor is a resident of the United States. If a Creditor's Claim is characterized as a loss resulting from a debt, then the extent of the deduction will depend on whether the debt is deemed wholly worthless or partially worthless, and whether the debt is construed to be a business or nonbusiness debt as determined under the 26 U.S.C. § 166, and/or other applicable provisions of the Internal Revenue Code.

CREDITORS SHOULD CONSULT THEIR TAX ADVISOR REGARDING THE TAX TREATMENT (INCLUDING FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES) OF THEIR RESPECTIVE ALLOWED CLAIMS. THIS DISCLOSURE IS NOT A SUBSTITUTE FOR TAX PLANNING AND SPECIFIC ADVICE FOR PERSONS AFFECTED BY THE PLAN.

X.
CONFIRMATION OF THE PLAN

A. Confirmation Of The Plan.

Pursuant to Section 1128(a), the Bankruptcy Court will hold hearings regarding confirmation of the Plan at the U.S. Bankruptcy Court, 230 N. 1st Avenue, Court Room ____, Phoenix, Arizona at _____. To the extent necessary, the Bankruptcy Court will schedule additional hearing dates.

B. Objections to Confirmation of the Plan.

Section 1128(b) provides that any party-in-interest may object to confirmation of a plan. Any objections to confirmation of the Plan must be in writing, must state with specificity the

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grounds for any such objections, and must be timely filed with the Bankruptcy Court and served upon counsel for Debtors at the following address:

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Attn: Robert C. Warnicke
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For the Plan to be confirmed, the Plan must satisfy the requirements stated in Section 1129. In this regard, the Plan must satisfy, among other things, the following requirements.

1. Best Interest of Creditors and Liquidation Analysis.

Pursuant to Section 1129(a)(7) of the Bankruptcy Code, for the Plan to be confirmed, it must provide that Creditors and Holders of Equity Securities will receive at least as much under the Plan as they would receive in a liquidation of Debtors under Chapter 7 of the Bankruptcy Code (the "Best Interest Test"). The Best Interest Test with respect to each impaired Class requires that each Holder of an Allowed Claim or Equity Security of such Class either: (i) accepts the Plan; or (ii) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive or retain if Debtors were liquidated under Chapter 7 of the Bankruptcy Code. The Bankruptcy Court will determine whether the value received under the Plan by the Holders of Allowed Claims in each Class of Creditors or Equity Securities equals or exceeds the value that would be allocated to such Holders in a liquidation under Chapter 7 of the Bankruptcy Code. Debtors believe that the Plan meets the Best Interest Test and provides value which is not less than that which would be recovered by each such holder in a Chapter 7 bankruptcy proceeding.

Generally, to determine what Holders of Allowed Claims and Equity Securities in each impaired Class would receive if Debtors were liquidated, the Bankruptcy Court must determine what funds would be generated from the liquidation of Debtors' Assets and properties in the context of a Chapter 7 liquidation case, which for unsecured creditors would consist of the proceeds resulting from the disposition of the Assets of Debtors, including the unencumbered Cash held by Debtors at the time of the commencement of the liquidation case. Such Cash amounts would be reduced by the costs and expenses of the liquidation and by such additional

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Administrative Claims and Priority Claims as may result from the termination of Debtors' businesses and the use of Chapter 7 for the purpose of liquidation.

In a Chapter 7 liquidation, Holders of Allowed Claims would receive distributions based on the liquidation of the non-exempt assets of Debtors. Such assets would include the same assets being collected and liquidated under the Plan. However, the net proceeds from the collection of property of the Estates available for distribution to Creditors would be reduced by any commission payable to the Chapter 7 trustee and the trustee's attorney's and accounting fees, as well as the administrative costs of the Chapter 11 s (such as the compensation for Chapter 11 professionals). The Estates have already absorbed much of the cost of realizing upon Debtors' Assets. In a Chapter 7 case, the Chapter 7 trustee would be entitled to seek a sliding scale commission based upon the funds distributed by such trustee to Creditors, even though Debtors have already incurred some of the expenses associated with generating those funds. Accordingly, there is a reasonable likelihood that Creditors would "pay again" for the funds accumulated by Debtors because the Chapter 7 trustee would be entitled to receive a commission in some amount for all funds distributed from the Estates.

