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8 Attorney for Debtor-in-Possession PREMIER GOLF PROPERTIES, LP

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **Southern District of California**

<p>12 In Re:</p> <p>13 PREMIER GOLF PROPERTIES, LP,</p> <p>14 a California limited</p> <p>15 partnership,</p> <p>16 Debtor-in-Possession,</p>	<p>17 Bankruptcy No. 11-07388-PB11</p> <p>18 Chapter 11 Proceeding</p> <p>19 DISCLOSURE STATEMENT OF</p> <p>20 PREMIER GOLF PROPERTIES, LP</p> <p>21 Date: August 8, 2011</p> <p>22 Time: 2:00 p.m.</p> <p>23 Dept. 4</p> <p>24 Room: 328</p> <p>25 Judge: Hon. Peter Bowie</p>
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26 Premier Golf Properties, LP (hereinafter "Premier",
27 "Debtor" or "Cottonwood") submits this Disclosure Statement and
28 appended proposed Plan of Reorganization.

29 **INITIAL STATEMENT**

30 Pursuant to 11 U.S.C. Section 1125 in connection with the
31 above-referenced case filed under Chapter 11 of the United
32 States Bankruptcy Code, this Disclosure Statement is intended to
33 summarize the Plan of Reorganization of the estate of
34 Cottonwood, the debtor-in-possession herein, as well as to
35 provide adequate and reasonable information about the financial
36 affairs of the debtor-in-possession to the holders of claims

1 such that each claimant will be able to make an informed
2 judgment about the Plan.

3 I.

4 **PRELIMINARY STATEMENT**

5 Cottonwood, the debtor-in-possession, (hereinafter also
6 "Debtor" or "Premier") submits the following Disclosure
7 Statement dated May 27, 2011 for consideration by creditors:
8

9 A. **General Information**

10 Pursuant to Section 1125 of the Bankruptcy Code, this
11 Disclosure Statement is submitted to provide its creditors and
12 all other interested parties with adequate information to allow
13 them to make an informed judgment about acceptance or rejection
14 of the Plan of Reorganization ("Plan"). Please refer to the
15 Plan for treatment of claims. The provisions of the Plan are
16 binding on all creditors and interest holders. Therefore, please
17 read the Plan carefully.

18 The purpose of this Disclosure Statement is to provide such
19 information as may be deemed material, important and necessary
20 for the creditors of the debtor-in-possession to make a
21 reasonably informed decision in exercising their right to vote
22 for the acceptance or rejection of the Plan of Reorganization.

23 **NO REPRESENTATION ABOUT THE DEBTOR; PARTICULARLY**
24 **ABOUT FUTURE PLANS OR THE VALUE OF PROPERTY ARE AUTHORIZED**
25 **BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE**
26 **STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO**
27 **SECURE ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED IN**
28 **THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY ANY**
CREDITOR OR INTEREST HOLDER. ANY ADDITIONAL
REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO
COUNSEL FOR THE DEBTOR WHO, IN TURN, SHALL DELIVER THE
INFORMATION TO THE BANKRUPTCY COURT OR TAKE OTHER
APPROPRIATE ACTION.

1 THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT
2 HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THE RECORDS
3 KEPT BY THE DEBTOR RELY FOR THEIR ACCURACY ON INTERNAL
4 BOOKKEEPING. EVERY REASONABLE EFFORT HAS BEEN MADE TO
PRESENT ACCURATE FIGURES. HOWEVER, THE RECORDS KEPT BY THE
DEBTOR ARE NOT WARRANTED OR REPRESENTED TO BE FREE OF ANY
INACCURACY.

5 The Debtor recommends a vote "for acceptance" of the Plan.

6
7 B. Manner of Voting and Confirmation of the Plan

8 1. Classes Entitled to Vote The Plan divides the claim
9 of creditors into a number of classes. Only classes of
10 creditors and interest holders impaired under the Plan are
11 entitled to vote. Generally, subject to the specific provisions
12 of the Bankruptcy Code, this includes creditors whose claims,
13 under the Plan, will be modified in terms of principal,
14 interest, length of time for payment, or a combination of the
15 above.

16 2. Procedures for Voting All creditors should cast
17 their vote by completing, dating, and signing the ballot
18 included with the Plan and mailing it to Jack F. Fitzmaurice
19 Esq. at Fitzmaurice & Demergian, 1061 Tierra del Rey, Suite 204,
20 Chula Vista, California 91910. PLEASE NOTE THAT IF YOU FAIL TO
21 VOTE AGAINST THE PLAN, YOU WILL BE TREATED AS HAVING VOTED IN
22 FAVOR OF THE PLAN. IN ORDER TO HAVE YOUR VOTE COUNTED AGAINST
23 THE PLAN, YOU MUST FILE A BALLOT TO THAT EFFECT WITHIN THE TIME
24 STATED IN THE BALLOT. In order to be counted, the ballot must
25 be received by the date set forth in the ballot. A ballot does
26 not constitute a valid Proof of Claim in the bankruptcy
27 proceedings.

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1 C. **Confirmation of the Plan**

2 1. **Solicitation of Acceptance** This Disclosure Statement
3 will be provided to each creditor whose Claim has been scheduled
4 by the Debtors or who has timely filed a Proof of Claim with the
5 Bankruptcy Court. This Disclosure Statement is intended to
6 assist creditors with their evaluation of the Plan and their
7 decision to reject or accept the Plan. Your acceptance of the
8 Plan may not be solicited unless you receive a copy of this
9 Disclosure Statement prior to or concurrently with the
10 solicitation of acceptance of the Plan.

11 2. **Determining Acceptance of the Plan** When acceptance
12 of the Plan is determined by the Bankruptcy Court, only the
13 votes from the impaired classes of creditors will be counted.
14 Therefore, votes of claimants will only be counted if submitted
15 by those claimants whose claims or interests are duly scheduled
16 by the Debtors as undisputed, non-contingent and liquidated, or
17 who have timely filed a Proof of Claim with the Bankruptcy Court
18 which as been allowed as provided by 11 U.S.C. Section 502
19 before confirmation of the Plan. There are no unimpaired
20 classes which are deemed to have accepted the Plan. The
21 classification of Claims is described in Article III below. If
22 you are in any way uncertain if your claim has been correctly
23 scheduled, you should review the Debtor's schedules and any
24 amendments to schedules which are on file at the Clerk's Office
25 of the United States Bankruptcy Court, Southern District of
26 California, San Diego, California, during their regular business
27 hours, Monday through Friday, 9:00 a.m. through 4:00 p.m.

