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6 Attorneys for Debtor-in-Possession Premier Golf Properties,LP

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**UNITED STATES BANKRUPTCY COURT
Southern District of California**

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In Re:

Premier Golf Properties, LP,
A California limited partnership

Debtor-in-Possession,

Bankruptcy No. 11-07388-PB11

11

Chapter 11 Proceeding

12

Date: August 8, 2011

13

Time: 2:00 p.m.

14

Dept.: 4

Room: 328

Judge: Hon. Peter W. Bowie

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**PLAN OF REORGANIZATION OF DEBTOR-IN-POSSESSION
PREMIER GOLF PROPERTIES, LP**

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INTRODUCTION

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Premier Golf Properties, LP is a California limited
21 partnership which owns and operates a 36 hole golf facility at
22 Rancho San Diego, an unincorporated community of San Diego
23 County.

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ARTICLE 1

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DEFINITIONS

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The following are the definitions applicable to the Plan
27 and shall have the meanings specified below:

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1 1.1 "Administrative Expense": Those expenses allowed
2 within the definition of Section 503 of the Code.

3 1.2 "Allowed Claim": Means (a) any claim in respect of
4 which a proof of claim has been filed with the Court on or
5 before the applicable bar date and in accordance with Code
6 Section 501 and Bankruptcy Rule 3003(c), 3004, or 3005; or (b)
7 any claim listed in the schedule of liabilities prepared by the
8 Debtor and filed with the Court pursuant to Code Section 501 and
9 not listed as disputed, contingent or unliquidated as to amount,
10 and in either case to which no objection to the allowance
11 thereof has been interposed within any applicable period of
12 limitation or order of this Court, or as to which any objection
13 has been determined by an order or judgment which is no longer
14 subject to appeal or certiorari proceedings is pending. An
15 allowed claim may be secured or unsecured as the case may be.

16 1.3 "Ballot": Means the written form labeled as such and
17 mailed by the Debtor to the Creditors and by which a creditor
18 votes to accept or reject the Plan. A ballot is enclosed with
19 your copy of this Plan.

20 1.4 "Bar Date": Means the last date set by the Court for
21 filing proofs of claim.

22 1.5 "Case": Means this proceeding for the reorganization
23 of the Debtor under Chapter 11 of the Code now pending in the
24 Court and having Case No. 11-07388-PB11.

25 1.6 "Claim": Means any right to payment or right to an
26 equitable remedy for breach of performance if such breach gives
27 rise to a right of payment, against the Debtor, in existence on
28 or as of May 3, 2011, whether or not such right is liquidated,
unliquidated, fixed, contingent, matured, unmatured, disputed,

1 undisputed, legal, equitable secured, unsecured, known or
2 unknown.

3 1.7 "Class": Means any class into which allowed claims
4 are classified pursuant to Article II of the Plan.

5 1.8 "Code": Means Title 11, United States Code, Section
6 101, et seq., commonly referred to as the Bankruptcy Code.

7 1.9 "Confirmation Date": Means the date on which the order
8 of confirmation is entered by the Court.

9 1.10 "Court": Means the United States Bankruptcy Court for
10 the Southern District of California, together with any other
11 court granted jurisdiction by 23 U.S.C. Section 1471, and any
12 successor court as may be granted jurisdiction herein by
13 Congress.

14 1.11 "Debtor": Means Premier Golf Properties, LP, debtor-
15 in-possession in the above-captioned case.

16 1.12 "Default": Means the failure of the Debtor to make
17 payment or to perform any other act required herein on or before
18 the date of payment or performance.

19 1.13 "Effective Date of the Plan": Means a date 30 days
20 after the date on which the order of confirmation becomes final
21 and binding.

22 1.14 "Impaired by the Plan": Refers to the concept of
23 impairment as set forth in Code Section 1124.

24 1.15 "Insider": Means any person who would be an "insider"
25 as defined in Section 101(28) of the Code.

26 1.16 "Order of Confirmation": Means the order entered by
27 the Court confirming the Plan in accordance with Chapter 11 of
28 the Code.

1.17 "Plan": Means the Plan of Reorganization.

1 1.18 "Priority Claim": Means a claim entitled to priority
2 under Code Section 507(a).

3 1.19 "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 1.20 "Reorganized Debtor": Means the Post-Confirmation
7 Debtor.

8 1.21 "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 1.22 "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 1.23 "Unsecured Claim": means any claim against the Debtor
16 which is not a secured claim or a priority claim, including
17 deficiency claims of any undersecured secured claim holder.