It is further anticipated that a Chapter 7 liquidation would result in significant delay in the payment, if any, to Creditors. Among other things, Chapter 7 cases could trigger a new bar date for filing Claims that would be more than ninety (90) days following conversion of the Chapter 11 Cases to Chapter 7. Hence, a Chapter 7 liquidation would not only delay distribution but raises the prospect of additional Claims that were not asserted in the Chapter 11 Cases. Moreover, Claims that may arise in the Chapter 7 cases or result from the Chapter 11 Cases would be paid in full from the Assets before the balance of the Assets would be made available to pay pre-Chapter 11 Allowed Priority Claims, Allowed General Unsecured Claims, and Equity Securities.

The distributions from the Assets would be paid Pro Rata according to the amount of the aggregate Claims held by each Creditor. Debtors believe that the most likely outcome under Chapter 7 would be the application of the "absolute priority rule." Under that rule, no junior Creditor may receive any distribution until all senior Creditors are paid in full, with interest, and

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no Equity Security holder may receive any distribution until all Creditors are paid in full.

As set forth in the Liquidation Analysis[21] and accompanying notes annexed hereto "Debtors have determined that confirmation of the Plan will provide each Holder of a Claim in an Impaired Class[22] with no less of a recovery than he/she/it would receive if Debtors were liquidated under Chapter 7. If the Plan is confirmed, Debtors project that all Creditors will be paid 100% of their Allowed Claims.

Despite the fact that Allowed Secured Claims are oversecured, in Chapter 7 cases, Debtors would cease operating, thereby eliminating the going concern value of its business and possibly resulting in the a decrease in the value of the Real Property. As explained below, such reduced value could preclude any meaningful distribution to Holders of Administrative Claims, Priority Unsecured Claims, General Unsecured Claims, and Equity Securities.

In Chapter 7 cases, the Chapter 7 trustee must liquidate the Debtors' Assets and distribute the proceeds thereof to Holders of Allowed Claims. However, the change in management would hinder the Chapter 7 trustee's ability to maximize the sales price of the Real Property. If a sale could not be quickly effectuated at a price greater than the Allowed Secured Claims, the Holders of Allowed Secured claims would presumably seek relief from the automatic stay to foreclose on the Real Property or the Chapter 7 trustee would abandon the collateral.

In the event the Chapter 7 trustee was able to sell the Real Property for a sum in-excess-of the Allowed Secured Claims, such Claims would be satisfied, which treatment is not more than the Secured Lenders will receive under the Plan as the Plan provides for the full payment of the Allowed Secured Claims. It is unlikely that the Trustee would realize enough from the sale to pay all Creditors in full as provided in the Plan. It is certain that the Creditors would not do better in a Chapter 7 liquidation since the Plan provides for full payment of all Allowed Claims. Therefore, the Plan meets the Best Interest Test.

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[21] The Liquidation Analysis sets forth Debtors' best estimates as to value and recoveries in the event that the Chapter 11 Cases are converted to cases under Chapter 7 of the Bankruptcy Code and Debtors' Assets are liquidated.

[22] The Impaired Classes are Class 1 (USB Secured Loan Claims), Class 2 (Hertz Secured Loan Claims), Class 3 (Bookbinder Automobile Loan Claim), Class 4 (Bookbinder Equipment Loan Claim), and Class 7 (General Unsecured Claims).

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Without a prompt sale by the Chapter 7 trustee, relief from the automatic stay would likely be granted or the collateral abandoned by the Chapter 7 trustee, which would likely be followed by a foreclosure sale. Despite the fact that the Holders of Allowed Secured Claims are currently oversecured, in the event that the Holders of Allowed Secured Claims foreclosed on its Collateral, each Holder would receive its collateral with a value equal to or greater than its Allowed Secured Claim subject to the foreclosure costs, and would subsequently incur additional sale costs of approximately ten percent (10%). After costs of sale, each Holder of an Allowed Secured Claim would likely receive full payment of its Allowed Secured Claim, which is equivalent to what each such Holder will receive under the Plan.