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1 **3. Hearing on Confirmation of the Plan** The Bankruptcy
2 Court will set a hearing to determine if the Plan has been
3 accepted by the required number of holders of claims and if the
4 other requirements for confirmation of the Plan outlined by the
5 Bankruptcy Code have been satisfied. Each creditor will
6 receive, either with this Disclosure Statement or separately, a
7 notice of the date of the Bankruptcy Court's hearing on
8 confirmation of the Plan. A copy of the proposed Plan is filed
9 contemporaneously herewith.

10 **4. Acceptance Necessary to Confirm the Plan** At the
11 scheduled hearing on confirmation of the Plan, the Bankruptcy
12 Court must determine, among other things, if the Plan has been
13 accepted by each impaired class. Under Section 1126 of the
14 Bankruptcy Code, an impaired class is deemed to have accepted
15 the Plan if at least two-thirds (66-2/3%) in dollar amount and
16 more than one-half (50%) in number of Allowed Claims of class
17 members actually voting have voted in favor of the Plan.
18 Further, the Bankruptcy Court must also find that each class
19 member will receive at least as much under the Plan as he, she
20 or it would receive if the Debtor's property was liquidated, as
21 of the Effective Date of the Plan under the provisions of
22 Chapter 7 of the Bankruptcy Code.

23 **5. "Cram Down" Confirmation of the Plan Without Necessary**
24 **Acceptance** In the event that the requisite acceptances are not
25 obtained from all of the impaired classes of creditors, the
26 Bankruptcy Court may, nevertheless, confirm the Plan if the
27 Bankruptcy Court finds that all other requirements of
28

1 confirmation under Section 1129(a) are met and certain
2 additional conditions are met.

3 These conditions are set forth in the "Cram Down"
4 provisions of Section 1129(b) of the Bankruptcy Code and
5 require, generally, a showing that the Plan does not
6 discriminate unfairly, the Plan accords fair and equitable
7 treatment, and the claimants in a non-consenting class will
8 receive either the full value of their claims, or, if they
9 receive less than full value, no class with a junior priority
10 will receive anything (the "absolute priority" rule).

11 In order to apply the "cram down" provisions of Section
12 1129(b), the Debtor is required to properly explain the
13 "absolute priority" rule, and the alternatives facing unsecured
14 creditors, including the consequences of denial of confirmation.
15 In re Genesee Cement, Inc., 31 B.R. 442, 444 (Bankr.E.D.Mich.
16 1983).

17 Pursuant to 11 U.S.C. Section 1129 (b) (2) the Court may
18 confirm a plan even if all impaired classes do not vote for the
19 plan in sufficient number and dollar amount so long as one
20 impaired class has accepted the plan and treatment of the
21 respective classes does not violate the "absolute priority"
22 rule. See Northwest Bank Worthington v. Ahlers, 108 S.Ct. 963
23 (1988). The absolute priority rule requires that in order for
24 the plan to be confirmed over the objection of a class of
25 impaired unsecured creditors, the holders of an interest that is
26 junior in priority to the interest of such class, such as the
27 debtor, are prohibited from receiving any money or property
28 unless the class of impaired unsecured creditors is to receive

1 the full amount of the allowed claims, plus post confirmation
2 interest at a rate established by the Court.

3 **6. Acceptance Necessary to Confirm the Plan.** The Court
4 provides certain minimum requirements for confirmation, but the
5 Court may decide that a plan is not fair and equitable and is
6 therefore unconfirmable even if it is in technical compliance
7 with these requirements. In re Sandy Ridge Dev. Corp., 881 F.2d
8 1346 , 1352 (5th Cir. 1989), reh'g denied; In re D&F
9 Construction, Inc. 865 F.2d 673 (5th Cir. 1989); Matter of IPC
10 Atlanta Ltd. Partnership, 142 B.R. 547, 555 (Bankr.N.D.Ga.
11 1992).

12 The "fair and equitable" requirement is satisfied with
13 respect to a secured claim so long as the claimholder: 1)
14 retains the lien; and 2) receives "deferred cash payments
15 totaling at least the allowed amount of such claim, of a value,
16 as of the effective date of the plan, of at least the value of
17 such holder's interest in the estate's interest in such
18 property." In re Bryson Properties, XVIII, 961 F.2d 496, 500
19 (4th Cir. 1992).

20 In this case, if cram down is necessary, all secured
21 creditors will be retaining their liens on the property in the
22 priority as existed at the time of the conformation of the Plan.

23 These are complex statutory provisions and this summary is
24 not intended to be a complete statement of the law. It is the
25 hope of the Debtor that the plan will be consensual and resort
26 to the "cram down" provisions will not be necessary. Until
27 creditors vote on the Plan, it is impossible to determine to
28

1 what extent the "fair and equitable" test will need to be
2 invoked.

3 To the extent that any class does not accept the Plan or is
4 deemed not to have accepted the Plan, the Debtor will request
5 the Bankruptcy Court to confirm the Plan pursuant to Section
6 1129 (b). The Debtor believes that the Plan will meet the "fair
7 and equitable" test and comply with the "absolute priority"
8 rule.

9 Under the Plan, although all property of the bankruptcy
10 estate reverts in the Debtor upon confirmation and such property
11 will be operated for the benefit of the creditors.

12 **II.**

13 **STATEMENT OF FACT**

14 **A. The Debtor:** Premier is a California limited
15 partnership organized and existing under the laws of the State
16 of California and legally qualified to do business in the State
17 of California and in fact does business under the fictitious
18 business name of Cottonwood Golf Club. Premier was formed in
19 2002 with Premier Golf Management, Inc., a California
20 corporation ("Management"), as its general partner. Management's
21 posture as general partner is its only asset and Management
22 exists to manage the limited partnership. In July, 2002 Premier
23 purchased Cottonwood Golf Club, a golf venue located in the
24 Sweetwater River Valley in the Rancho San Diego area of San
25 Diego County for the sum of \$19,500,000.