18 1.24 "Other Definitions": Whenever any word, words, or
19 phrase which is defined by any provision of the Code is used,
20 then, unless this Plan or the context specifically establishes a
21 different meaning, such word, words or phrase shall, for the
22 purposes of this Plan, have the same meaning as that established
23 by the Code.

24 **ARTICLE 2**

25 **CLASSIFICATION OF CLAIMS**

26 Claims dealt with under the Plan are divided into the
27 following classes:

28 2.1 Group I classes.

1 Class 1 A, the statutory secured claim of the San
2 Diego County Tax Assessor whose claim consists of unpaid real
3 estate taxes and who will be paid in full upon successful
4 performance of the Plan. In the interim all real estate tax
5 payments will be made timely

6 Class I B, the secured claim of Far East National Bank
7 evidenced by a first position deed of trust encumbering the
8 Debtor's real property and who will be paid in full upon
9 completion of the Plan performance period. Monthly interest
10 payments will be made during the plan performance period

11 Class I C, the secured claim of 8332 Case St. Inv.
12 Evidenced by a second position deed of trust encumbering the
13 Debtor's real property. 8332 Case St. Inv. Is controlled by an
14 insider and shall take nothing under the Plan.

15 Class I D, the claim of Yamaha Motor Corporation which
16 is the subject of litigation in the Orange County and the San
17 Diego County Superior Courts.

18 2.2 Group II classes.

19 Class II A: This class consists of all allowed claims
20 of the non insider unsecured creditors in the amount of
21 \$169,393. This class will be paid in full together with interest
22 thereon at 10% per annum from and after the date of filing the
23 petition herein.

24 Class II B: This class consists of the Insider
25 unsecured claims in the amount of \$1,722,017. This class will
26 take nothing under the Plan.

27 Class III: This class consists of any and all
28 Administrative Claims entitled to or approved for payment
pursuant to the provisions of 11 U.S.C. Section 503, including

1 quarterly fees to the U.S. Trustee. The amounts hereunder are
2 not material.

3 **ARTICLE 3**

4 **IMPAIRMENT OF CLAIMS**

5 3.1 Classes I, II, and III are impaired.

6 **ARTICLE 4**

7 **TREATMENT OF CLAIMS**

8 4.1 Class I A: San Diego County tax assessor obligation in
9 the amount of \$849,079. This class will be paid in full at the
10 completion of the Plan performance period which is 28 months
11 from and after the Effective Date of the Plan. In the interim
12 all regular real estate tax payments will be made on a current
13 basis. This class is impaired.

14 4.2 Class I B: Far East National Bank: This class consists
15 of the Far East National Bank obligation secured by first
16 position trust deed on the real property of Debtor. The
17 estimated amount of this claim is \$11,061,000 and will be paid
18 in full by way of the refinance of the Debtor's real property at
19 the completion of the Plan performance period which is 28 months
20 from and after the Effective Date of the Plan. This class is
21 impaired.

22 4.3 Class I C: This class consist as of the claim of 8332
23 Case St. Inv., Inc. in the amount of \$612,056. This class will
24 take nothing under the Plan and will subordinate or otherwise
25 accommodate the Debtor as necessary and appropriate to complete
26 Plan performance

27 4.3 Class I D: Yamaha Golf Car Company: This class consists
28 of the claim of Yamaha Golf Car Company which is the subject of
pending litigation more particularly described in the Disclosure

1 Statement of Premier Golf Properties, LP. The debtor will, from
2 and after the Effective Date of the Plan, reserve the monthly
3 payments otherwise due for golf cart rental, until the
4 expiration of the Yamaha rental agreement which is mid 2012. The
5 Yamaha claim is the subject of litigation which the Debtor
6 believes is well merited and payment to this class will abide
7 the outcome of said litigation. This class is impaired under the
8 Plan.

9 4.4 Class II A: This class consists of \$169,393 in non
10 insider unsecured debt. This class will be paid in full together
11 with interest at 10% per annum at the completion of the 28 month
12 Plan performance period. This class is impaired.

13 4.5 Class II B: This class consists of unsecured debt owed
14 to insiders in the amount of \$1,722,017. This class will take
15 nothing under the Plan and shall abide the payment of all other
16 debt and the completion of the Plan performance period. This
17 class is impaired under the Plan.

