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10 **UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:
13 MTS LAND, LLC, an Arizona limited liability
company,
14
Debtor.
15 Affects this Debtor.

CASE NO.: 2:12-bk-16257-EWH
Chapter 11 Proceeding
Jointly Administered with:
2:12-bk-16259-EWH

17 In re:
18 MTS GOLF, LLC, an Arizona limited liability
company,
19
Debtor.
20 Affects this Debtor.

21
22
23 **DISCLOSURE STATEMENT TO ACCOMPANY**
24 **DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION**
25
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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 Chapter¹ 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' First Amended Joint Plan of Reorganization* [ECF No. 427] (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.

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

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

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

9 **3. What is a plan of reorganization?**

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

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

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

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

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

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

27 ///

28

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

3 This Disclosure Statement will be used to solicit acceptances of the Plan only after the
4 Bankruptcy Court has found that this Disclosure Statement provides adequate information in
5 accordance with Section 1125 of the Bankruptcy Code and has entered an order approving this
6 Disclosure Statement. Approval by the Bankruptcy Court is not an opinion or ruling on the
7 merits of the Plan or final approval of this Disclosure Statement and it does not mean that the
8 Plan has been or will be approved by the Bankruptcy Court.

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

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

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

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

1 Bankruptcy Court has ruled to allow your Claim. Under the Plan, the deadline for filing
2 objections to Claims is 90 days following the Effective Date. If your Claim is not an Allowed
3 Claim, it is a Disputed Claim and you will not be entitled to vote on the Plan unless the
4 Bankruptcy Court temporarily or provisionally allows your Claim for voting purposes pursuant
5 to Bankruptcy Rule 3018. If you are uncertain as to the status of your Claim or if you have a
6 dispute with Debtors, you should check the Bankruptcy Court record carefully, including the
7 Schedules of Debtors, and seek appropriate legal advice. Neither Debtors nor their professionals
8 can advise you about such matters.

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

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

19 **10. How generally is a plan approved?**

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

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

25 The primary objective of the reorganization and restructuring under the Plan is to
26 maximize returns to those Creditors entitled to recoveries from the Estates. Debtors desire to
27 achieve this objective through a restructuring of their debts, the sale of Parcels and the infusion
28 of funds, which will result in full repayment of all Allowed Administrative Claims, Allowed

1 Secured Claims, Allowed Priority Claims, and Allowed General Unsecured Claims, with present
2 equity retaining their interest in Debtors.

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

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

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

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

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

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

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

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

25 After the appropriate Persons have voted to accept or reject the Plan, there will be a
26 Confirmation Hearing to determine whether the Plan should be confirmed by the Bankruptcy
27 Court. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan
28 satisfies the requirements of the Bankruptcy Code. The Bankruptcy Court will also receive and

1 consider a Ballot summary, which will present a tally of the votes cast by those Classes of
2 Creditors entitled to vote on the Plan.

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

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

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

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

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

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

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

27 **THE MANAGEMENT OF DEBTORS HAS REVIEWED THE FINANCIAL**
28 **INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH**
DEBTORS HAVE ENDEAVORED TO ENSURE THE ACCURACY OF THIS

1 FINANCIAL INFORMATION, THE FINANCIAL INFORMATION CONTAINED IN,
2 OR INCORPORATED BY REFERENCE INTO THIS DISCLOSURE STATEMENT
3 HAS NOT BEEN AUDITED.

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

5 THE INFORMATION IN THIS DISCLOSURE STATEMENT IS INCLUDED
6 HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND
7 MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE
8 HOW TO VOTE ON THE PLAN. THIS DISCLOSURE STATEMENT THEREFORE
9 DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF
10 FACT OR LIABILITY, A STIPULATION OR A WAIVER IN ANY PROCEEDING
11 OTHER THAN THE SOLICITATION OF ACCEPTANCES OF THE PLAN AND
12 CONFIRMATION OF THE PLAN. FOR ALL PURPOSES OTHER THAN THE
13 SOLICITATION OF ACCEPTANCES OF THE PLAN, THIS DISCLOSURE
14 STATEMENT SHOULD BE CONSTRUED AS A STATEMENT MADE IN
15 SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS,
16 ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED
17 LITIGATION OR ACTIONS.

18 19. Should I consult with my own financial and legal advisors?