26 Geographically, the venue occupies approximately 297 acres on
27 the floor of the Sweetwater river valley (ancient floodplain) in
28 an oblong shape generally oriented on an east - west axis.

1 Threading through the entire property from east to west is the
2 bed of the Sweetwater River, a factor of critical import
3 relative to value. Although a "blue line" waterway and thus
4 under the jurisdiction of the United States Corps of Engineers,
5 the river bed is in fact dry except for those rare times when
6 the San Diego region experiences three (3) or four (4) days of
7 continuous rain; in which instance the river bed carries run off
8 down to the Sweetwater reservoir. The flows in no wise impede
9 play on the courses.

10 The venue consists of two (2) 18 hole golf courses referred
11 to as the Ivanhoe course and the Lakes course. In addition, the
12 facilities include parking, a driving range, practice greens,
13 pro shop (retail), restaurant and bar as well as an enclosed
14 pavilion for banquets, large social events and golf tournaments.

15 Subsequent to the 2002 acquisition the Debtor commenced a
16 program of visual upgrades and course improvements culminating
17 in the creation of what is now the Lakes Course by way of adding
18 lakes scattered across the playing area, an island tee box and
19 an island green. The Lakes course renovations were completed in
20 2009 and were but a segment of a strategic development plan
21 which, in addition to the Lakes course renovation, included -
22 and still includes, a new clubhouse and other infrastructure
23 upgrades; all to have been funded by sand extraction and
24 wetlands mitigation set asides. Additionally, active adult
25 citizen residential development was and is planned. Residential
26 development is made possible by the fact that the premises
27 contains 56 +/- developable excess acres; i.e., land not

28

1 necessary for golf course operations, sand extraction or
2 wetlands mitigation set asides.

3 Having so noted it is of greater import to note that the
4 floodplain area occupied by the golf courses consists of a layer
5 of cement quality sand overlaid by soils as well as an area
6 circa the river bed appropriate for wetlands mitigation
7 purposes. It is these aspects together with the two (2) mature
8 golf courses which define the value of the debtor in possession.

9 **B. Cottonwood Debt:** As of April 1, 2011 the Premier real
10 estate was indebted as follows:

11 (a) Secured debt:

12	1. Real Estate Taxes	\$ 859,079.00
13	2. First Trust Deed	
14	(Far East National Bank)	\$11,061,000.00
15	3. Second Trust Deed	
16	(8332 Case St. Inv., Inc.)	<u>\$ 692,157.00</u>
17	Total Secured Debt:	\$12,612,236.00

18
19 (b) Unsecured debt \$ 1,941,410.00

20 TOTAL DEBT: \$14,553,646.00

21 Of the \$12,612,236.00 secured debt, \$692,157 is owed to
22 8332 Case St. Inv., Inc., an entity controlled by an insider. Of
23 the \$1,941,410 in unsecured debt, \$1,109,961 is owed to
24 Edgewood Distributors & Management, Inc., an entity controlled
25 by an insider, and \$612,056 is owed to RH Rodriguez, Inc., an
26 entity controlled by an insider, for a total insider unsecured
27 debt of \$1,772,017. Thus \$169,393 of the unsecured debt total is
28 owed to non insider unsecured creditors.

1 **C. Initiation of Chapter 11 Proceeding:** This proceeding was
2 initiated on May 2, 2011 by way of the filing of a petition
3 under the auspices of Chapter 11 of the United States Bankruptcy
4 Code, 11 U.S.C. Sec. 101 et seq. The filing itself was triggered
5 by the pursuit of foreclosure upon the balance due under the two
6 (2) year term bridge note underlying the first deed of trust
7 encumbering the real property held by Far East National Bank
8 ("FENB"). In that regard Cottonwood filed an action against Far
9 East National Bank styled Premier Golf Properties, LP v. Far
10 East National Bank, a National Banking Association in the San
11 Diego Superior Court under case no. 37-2011-000653-341-CU-BP-EC.
12 That action is still pending.

13 As noted above Cottonwood had commenced a long term
14 development plan after acquiring the Cottonwood venue. The
15 creation of the lakes and redesign of the Lakes course was an
16 integral part of that developmental plan. To facilitate the
17 plan, in mid-2007 Premier was actively seeking a funding source
18 to buttress Premier's development plans. FENB was introduced to
19 Premier at this time and much discussion coupled with financial
20 review for underwriting purposes followed. The upshot was a
21 conclusion by FENB that the most appropriate approach to
22 Premier's goals was a two (2) step process; i.e., an initial
23 short term bridge loan followed by a long term take out type
24 loan. The Bank's thinking in connection with the two (2) phase
25 mechanic was influenced by the fact that Premier was then in the
26 midst of the construction of lakes on the Lakes course and FENB
27 wanted to abide the completion of the lake construction aspect
28 of the improvement plan. In consequence the latter half of 2007

1 was devoted to FENB's underwriting processes. Among those was
2 the conduct of an appraisal by Deloitte Financial Advisory
3 Services in September, 2007. The Deloitte valuation, limited
4 exclusively to golf course operations value, was \$20,200,000 "as
5 is" with an increase to \$22,800,000 once "stabilized". By
6 stabilization was meant the completion of lake construction on
7 the Lakes course; thus freeing up more "rounds" on the Lakes
8 course (a "round" is a single player playing 18 holes).
9 Cottonwood now averages 80,000+/- paid rounds per year, not
10 counting hosting, charity, civic and high school events.

11 In December, 2007 FENB and Premier entered into an
12 \$11,500,000 bridge loan agreement for an interim twenty four
13 (24) month loan which was secured by a first position deed of
14 trust encumbering the Cottonwood venue as well as a security
15 interest in certain personal property. During the period from
16 January, 2008 through December, 2009 Premier made all loan
17 payments in a timely manner. Indeed, in addition to paying all
18 interest during the 2 year pendency of the loan, Premier paid
19 down in excess of \$500,000 in principal. During calendar year
20 2008 Premier completed the Lakes course renovations and returned
21 the Lakes track to full productivity in 2009.