18 4.6 Class III: The class consists of any and all
19 administrative claims entitled to, or approved for, payment
20 pursuant to the provisions of U.S.C. § 503 and includes the
21 quarterly fees of the United States Trustee for the life of the
22 Plan. All such fees shall be paid when due during the life of
23 the Plan. All other administrative expenses shall be paid when
24 accrued except for legal counsel fees and costs will be paid
25 only upon application and judicial approval pursuant to Sections
26 327 - 330 of the Code. Payment to legal counsel shall be
27 subordinate to Plan payments to creditors and other
28 administrative expenses during the life of the Plan.

1 **ARTICLE 5**

2 **METHOD AND TIMING OF PAYMENT**

3 5.1. Performance of the Plan shall be accomplished by way
4 of refinancing all or a portion of the real property owned by the
5 Debtor. To that end the debtor shall devote its best efforts to
6 continue its efforts to obtain the requisite governmental
7 approvals to commence sand extraction and wetlands mitigation
8 credits marketing. The Debtor does not look to income from either
9 source to fund Plan payments but the accomplishment of the
10 permitting will greatly enhance the value of Debtor's property,
11 thus contributing to the refinancing of Debtor's real property.
12 Having so stated, the Debtor shall actively seek refinancing
13 during the course of Plan performance and, upon securing same,
14 shall accelerate Plan performance.

15 **ARTICLE 6**

16 **PRESENT AND CONTINUED OPERATIONS OF DEBTOR**

17 6.1 Upon the Effective Date of the Plan, the Debtor will
18 be revested with its assets and continue to engage in business.

19 **ARTICLE 7**

20 **PROPERTY AND ASSETS**

21 7.1 All property and assets of the Debtor, including,
22 without limitation, all property and assets accumulated by the
23 Debtor since the date of the filing of this Chapter 11 petition
24 will be dealt with by this Plan. All claims duly and properly
25 filed against the Debtor shall be discharged in accord with the
26 terms and provisions of the Plan.

27 **ARTICLE 8**

28 **POST-CONFIRMATION CLAIMS ACTIVITY**

1 8.1 Nothing in this Plan is intended to, nor shall it
2 later be deemed to, waive or otherwise limit the Debtor's right
3 to object to, or reexamine any claim, provided, however, that
4 the Debtor must object to any claim, if at all, within sixty
5 (60) days from the Effective Date of the Plan.

6 **ARTICLE 9**

7 **POST CONFIRMATION COMPLIANCE**

8 9.1 During the period of Plan performance the Debtor shall
9 pay all quarterly fees due the United States Trustee pursuant to
10 29 U.S.C. Sec. 1930 et seq., and shall prepare and file the
11 requisite quarterly reports. Failure to pay fees or file
12 reports timely shall constitute Default under the Plan.

13 **ARTICLE 10**

14 **MODIFICATION**

15 10.1 Pre-Confirmation Plan Modifications:

16 The Debtor may propose any number of amendments or
17 modifications to this Plan or rescind it in its entirety (with
18 or without the substitution of a replacement Plan at any time
19 prior to confirmation of the Plan, without leave of the Court.

20 10.2 Post-Confirmation Plan Modifications:

21 After confirmation of the Plan, the Debtor may, with
22 approval of the Court, and so long as it does not materially
23 adversely affect the interests of creditors, remedy any defect
24 or omission or reconcile any inconsistencies within the Plan or
25 in the order of confirmation, in such manner as may be necessary
26 to carry out the purpose and effect of the Plan. Additionally,
27 the Debtor expressly reserves the right to modify the Plan after
28 its confirmation to the fullest extent provided or permitted by
the provisions of Section 1127(b) of the Code.

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ARTICLE 11

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

11.1 The Debtor will assume all executory contracts not specifically affirmed or rejected, pursuant to the Plan of Reorganization.

11.2 Any claimant holding a claim based upon the rejection of an executory contract or unexpired lease must, within 30 days after the date of confirmation, file a proof of claim with the Bankruptcy Court and elect treatment as a holder of Class I D claim under the Plan. Failure of any individual or entity to file a proof of claim within the specified time period will result in disallowance of such claim.

ARTICLE 12

JURISDICTION OF THE COURT

Subject to any limitations imposed in the provisions of the Plan, the Court will retain its full jurisdiction until the Plan has been fully consummated for purposes, including but not limited to, the following:

12.1 The classification or allowance (or disallowance) of the claim of any creditor and the reexamination of claims which have been allowed for voting, and the determination of such objections as may be filed to creditor's claims. The failure by the Debtor to object to, or to examine a claim for the purpose of voting shall not be deemed to be a waiver of the Debtor's right to object to, or to reexamine the claim in whole or part.