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

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

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

28 ///

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

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

9 **III.**
10 **GENERAL OVERVIEW OF THE PLAN**

11 **A. General Overview.**

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

<u>Class</u>	<u>Description</u>	<u>Treatment</u>	<u>Estimated Claim</u>
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

1	Class 7	Priority Unsecured Claims	Unimpaired No solicitation required.	\$0
2	Class 8	General Unsecured Claims	Impaired. Solicitation required.	\$2,098,424.53 (Per the Schedules)
3				
4	Class 9	Equity Securities	Unimpaired. No solicitation required.	N/A
5				

6 **B. Treatment of Administrative Claims.**

7 Pursuant to Section 1123(a)(1), Allowed Administrative Claims are not designated as a
8 Class. The Holders of such unclassified Claims shall be paid in full under the Plan consistent
9 with the requirements of Section 1129(a)(9)(A) and are not entitled to vote on the Plan. The
10 amount of Administrative Claims incurred, but unpaid as of the Confirmation Hearing is
11 estimated to be \$1,250,000.³

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

18 On the Effective Date, the DIP Loan Documents shall remain in full force and effect,
19 save and except that without any further action by Reorganized Debtor or DIP Lender, all of the
20 DIP Loan Documents shall be deemed to have been amended and modified (the “Restated DIP
21 Loan Documents”) and the DIP Loan Claims will be evidenced by the Restated DIP Promissory
22 Note, which will be effective on the Effective Date and will generally incorporate the terms of
23 the DIP Promissory Note as modified as follows: (a) the principal balance of the Restated DIP
24 Promissory Note shall be the DIP Loan Claim as of the Effective Date; (b) interest shall accrue
25 on the Restated DIP Promissory Note at the DIP Interest Rate; (c) beginning on the fourteenth

26 ³ This includes the DIP Loan Claims of \$1,080,000 plus accrued interest addressed in Sections 2.3 of the
27 Plan as well as the amount outstanding to Debtors’ duly-retained professionals. Pursuant to Section
28 331 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.

1 (14th) Business Day of the first full calendar month following the Effective Date, and on the
2 fourteenth (14th) Business Day of each subsequent month up to and including the twenty-fourth
3 (24th) full month after the Effective Date, Reorganized Debtor shall distribute to the DIP Lender
4 principal and interest payments on the outstanding balance of the Restated DIP Promissory Note
5 amortized over a period of twenty (20) years at the DIP Interest Rate; (d) the unpaid balance of
6 the Restated DIP Promissory Note shall be due and payable on December 31, 2016 (the
7 “Restated DIP Loan Maturity Date”); and (e) there shall be no penalty for prepayment for all or
8 part of the Restated DIP Promissory Note prior to the Restated DIP Loan Maturity Date.

9 **C. Class 1 – USB Loan Claim.**

10 Class 1 is comprised of the USB Loan Claim, which is calculated as follows: The
11 outstanding principal and accrued interest at the non-default rate due and owing by Debtors to
12 USB under the USB Note as of the Petition Date, which principal and interest totals
13 \$32,450,046.03, minus the Adequate Protection Payments tendered on account of the USB Note,
14 if any, plus: (i) any accrued and unpaid interest from the Petition Date up to the Effective Date at
15 the rate set forth in the USB Note; and (ii) reasonable attorney’s fees, costs, and expenses
16 incurred by USB post-petition and prior to the Effective Date, solely to the extent that such fees,
17 costs, and expenses are approved by entry of a Final Order of the Bankruptcy Court.

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

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28 ///

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

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

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

9 **4. Monthly Payments.**

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

16 **b.** Beginning on the fourteenth (14th) Business Day of the thirteenth
17 (13th) full month after the Effective Date, and on each subsequent month up to
18 and through the Restated UBS Loan Maturity Date, Reorganized Debtor shall
19 distribute to USB monthly principal and interest payments on the outstanding
20 balance of the Restated USB Note amortized over a period of thirty (30) years at
21 the USB Restated Interest Rate.

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

27 **a.** USB shall have received from Reorganized Debtor written notice
28 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.

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

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

8 **b. Partial Sales and Releases.** Prior to the Restated USB Loan
9 Maturity Date, Reorganized Debtor shall have the absolute right to obtain a
10 release of one or more Parcels free and clear of the Lien of the Restated USB
11 Loan Documents for the Release Price applicable to each such Parcel as set forth
12 on **Schedule 1.193** of the Plan on the following conditions:

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

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

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

24 **c. Cooperation.** Subject to the terms and conditions herein, the
25 Reorganized Debtor and USB shall use their commercially reasonable best efforts
26 to cooperate and to consummate each such proposed Parcel sale, including any
27 reasonable requests for information or execution of applicable documents,
28 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.