22 Commencing in April, 2009 and continuing through the first
23 three (3) quarters of 2010 Premier was in communication with
24 FENB as to long term financing aspect; providing accounting
25 data, revenue information and developmental plans. Throughout
26 the latter part of 2009 and the first half of 2010 the
27 communicative relationship with FENB continued although with a
28 rising level of frustration on Premier's part inasmuch as FENB

1 was always "reviewing" or "analyzing" for long term loan
2 purposes. Indeed, Premier brought well recognized developers to
3 FENB with strong interest in Premier's long term development
4 plans. Their involvement, however, as well as all other forward
5 progress was dependent upon FENB moving forward to complete
6 underwriting and posit the take-out loan. The sticking point was
7 FENB's seeming inability to make a final decision on the longer
8 term loan arrangement. It is of critical import to note that
9 Premier continued to make the monthly payments throughout this
10 period. Premier did so because it had no idea FENB was
11 restricted from performing. Indeed, from the December, 2009 due
12 date, FENB continued to invoice only for payment of the regular
13 monthly payment. The Debtor only ceased payment in September,
14 2010 when it became apparent that FENB could not or would not
15 perform.

16 The FENB reality had in fact been adjusted many months
17 before. During 2009 and continuing throughout most of 2010 FENB
18 had failed to maintain its minimum capital ratio as well as its
19 risk weighted asset ratios and its Tier 1 capital levels. In
20 consequence, it was undercapitalized throughout the subject
21 period and was functioning under constant supervision of the
22 U.S. Department of the Treasury by reason of its "unsafe and
23 unsound banking practices". During this supervisory period it
24 appears that FENB was restricted in initiating loans and, in
25 fact, was subjected to a Cease and Desist Order issued by the
26 federal government in March, 2010, a fact not disclosed by FENB
27 but rather was discovered by the Debtor later in the year.
28 During this time frame, FENB never disclosed that it actually

1 was prohibited from engaging in the Premier loan transaction
2 which it was purportedly reviewing and analyzing for
3 underwriting purposes. Accordingly, it neither approved nor
4 denied for almost one (1) year while leading Premier to believe
5 that the take-out loan was to occur at the completion of the
6 process; one (1) year during which Premier did not pursue
7 alternatives. Thus this Chapter 11 proceeding. FENB denies these
8 contentions and the Debtor and FENB are locked in the litigation
9 identified above.

10 **III.**

11 **SUMMARY OF PLAN AND TREATMENT OF CREDITORS**

12 The Plan provides for the creation of four (4) classes of
13 secured creditors, two (2) classes of unsecured creditors and an
14 administrative expense class. The classes are:

15
16 **SECURED CLAIMANTS**

17 **CLASS I A:** This class consists of the San Diego County tax
18 assessor as to real property taxes. This obligation is
19 presently \$859,079. The Debtor has had pending for some time a
20 application for reappraisal of valuation for tax purposes of its
21 real property and, since its present appraised value for tax
22 purposes is predicated upon a its original purchase valuation,
23 the Debtor reasonably expects a 25 reduction consequent upon
24 reappraisal. The Debtor has withheld payment for that reason.
25 The remaining balance will be paid in full upon the
26 financing/re-financing of all or a portion of the Cottonwood
27 venue trust deed debt. In the interim the statutory lien for
28 real property taxes remains in place and the Debtor will make

1 the normal and usual semiannual real estate tax payments post
2 petition and post Plan. The San Diego County tax assessor claim
3 is impaired under the Plan.

4 **CLASS I B:** This class consists of the first trust deed
5 indebtedness due FENB in the amount of \$11,061,000. Cottonwood
6 contemplates that the Plan acknowledge the FENB indebtedness,
7 commence interest payments upon confirmation and pay FENB in
8 full at or prior to the expiration of the Plan performance
9 period. This class is impaired under the Plan.

10 **CLASS I C:** This class consists of the second position trust
11 deed indebtedness in the amount of \$692,057 due 8332 Case Street
12 Inv. Inc., an entity controlled by an insider. 8332 Case St.
13 Inv., Inc. shall take nothing under the Plan and will
14 subordinate and/or otherwise cooperate with the Debtor. This
15 class is impaired under the Plan.

16 **CLASS I D:** This class consists of the claim of Yamaha Motor
17 Corporation USA arising out of the lease of golf carts to the
18 Debtor. The Yamaha relationship is the subject of (1) Premier
19 Golf Properties, LP v. Yamaha Golf Car Company and Yamaha Motor
20 Manufacturing Corporation of America, case number 37-2011-
21 00067450-CU-BT EC pending in the San Diego Superior Court and
22 (2) Yamaha Motor Corporation v. Premier Golf Properties, LP,
23 case number 30-2010-00411742 pending in the Orange County
24 Superior Court. The litigations center upon allegations of
25 serious defects in golf cart manufacture and the Debtor contends
26 that it owes Yamaha nothing. During the course of the Plan,
27 Debtor will reserve the rental payments of \$11,300 per month
28

1 pending the outcome of the Yamaha litigation. Yamaha is impaired
2 under the Plan.

3
4 **UNSECURED CREDITORS**

5 This group consists of unsecured claimants owed money by
6 reason of the provision of advances as well as for goods and/or
7 services to the Debtor. The sum due the unsecured creditor body
8 is \$1,941,410 consisting of \$1,722,017 owed to two (2) entities
9 controlled by insiders and \$169,393 owed to non insider
10 unsecured creditors. Unsecured creditors will consist of two (2)
11 classes:

12 **Class II A:** This class consists of non insider unsecured
13 creditors and totals \$169,393. The members of this class will be
14 paid in full at the end of the 28 month plan performance period
15 together with interest at the rate of ten percent (10%) per
16 annum calculated from and after the date of filing of the
17 petition herein. This class is impaired under the Plan

18 **Class II B:** This class consists of the \$1,722,017 owed to the
19 two (2) entities controlled by insiders who have made advances
20 to the Debtor over the past few years since its creation. This
21 class will receive no payments under the Plan until all other
22 classes of creditor are paid in full, but the indebtedness due
23 the members hereof shall remain in existence; albeit
24 subordinated to all other Plan obligations. Once all other Plan
25 obligations are paid, the Debtor shall commence repayment of
26 this class. This class is impaired under the Plan.