Thus, as evidenced by the Liquidation Analysis and the accompanying notes included as **Exhibit "5"** to the Appendix, the value provided under the Plan to the Holders of Allowed Claims in the Impaired Classes is equal to or better than they would receive under a Chapter 7 liquidation. ***Specifically, as has been explained herein, if the Plan is confirmed, all Allowed Claims will be paid in full with interest at the rates set forth in the Plan. Additionally, Holders of Equity Securities as of the Record Date will retain all of their rights thereunder. Thus, Debtors strongly encourages all Impaired Classes to vote in favor of confirmation of the Plan.***

2. Feasibility.

The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court must find that Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of Debtors (the "Feasibility Test"). For the Plan to meet the Feasibility Test, the Bankruptcy Court must find by a preponderance of the evidence that Debtors will possess the resources and working capital necessary to meet its obligations under the Plan.

As demonstrated by the previous discussion of Debtors' financial condition, Debtors' operations and Exit Loans generate sufficient cash flow to meet its payment obligations under the Plan until the Real Property can be developed or refinanced and Parcels sold. Further, as demonstrated by the Martori Appraisal, the value of Debtors' Assets exceeds the Secured Claims, thereby enabling Debtor to sell the Real Property or to obtain refinancing prior to repay

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in full the all Allowed Claims consistent with the provisions of the Plan. Furthermore, as demonstrated by the Projections included as **Exhibit "6"** to the Appendix**,** Debtors will be able to satisfy their obligations under the Plan. Provided the foregoing, Debtors are confident that it can establish, and the Bankruptcy Court will find, that the Plan is feasible within the meaning of Section 1129(a)(11) of the Plan.

3. Accepting Impaired Class.

Since various Classes of Claims are impaired under the Plan, for the Plan to be confirmed, the Plan must be accepted by at least one impaired Class of Claims (not including the votes of insiders of Debtors).

4. Acceptance of Plan.

For an impaired Class of Claims to accept the Plan, those representing at least two-thirds (2/3) in amount and a majority in number of the Allowed Claims voted in that Class must be cast for acceptance of the Plan.

5. Confirmation Over a Dissenting Class ("Cram Down").

If there is less than unanimous acceptance of the Plan by Impaired Classes of Claims, the Bankruptcy Court nevertheless may confirm the Plan at Debtors' request. Section 1129(b) provides that if all other requirements of Section 1129(a) of the Plan are satisfied and if the Bankruptcy Court finds that: (i) the Plan does not discriminate unfairly; and (ii) the Plan is fair and equitable with respect to the rejecting Class(es) of Claims or Equity Securities impaired under the Plan, the Bankruptcy Court may confirm the Plan despite the rejection of the Plan by dissenting impaired Class of Claims or Equity Securities.

Debtors will request confirmation of the Plan pursuant to Section 1129(b) of the Bankruptcy Code with respect to any Impaired Class of Claims that does not vote to accept the Plan. Debtors believe that the Plan satisfies all of the statutory requirements for Confirmation, that Debtors have complied with or will have complied with all the statutory requirements for Confirmation of the Plan, and that the Plan is proposed in good faith. At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the statutory requirements for Confirmation.

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6. Allowed Claims.

You have an Allowed Claim if: (i) you or your representative timely file a proof of Claim and no objection has been filed to your Claim within the time period set for the filing of such objections; (ii) you or your representative timely filed a proof of Claim and an objection was filed to your Claim upon which the Bankruptcy Court has ruled and Allowed your Claim; (iii) your Claim is listed by Debtors in their Schedules or any amendments thereto (which are on file with the Bankruptcy Court as a public record) as liquidated in amount and undisputed and no objection has been filed to your Claim; or (iv) your Claim is listed by Debtors in their Schedules as liquidated in amount and undisputed and an objection was filed to your Claim upon which the Bankruptcy Court has ruled to Allow your Claim.