12.2 Determination of all questions and disputes regarding title to the assets of the estate, and determination of all causes of action, controversies, disputes or conflicts, whether

1 or not subject to action pending as of the confirmation date,
2 between the Debtor and any other party, including but not
3 limited to any right of the Debtor to recover assets under the
4 provisions of the Code.

5 12.3 Determination of any disputes arising under any
6 provision of the Plan.

7 12.4 The correction of any defect, the curing of any
8 omission, or the reconciliation of any inconsistency in the Plan
9 or the order of confirmation as may be necessary to carry out
10 the purposes and intent of the Plan.

11 12.5 To reconsider the allowance or disallowance of any
12 claim previously allowed (or disallowed) as provided by Code
13 Section 502(j).

14 12.6 The modification of the Plan after confirmation
15 pursuant to the Bankruptcy Code.

16 12.7 The enforcement and interpretation of the terms and
17 conditions of the Plan in making any order required, permitted,
18 or otherwise contemplated by the Plan.

19 12.8 The entry of any order, including injunctions,
20 necessary to enforce the title, rights and powers of the Debtor
21 and to impose such limitations, restrictions, terms and
22 conditions of such title, rights and powers as this Court may
23 deem necessary.

24 12.9 The enforcement of any written settlement agreement
25 between the Debtor and any other party.

26 12.10 The entry of an order concluding this case.

27 12.11 Pursuant to 28 U.S.C. Section 1471(b), and as agreed
28 between the Debtor and his creditors, the jurisdiction of the
Court shall continue after the Effective Date of the Plan until

1 the Plan is fully performed with respect to any matter arising
2 or related to the case herein. So long as no material default
3 has been determined by the Bankruptcy Court to exist under this
4 Plan, no act shall be taken nor shall any action or proceeding
5 be commenced or continued in any manner whatsoever to enforce or
6 collect, directly or indirectly, any claim covered by the Plan
7 without the order of this Court first having been obtained.

8 **ARTICLE 13**

9 **MISCELLANEOUS**

10 13.1 Retention of Assets: Upon confirmation of the Plan all
11 assets of the estate shall be fully restored to the Debtor
12 subject to the terms and conditions of this Plan pursuant to
13 Section 1141(b) of the Bankruptcy Code.

14 13.2 Means to Execute the Plan: The Debtor intends to
15 satisfy the claims against the estate through the refinance
16 and/or sale of all or a portion of estate real property.

17 13.3 Acceleration of the Plan: To the extent that the
18 Debtor finds it desirable to accelerate performance of the Plan,
19 the Debtor may do so without further approval of the Court. The
20 Debtor may prepay in whole or in part the claims in any class as
21 long as such prepayment does not violate any term of the Plan.
22 Except as otherwise provided in the Plan, any such partial
23 payment shall be made pro rata among the claims of such class.
24 To the extent the Debtor finds it (1) desirable to accelerate
25 performance of the Plan, or (2) necessary to do so, the Debtor
26 may seek a modification of the Plan which may provide for
27 further financial reorganization.

28 13.4 Post Confirmation Default: In the event of an alleged
default or breach in the terms of the Plan or in proposed

1 treatment of any claim, such alleging creditor shall be required
2 to file a motion or other proceeding with the Bankruptcy Court
3 seeking such relief as such party deems appropriate. The Debtor
4 and any other party in interest shall be entitled to object to
5 such requested relief.

6 13.5 Controlling Documents: The provisions, terms and
7 conditions of this Plan are controlling. In the event of a
8 conflict or ambiguity between the provisions of this Plan and
9 the Debtor's Disclosure Statement, the terms and conditions of
10 this Plan shall control.

11 **ARTICLE 14**

12 **EFFECT OF CONFIRMATION**

13 14.1 This Plan, upon confirmation, shall bind any creditor
14 in accord with its terms, whether or not the claim or interest
15 of such creditor is impaired under the Plan and whether or not
16 such creditor has accepted the Plan.

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18 **FITZMAURICE & DEMERGIAN**

19
20 Dated: May 31, 2011

21 /s/ Jack F. Fitzmaurice
22 JACK F. FITZMAURICE, ESQ.
23 Attorney for Premier Golf
24 Properties, LP

25 Premier Golf Properties, LP

26 /s/ Daryl C. Idler
27 Daryl C. Idler, president of
28 General Partner