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1 The details of the method and time period of payment of
2 unsecured debt is set forth at Article V, **MEANS OF**
3 **IMPLEMENTATION OF THE PLAN.**

4
5 **ADMINISTRATIVE CLAIMS**

6 **Class III:** This class consists of all administrative claims
7 entitled to be approved for payment pursuant to the provisions
8 of 11 U.S.C. § 503 and also specifically includes the quarterly
9 fees of the United States Trustee for the life of the estate and
10 the life of the Plan. All quarterly fees have been and will
11 continue to be paid timely. All other administrative expenses
12 except for legal counsel will be paid in accord with their terms
13 and as incurred.

14 Legal counsel for the Debtor are also members of this
15 class. Legal counsel were engaged pursuant court approval which
16 provided that counsel would be compensated by payment of fees
17 accrued at counsels' ordinary and usual rates and costs
18 incurred; all subject to court approval under Section 330 of the
19 United States Bankruptcy Code, 11 U.S.C. 330. Given the
20 retainers in the hands of legal counsel equaling \$60,000, it is
21 estimated that legal counsel will be paid from debtor funds in
22 hand as opposed to Debtor income earned during the Chapter ii
23 period of administration. To the extent there is a shortfall the
24 same will be paid from debtor income during the plan performance
25 period; subject to the proviso that Plan payments are first
26 made.

27 **IV.**

28 **EXECUTORY CONTRACTS**

1 To the extent that executory contracts are in existence,
2 have not been previously assumed and have not been rejected by
3 specific order of this court prior to confirmation of the Plan,
4 the same shall be assumed as a consequence of confirmation of
5 the Plan.

6 V.

7 **MEANS OF IMPLEMENTATION OF THE PLAN**

8 **A. Cottonwood Venue Status and Value:**

9 Since approximately 2005 the development plan for the
10 Cottonwood Golf Club has had three (3) goals; more properly
11 defined as value components. Those value components are:

12 1. Golf operations component

13 As noted earlier the Cottonwood golfing operation was acquired
14 in 2002 for \$19,500,000. Having done so, Premier, at a level
15 pace, began to improve the golf course infrastructure. Chief
16 among those improvements was the re-design/improvement of what
17 is now the Lakes course as previously described, including the
18 excavation and construction of the lakes themselves and the
19 development of the island green. An island green is an amenity
20 much desired by golfers notwithstanding the fact that a golf
21 ball, once struck, will go where it will regardless of the
22 golfer's intent. In consequence the golf ball will on occasion
23 descend into the lake. After all, the golf ball has no mind. On
24 those occasions the golfer will strike another ball with a view
25 toward sailing over the lake and onto the island green.
26 Notwithstanding the golfer's view, it can happen that the ball
27 will descend into the lake yet again. In such circumstances the
28 golfer, stoic that he is, will throw his golf clubs into the

1 lake and stomp back to the clubhouse to drown his sorrows much
2 as he has drowned his golf balls.

3 In late 2007, the golf operations component (land/golf
4 business operation) was valued by Deloitte Financial Advisory
5 Services, the appraiser chosen by FENB, at \$20,500,000 on an "as
6 is" basis and \$22,800,000 once the Lakes course renovation was
7 completed. Aware, of course, of the impact of the recent
8 difficulties in the national economy, the Debtor has caused
9 Deloitte Financial Advisory Services to appraise the golf
10 courses once again. Deloitte did so and found a current "as is"
11 value at December, 2010 of \$14,000,000.

12 2. Mineral extraction (sand) component:

13 The conduct of the Lakes course improvement excavations
14 confirmed the felicitous fact set out in the June, 2006
15 TerraMins, Inc. geologic report and analysis of the Cottonwood
16 venue that the property contained up to nine (9) million tons of
17 PCC (Portland Cement Concrete) grade sand. While it was not the
18 intent of the lake excavations, Cottonwood realized ancillary
19 income in excess of \$1,100,000 from the sale of the sand
20 extracted, net of the cost to create the lakes. In December,
21 2010 Premier caused EnviroMine, Inc., an environmental and mine
22 permitting consultation firm, inspect the site and to conduct an
23 analysis of the TerraMins, Inc. report so as to appraise the
24 value of the sand presently available for extraction. In so
25 doing EnviroMine, Inc. availed itself of the California
26 Department of Conservation Mineral Land Classification reports
27 as well as other data. The report notes that the San Diego
28 region suffers from a dearth of quality sand for use with

1 concrete and asphalt products. Accordingly, the regional
2 construction aggregates industry imports sand from Baja
3 California and Imperial, Riverside and San Bernardino Counties
4 at significant expense. For a San Diego source that means a
5 stable price and continuous demand. It is EnviroMine, Inc's
6 conclusion that the Cottonwood site would yield a net pretax
7 revenue of \$10.00 to \$11.00 per ton; netting a \$2,500,000 to
8 \$8,250,000 gain. For purposes of valuation within the Debtor's
9 estate, Premier has chosen to value the mineral extraction
10 component at the bottom end of the gain scale, i.e., \$2,500,000.
11 A copy of the EnviroMine, Inc. report is appended hereto as
12 Exhibit "A".