Under the Plan, the deadline for filing objections to Claims is ninety (90) calendar days following the Effective Date. If your Claim is not an Allowed Claim, it is a Disputed Claim and you will not be entitled to vote on the Plan unless the Bankruptcy Court temporarily or provisionally allows your Claim for voting purposes pursuant to Bankruptcy Rule 3018. If you are uncertain as to the status of your Claim or Equity Security or if you have a dispute with Debtors, you should check the Bankruptcy Court record carefully, including the Schedules of Debtors, and you should seek appropriate legal advice. Debtors and its professionals cannot advise you about such matters.

7. Impaired Claims and Equity Securities.

Impaired Claims and Equity Securities include those whose legal, equitable, or contractual rights are altered by the Plan, even if the alteration is beneficial to the Creditor or Equity Security Holder, or if the full amount of the Allowed Claims will not be paid under the Plan. Holders of Claims which are not impaired under the Plan are deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code and Debtors need not solicit the acceptances of the Plan of such unimpaired Claims. As such, only Holders of Claims in impaired Classes 1, 2, 3, 4 and 7 under the Plan are entitled to vote.

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8. Voting procedures.

a. Submission of Ballots.

All Creditors entitled to vote will be sent a Ballot, together with instructions for voting, a copy of this approved Disclosure Statement, and a copy of the Plan. You should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot that was sent with this Disclosure Statement. You should complete your Ballot and return it as follows:

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Attn: Robert C. Warnicke
One East Washington Suite 400
Phoenix, Arizona 85004

TO BE COUNTED, YOUR BALLOT MUST BE ***RECEIVED*** AT THE ADDRESS LISTED ABOVE BY _____, 2013.

b. Incomplete Ballots.

Unless otherwise ordered by the Bankruptcy Court, Ballots which are signed, dated, and timely received, but on which a vote to accept or reject the Plan has not been indicated, will be counted as a vote to accept the Plan.

c. Withdrawal of Ballots.

A Ballot may not be withdrawn or changed after it is cast unless the Bankruptcy Court permits you to do so after notice and a hearing to determine whether sufficient cause exists to permit the change.

d. Questions and Lost or Damaged Ballots.

If you have any questions concerning these voting procedures, if your Ballot is damaged or lost, or if you believe you should have received a Ballot but did not receive one, you may contact Debtors' counsel as listed above regarding the submission of Ballots.

XI.
ALTERNATIVES TO THE PLAN

A. Debtors' Considerations.

Debtors believe that the Plan provides Creditors with the best and most complete form of recovery available. As a result, Debtors believe that the Plan serves the best interests of all

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Creditors and parties-in-interest in the Chapter 11 Cases. In formulating and developing the Plan, Debtors have explored other alternatives. Debtors believe not only that the Plan, as described herein, fairly adjusts the rights of various Classes of Creditors and enables the Creditors to realize the greatest sum possible under the circumstances, but also that rejection of the Plan in favor of some theoretical alternative method of reconciling the Claims and Equity Securities of the various Classes will not result in a better recovery for any Class.

B. Alternative Plans of Reorganization.

Under Section 1121, a debtor has an exclusive period of one hundred twenty (120) days and an additional vote solicitation period of sixty (60) days from the entry of the order for relief during which time, assuming that no trustee has been appointed by the Bankruptcy Court, only a debtor may propose and confirm a plan. After the expiration of the initial one hundred eighty (180) day period, and any extensions thereof, Debtors, or any other party-in-interest, may propose a different plan provided the exclusivity period is not further extended by the Bankruptcy Court. In the case at hand, Debtors filed their Plan prior to the expiration of the exclusive period and have requested an addition sixty (60) day extension on the period to obtain acceptances to the Plan.

C. Liquidation Under Chapter 7.

If a plan cannot be confirmed, a Chapter 11 case may be converted to a case under Chapter 7, in which a Chapter 7 trustee would be elected or appointed to liquidate the assets of debtor for distribution to their creditors and holders of equity security in accordance with the priorities established by the Bankruptcy Code.