13 3. Wetlands mitigation credits component:

14 As EnviroMine, Inc. also notes, on page 2 of its overview
15 report, that careful conduct of sand extraction activity is
16 estimated to generate approximately 55 to 67 acres of land in
17 the Sweetwater River bed and river plain suitable for
18 wetlands/riparian habitat for use for mitigation purposes (while
19 simultaneously serving as designated hazard and out of bounds
20 areas on the golf courses). This acreage will constitute a
21 mitigation land bank of significant value. Each project of
22 consequence in the County of San Diego, such as highways,
23 bridges, roads, shopping centers and even Walmart facilities
24 requires allocations for open space, wetlands replacement,
25 riparian habitat replacement and the like. Since the land
26 requisite to meet the allocations is seldom available on site,
27 County of San Diego regulations as well those of the State of
28 California mandate the ability to obtain wetlands and riparian

1 land set asides for dedication to meet the allocation
2 requirements of the project. Thus the mitigation bank made up of
3 qualified wetlands/riparian or otherwise qualified acreage for
4 sale/set aside. The purchase/set aside of land in the mitigation
5 bank; which land, of course, remains in place, results in the
6 issuance of mitigation credits which are used by the developer
7 or government agency to meet its project allocation of
8 mitigation responsibility. Finally, since the land is left in
9 its wetlands habitat condition it continues to serve as hazard
10 and out of bounds designated portions of the Cottonwood golf
11 courses. Present research indicates that the current value of
12 wetlands mitigation credits in the Cottonwood portion of the
13 Sweetwater River watershed (there is only one other mitigation
14 bank in the in the whole Sweetwater River watershed) is between
15 \$150,000 and \$500,000 per credit/acre and, given the paucity of
16 mitigation credits extant in the San Diego region, the
17 expectation of value would be toward the upper end of the range.
18 However, taking the most conservative of postures, it posits a
19 valuation of 55 acres at \$150,000 per acre for a mitigation
20 credit/acre valuation of \$8,250,000.

21 4. Raw land/Willow Glen side:

22 Resort to a map demonstrates that the Cottonwood courses form
23 the southerly edge of Willow Glen Dr. for a least one (1) mile.
24 Realty Executives, a Rancho San Diego based real estate
25 consultancy, has identified 21.5 acres (two separate
26 parcels)fronting on Willow Glen Dr. which if sold off as raw,
27 undeveloped parcels, bring in not less than \$150,000 per acre;
28 i.e., \$3,225,000. Doing so would not have a significant negative

1 impact upon golf operations. In addition the venue contains 35
 2 +/- acres along its southerly area suitable for residential
 3 housing development. In consequence, that land adds significant
 4 additional value to the venue. However, for valuation and status
 5 purposes the Debtor will refer only to the present valuation of
 6 the 21.5 acre paralleling Willow Glen Drive. Attached hereto as
 7 Exhibit B is the REALTY EXECUTIVES analysis. While the real
 8 estate value component contributes significantly to the value of
 9 Cottonwood, the Debtor is not relying upon realization of the
 10 value of excess land as a source of funding of its Plan.

11 **B. Summary of Cottonwood Valuation Components:**

12	1. Value qua golf operation:	\$14,000,000
13	2. Sand extraction:	\$2,500,000
14	3. Mitigation credits/acres:	\$8,250,000
15	4. Willow Glen frontage:	<u>\$3,225,000</u>
16	TOTAL VALUE:	\$27,975,000

17 It is thus apparent that Class IA, Class IB and Class IC
 18 secured creditors are more than adequately protected. Moreover,
 19 the Debtor has already initiated the processes necessary to
 20 obtain the appropriate permits to begin the realization of the
 21 land use processes (sand extraction and wetlands mitigation)
 22 requisite to turn the existing valuation into cash flow
 23 realities. For example, attached hereto as Exhibit C is a copy
 24 of correspondence to the San Diego County Director of Planning
 25 and Land Use requesting a special study area designation, a
 26 designation complementary to forward motion toward the above
 27 described goals. The follow-on application materials are in
 28 preparation.

1 However, it should be noted that the debtor does not intend
2 that pursuit of the sand extraction and wetlands mitigation
3 strategies provide the source of Plan payments during the course
4 of the 28 month Plan performance period. The realization of cash
5 flows from sand extraction and wetlands mitigation enhancements
6 must abide a land use regulation process before sand extraction
7 and permitting and wetlands mitigation designations occur.
8 Indeed, the sand extraction event contributes to the wetlands
9 mitigation creation/designation. In that regard, discussion with
10 County of San Diego officials and private consultants mandates a
11 19 to 24 month period before permitting and designation will
12 issue. Accordingly, the Debtor's Plan posits a twenty eight (28)
13 month Plan performance period.

14 **C. Classification and payment to creditors:**

15 **Class I A.** Real estate taxes. From and after the date of
16 filing the petition and semi - annually throughout the 28 month
17 Plan performance period the Debtor will make the normal and
18 usual real estate tax payments. On or before 28 months from and
19 after confirmation of the Plan, the \$859,079 together with any
20 accruals thereon will be paid in full by way of new financing
21 of the premises. The sand extraction permit and the wetlands
22 mitigation designation being in place will greatly simplify the
23 process of obtaining a first trust deed position loan to pay
24 this class in full.

25 **Class I B.** FENB. From and after the confirmation of the Plan,
26 the Debtor will make monthly interest payments to secured
27 creditor FENB for a period of 28 months; at which time FENB
28 will be paid in full by way of new financing of the premises.

1 The amount of this claim is estimated to be \$11,061,000 and is
2 impaired under the Plan. The sand extraction and wetlands
3 mitigation designation being in place will greatly simplify the
4 process of obtaining a first position trust deed loan to pay
5 FENB in full.

6 **Class I C:** This class consists of the secured claim of 8332
7 Case St. Inv., Inc. in the amount of \$692,056,157 secured by a
8 second position deed of trust encumbering the real property of
9 the Debtor. This entity is controlled by an insider, shall take
10 nothing under the Plan and will subordinate or otherwise
11 accommodate the refinance of the Debtor's real property.

12 **Class I D.** Yamaha. It is the intention of the Debtor to
13 complete its litigation with Yamaha and believes that it is
14 likely to prevail. In the interim the Debtor will, during the
15 course of the Plan performance period, reserve the monthly
16 payments otherwise due Yamaha.

17 **Class II A.** This class consists of \$169,393 in unsecured non
18 insider debt. This class will be paid in full with interest
19 thereon at 10% per annum at the completion of the 28 month plan
20 performance period. The source of funds will be the refinancing
21 of the Cottonwood real property and sand extraction income.

22 **Class II B.** This class consists of unsecured debt owed to
23 insider controlled entities in the amount of \$1,722,017. This
24 class will take nothing during the course of the 28 month Plan
25 performance period. However, the Debtor acknowledges the
26 indebtedness and must commence monthly payment thereon at the
27 end of the Plan performance period.

28

Class III. This class of obligations will be paid when due during the course of this proceeding and Plan performance period except for legal counsel who will only be compensated after application, judicial review and approval. This class has no material financial impact upon Plan performance.

D. Means of performance of the Plan:

As noted above this proceeding has been triggered by the existential threat presented by the initiation of foreclosure proceedings by FENB. Cottonwood is in fact a solvent enterprise. Attached hereto as Exhibit D is Cottonwood's five (5) year projection of profit and loss (statement of cash flows) set out on an EBITDA basis. Perusal of the projections, which include interest only debt service to FENB and real estate tax payments, demonstrates that the debtor can and will fund the Plan from operating income inasmuch as the projections reflect a net operating income of \$1,109,760 and a non operating income; i.e., after debt service to FENB, of \$462,047. The projections thus demonstrate beyond cavil that the Debtor can and would meet the Plan payment obligations. Thus, calculated on a per annum basis:

1. Class I A: Real estate tax:	\$441,625.00
2. Class I B: FENB:	\$471,430.00
3. Class I C: 8332 Case St:	00.00
4. Class I D: Yamaha (reserved):	\$135,600.00
5. Class II A: Non insider unsecured	\$00.00
6. Class II B: Insider unsecured	<u>00.00</u>
TOTAL	\$1,048,655.00

1
2 Given the \$1,109,760 net operating income; i.e., after
3 payment of all current operating responsibilities, there will be
4 sufficient income to meet all of the Debtor's obligations going
5 forward.

6 **VI.**

7
8 **E. Liquidation analysis:**

9 This bankruptcy estate is an anomaly in that the Debtor is
10 solvent. The Cottonwood golf venue presently generates 100% of
11 the Debtor's income as a golf course operation and has the value
12 and the capacity to generate more than enough income to pay all
13 non insider creditors in full with appropriate interest given
14 the income generating capacity demonstrated by golf operations.
15 Once sand extraction and creation of the mitigation land bank
16 are on line new financing will resolve the real estate tax and
17 FENB liabilities. The problem and consequent risk to the junior
18 secured creditors and the unsecured creditor body arises from
19 the fact that, except for golf operations, the value is not
20 presently capable of realization. In consequence, the failure
21 of the Plan will result in relief from automatic stay resulting
22 in foreclosure upon the golf courses by the first trust deed
23 holder. Foreclosure destroys any capacity to generate funds to
24 pay the remainder of the creditor body. In such circumstances
25 the junior secured creditor and the unsecured creditor body
26 would receive nothing.

27 **VII.**

28 **OBJECTIONS TO CLAIMS, FRAUDULENT CONVEYANCES AND PREFERENCES**

1 The Revested Debtor must, if at all, object to any claim
2 within sixty (60) days of the Effective Date of the Plan. The
3 Debtor has reviewed pre-petition financial events with a view
4 toward discovering any fraudulent transfers or preferential
5 transactions. Having done so none of consequence have been
6 discovered.

7 **VIII.**

8 **OPERATIVE PROVISIONS**

9 **A. Retention of Assets.** On the date of Confirmation,
10 the Debtor shall be fully restored to the assets of the estate
11 subject to the terms and conditions of this Plan pursuant to
12 Section 1141(b) of the Bankruptcy Code.

13 **B. Post Confirmation Compliance.** During the period of
14 Plan performance the Debtor shall pay all quarterly fees due the
15 United States Trustee pursuant to 28 U.S.C. 1930 et seq., and
16 shall prepare and file the requisite quarterly reports. Failure
17 to pay fees or file reports timely shall constitute Default
18 under the Plan.

19 **C. Post Confirmation Management.** The business of the
20 debtor has been operated prior to and since initiation of this
21 proceeding by Premier Golf Management Inc., the general partner
22 of the Debtor. Premier Golf Management, Inc. shall continue to
23 be responsible for the operations of the Debtor throughout the
24 life of the Plan.

25 **D. Retention of Automatic Stay.** So long as the Debtor is
26 in compliance with the terms of the Plan, the automatic stay
27 imposed by Section 362 of the Bankruptcy Code shall remain in
28 effect for the life of the Plan. Subsequent thereto FENB and any

1 junior secured creditor may initiate the foreclosure process
2 should it not be paid in full by the maturity of the Plan
3 performance period.

4 **E. Acceleration of the Plan.** To the extent that the Debtor
5 finds it desirable to accelerate performance of the Plan, the
6 Debtor may do so without further approval of the Court. The
7 Debtor may prepay in whole or in part the claims in any class as
8 long as such prepayment does not violate the terms of the Plan;
9 however, acceleration of the Plan will not increase any dividend
10 to any class of creditors. Except as otherwise provided in the
11 Plan, any such partial payment shall be made pro rata among the
12 claims of such class; provided, however, that nothing in the
13 Plan shall prevent or impede the right of the Debtor post
14 confirmation, without court order, to prepay in whole or in
15 part, any administrative expense. To the extent the Debtor finds
16 it desirable or necessary to accelerate performance of the Plan,
17 the Debtor may seek a modification of the Plan; possibly
18 including further financial reorganization.

19 **F. Retention of Jurisdiction.** Pursuant to 28 U.S.C.
20 Section 1471(b), and as agreed between the Debtor and its
21 creditors, the jurisdiction of the Court shall continue after
22 the Effective Date of the Plan until the Plan is fully performed
23 with respect to any matter arising or related to the case
24 herein. So long as no material default has been determined by
25 the Court to exist under this Plan, no act shall be taken nor
26 shall any action or proceeding estate to enforce or collect,
27 directly or indirectly, any claim covered by the Plan.