As previously stated, Debtors believe that a liquidation under Chapter 7 would result in a substantially reduced recovery of funds by its Creditors because of: (i) additional Administrative Expenses involved in the appointment of a Chapter 7 trustee for Debtors and attorneys and other professionals to assist such Chapter 7 trustee; (ii) additional expenses and Claims, some of which may be entitled to priority, which would be generated during the Chapter 7 liquidation; and (iii) the possibility that Holders of Allowed Secured Claims would be entitled to relief from the automatic stay in such Chapter 7 bankruptcy case, thereby likely resulting in a foreclosure sale of

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the Real Property, which will reduce the recovery by Debtors' other Creditors and Equity Security Holders. Accordingly, Debtors believe that all Holders of Allowed Claims will receive a smaller, if any, distribution under a Chapter 7 liquidation.

XII.
AVOIDANCE ACTIONS

A bankruptcy trustee (or the entity as debtor-in-possession) may avoid as a preference a transfer of property made by a debtor to a creditor on account of an antecedent debt while a debtor was insolvent, where that creditor receives more than it would have received in a liquidation of the entity under Chapter 7 of the Bankruptcy Code had the payment not been made, if: (i) the payment was made within ninety (90) days before the date the Chapter 11 Cases was commenced; or (ii) if the creditor is found to have been an "insider" as defined in the Bankruptcy Code, within one (1) year before the commencement of the Chapter 11 Cases. A debtor is presumed to have been insolvent during the ninety (90) days preceding the commencement of the case.

A bankruptcy trustee (or the entity as debtor-in-possession) may avoid as a fraudulent transfer a transfer of property made by a debtor within two (2) years (and under applicable Nevada law, four (4) years) before the date the Chapter 11 Cases were commenced if: (i) debtor received less than a reasonably equivalent value in exchange for such transfer; and (ii) was insolvent on the date of such transfer or became insolvent as a result of such transfer, such transfer left debtor with an unreasonably small capital, or debtor intended to incur debts that would be beyond debtor's ability to pay as such debts matured. In addition, this reachback may be extended further to within one (1) year of reasonable discovery of the facts underlying the transfer and its actual fraudulent nature.

Provided the brief period of time that has transpired since the commencement of the Chapter 11 Cases, Debtors have not fully analyzed various potential preference or other avoidance actions, and it is possible that additional pre-petition transactions may be avoidable and recoverable under various theories in Chapter 5 of the Bankruptcy Code. Debtors thus hereby expressly reserve their right to commence any appropriate actions pursuant to Chapter 5

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of the Bankruptcy Code.

XIII.
RECOMMENDATION AND CONCLUSION

In Debtors' opinion, the Plan provides the best possible recovery for all Creditors as a whole, and therefore recommends that all Creditors who are entitled to vote on the Plan vote to accept the Plan.

DATED this 15th day of February, 2013.

MTS LAND LLC,
a Delaware limited liability company

/s/ Robert Flaxman
By: Robert Flaxman
For its administrative agent, Crown Development & Reality LLC

MTS GOLF LLC,
a Delaware limited liability company

/s/ Robert Flaxman
By: Robert Flaxman
For its administrative agent, Crown Development & Reality LLC

Prepared and Submitted:

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APPENDIX

EXHIBIT "1"	DEBTORS' JOINT PLAN OF REORGANIZATION
EXHIBIT "2"	DEPOSITION OF JOHN POPE PAUL
EXHIBIT "3"	LOT 68 VISUAL AID
EXHIBIT "4"	DECLARATION OF CHARLES G. OLLINGER, III.
EXHIBIT "5"	LIQUIDATION ANALYSIS
EXHIBIT "6"	FINANCIAL PROJECTIONS
EXHIBIT "7"	DECEMBER 31, 2012 MONTHLY OPERATING REPORT
EXHIBIT "8"	13 WEEK BUDGET 1/10/2013-04/21/2013

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