28 ///

1 **G. Post Confirmation Default.** In the event of an alleged
2 default or breach in the terms of the Plan or in the proposed
3 treatment of any claim, such alleging creditor shall be required
4 to file a motion or commence other proceedings with the
5 bankruptcy court seeking such relief as such party deems
6 appropriate. The Debtor and any other party in interest shall
7 be entitled to object to such requested relief. Should the
8 Debtor default in connection with his Plan obligations, then the
9 Debtor would have but two choices: These are:

10 (a) To make application and to seek approval of the
11 Court and the creditors to modify the Plan; or

12 (b) To move to convert the proceeding to a Chapter 7
13 liquidation proceeding. Should conversion occur, no Plan would
14 be presented, modified or otherwise. Any creditor may, upon Plan
15 default, move the court for modification of the Plan or
16 conversion of the proceeding to a Chapter 7 liquidation
17 proceeding.

18 **H. Definitions.** The following are the definitions
19 applicable to the Plan and shall have the meanings specified
20 below:

21 1.1 "Administrative Expense": Those expenses allowed
22 within the definition of Section 503 of the Code.

23 1.2 "Allowed Claim": Means (a) any claim in respect of
24 which a proof of claim has been filed with the Court on or
25 before the applicable bar date and in accordance with Code
26 Section 501 and Bankruptcy Rule 3003(c), 3004, or 3005; or (b)
27 any claim listed in the schedule of liabilities prepared by the
28 Debtor and filed with the Court pursuant to Code Section 501 and

1 not listed as disputed, contingent or unliquidated as to amount,
2 and in either case to which no objection to the allowance
3 thereof has been interposed within any applicable period of
4 limitation or order of this Court, or as to which any objection
5 has been determined by an order or judgment which is no longer
6 subject to appeal or certiorari proceedings is pending. An
7 allowed claim may be secured or unsecured as the case may be.

8 1.3 "Ballot": Means the written form labeled as such and
9 mailed by the Debtor to the Creditors and by which a creditor
10 votes to accept or reject the Plan. A sample ballot is attached
11 hereto as Exhibit "A".

12 1.4 "Bar Date": Means the last date set by the Court for
13 filing proofs of claim.

14 1.5 "Case": Means this proceeding for the reorganization
15 of the Debtor under Chapter 11 of the Code now pending in the
16 Court and having Case No. 08-36585-D11.

17 1.6 "Claim": Means any right to payment or right to
18 an equitable remedy for breach of performance if such breach
19 gives rise to a right of payment, against the Debtor, in
20 existence on or as of April 29, 2011, whether or not such right
21 is liquidated, unliquidated, fixed, contingent, matured,
22 unmatured, disputed, undisputed, legal, equitable secured,
23 unsecured, known or unknown.

24 1.7 "Class": Means any class into which allowed claims
25 are classified pursuant to Article III of the Plan.

26 1.8 "Code": Means Title 11, United States Code, Section
27 101, et seq., commonly referred to as the Bankruptcy Code.

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1 1.9 "Confirmation Date": Means the date on which the order
2 of confirmation is entered by the Court.

3 1.10 "Court": Means the United States Bankruptcy Court for
4 the Southern District of California, together with any other
5 court granted jurisdiction by 23 U.S.C. Section 1471, and any
6 successor court as may be granted jurisdiction herein by
7 Congress for the Southern District of California.

8 1.11 "Debtor": Premier Golf Properties, LP, the Debtor-in-
9 possession in the above-captioned case.

10 "Default": Means the failure of the Debtor to make payment
11 or to perform any other act required herein on or before the
12 date of payment performance.

13 1.12 "Disbursing Agent": Means the Debtor.

14 1.13 "Distribution Account": Means a segregated bank
15 account established by the Debtor for the purpose of
16 distributing payments under the Plan.

17 1.14 "Effective Date of the Plan": Means a date 30 days
18 after the date on which the order of confirmation becomes final
19 and binding.

20 1.15 "Impaired by the Plan": Refers to the concept of
21 impairment as set forth in Code Section 1124.

22 1.16 "Insider": Means any person who would be an "insider"
23 as defined in Section 101(28) of the Code.

24 1.17 "Order of Confirmation": Means the order entered by
25 the Court confirming the Plan in accordance with Chapter 11 of
26 the Code.

27 1.18 "Plan": Means the Plan of Reorganization.

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1 1.19 "Priority Claim": Means a claim entitled to priority
2 under Code Section 507(a).

3 1.20 "Proof of Claim": Means the written statement
4 prescribed by Code Section 501 and Bankruptcy Rule 3001 setting
5 forth a creditor's claim.

6 1.21 "Reorganized Debtor": Means the Post-Confirmation
7 Debtor.

8 1.22 "Secured Claim": Means any claim secured by a lien on
9 property in which the Debtor has an interest and any claim as
10 defined in Section 506 of the Code.

11 1.23 "Time": Means the time within which or the date upon
12 which any payment or other act required of the Debtor under the
13 Plan shall be calculated and determined in the manner prescribed
14 by the Bankruptcy Rule 9006(a).

15 1.24 "Unsecured Claim": means any claim against the Debtor
16 which is not a secured claim or a priority claim, including
17 deficient claims of any under secured claim holder.

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25 **THE FOREGOING IS A BRIEF SUMMARY OF THE PLAN AND SHOULD NOT BE**
26 **RELIED UPON FOR VOTING PURPOSES. CREDITORS ARE URGED TO READ**
27 **THE PLAN IN FULL. CREDITORS ARE FURTHER URGED TO CONSULT WITH**
28 **COUNSEL, OR WITH EACH OTHER, IN ORDER TO FULLY UNDERSTAND THE**

1 PLAN. THE PLAN IS COMPLEX, AND AN INTELLIGENT JUDGEMENT
2 CONCERNING SUCH PLAN CANNOT BE MADE WITHOUT UNDERSTANDING IT.

3 Dated: May 31, 2011

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FITZMAURICE & DEMERGIAN

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/s/Jack F. Fitzmaurice
JACK F. FITZMAURICE, Esq.
Attorneys for Premier Golf
Properties, LP

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9 **Premier Golf Properties, LP**

10 /s/ Daryl C. Idler
11 **Daryl, C. Idler**, president of
General Partner

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