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

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

6 **b.** To the extent inconsistent with the provisions of this Plan, on the
7 Effective Date, each of the USB Loan Documents shall be deemed modified,
8 amended and restated to the extent necessary to be consistent with and in
9 accordance with the provisions of this Plan, including (i) with respect to the USB
10 Loan Agreement (and all related provisions of the USB Loan Documents,
11 including the USB Deed of Trust) Sections 6.1, 6.6, 6.8, 7.4, 7.5, 7.7(b) and (c),
12 7.9, 7.1, 7.14 and 11.1(j), (l) and (m) are waived and deleted and of no further
13 effect, (ii) Reorganized Debtor shall be deemed in compliance with Sections 6.7
14 of the USB Loan Agreement (including all related provisions of the USB Loan
15 Documents, including the USB Deed of Trust), and (iii) the provisions of Section
16 2.5 of the Modification Agreement, Sections 8.1, 8.2, 7.17 and 7.18 of the USB
17 Loan Agreement as modified by Sections 2.6, 2.7, 2.8 and 2.9 of the USB
18 Modification Agreement, are waived and of no further force or effect (including
19 with respect to the USB Loan Documents, including the USB Deed of Trust).

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

26 **d.** Section 6.10 of the USB Loan Agreement (including with respect
27 to the USB Loan Documents, including the USB Deed of Trust) is amended to
28 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

1 continue to have sufficient capitals as and when required to operate its business,
2 and (iii) confirms that, based upon its assets and its anticipated business
3 performance, each Borrower will be able to pay its debts in accordance with the
4 Plan.

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

8 Inclusion in Community Facilities District. Consent to, or vote in favor of, the
9 inclusion of all or any part of the Real Property in any Community Facilities
10 District formed pursuant to the Community Facilities District Act, A.R.S. Section
11 48-701, et seq., as amended from time to time.

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

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

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

26 **D. Class 2 – Hertz Loan Claim.**

27 On the Effective Date, the Hertz Loan Documents shall remain in full force and effect,
28 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.

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

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

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

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

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

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

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

28 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.

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

3 **E. Class 3 – Bookbinder Automobile Loan Claim**

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

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

13 2. **Lien.** From and after the Confirmation Date, the Holder of the Allowed
14 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.

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

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

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

20 6. **Other Charges.** The Holder of the Bookbinder Automobile Loan Claim
21 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,

22 7. **Cure of Defaults.** On the Effective Date, all pre-Effective Date defaults
23 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
24 good standing under the Restated Bookbinder Automobile Loan Documents.

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

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1 **F. Class 4 – Bookbinder Equipment Loan Claim**

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

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

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

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

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

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

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

25 **7. Cure of Defaults.** On the Effective Date, all pre-Effective Date defaults
26 under the Bookbinder Equipment Loan Documents shall be deemed to have been cured
27 and on the Effective Date, Debtors and/or Reorganized Debtors shall be current and in
28 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.

29 **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

1 be fixed by the Bankruptcy Court; (iii) the fourteenth (14th) Business Day after such Claim is
2 Allowed; and (iv) such date as agreed upon by the Holder of such Secured Tax Claim and
3 Debtors, and after the Effective Date, Reorganized Debtor.

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

6 **H. Class 6 – Other Secured Claims.**

7 Each Allowed Other Secured Claim,⁴ if any, shall, in full and final satisfaction of such
8 Claim, be paid in full in Cash or otherwise left Unimpaired by Debtors or Reorganized Debtors,
9 as the case may be, upon the latest of: (i) the Effective Date or as soon thereafter as practicable;
10 (ii) such date as may be fixed by the Bankruptcy Court; (iii) the fourteenth (14th) Business Day
11 after such Claim is Allowed; and (iv) such date as agreed upon by the Holder of such Claim and
12 Debtors, and after the Effective Date, Reorganized Debtor.

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

15 **I. Class 7 – Priority Unsecured Claims.**

16 Each Priority Unsecured Claim,⁵ if any, shall, in full and final satisfaction of such
17 Claims, be paid in full in Cash on the latest of: (i) the Effective Date, or as soon thereafter as is
18 practical; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as is
19 practicable; (iii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon
20 thereafter as is practicable; or (iv) such date as the Holder of such Claim and Reorganized
21 Debtors have agreed or shall agree.

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

24 **J. Class 8 – General Unsecured Claims.**

25 A General Unsecured Claim is a Claim, including a Claim arising under Section 502(g)

26 ⁴ “Other Secured Claims” are any Secured Claim, other than the USB Loan Claims, the Hertz Loan Claims, the
27 Bookbinder Automobile Loan Claim and the Bookbinder Equipment Loan Claim.

28 ⁵ “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.”

1 of the Bankruptcy Code that is not secured by a charge against or interest in property in which
2 the Estate has an interest and is not an unclassified Claim, Administrative Claim, or Priority
3 Unsecured Claim.

4 Except to the extent that a Creditor with an Allowed General Unsecured Claim agrees to
5 less favorable treatment, each Creditor with an Allowed General Unsecured Claim, shall, in full
6 and final satisfaction of such Claim, be paid in full in Cash, plus post-Effective Date interest at
7 the Unsecured Interest Rate⁶, on the latest of: (i) the sixtieth (60th) Business Day after the
8 Effective Date, as soon thereafter as is practical; (ii) such date as may be fixed by the Bankruptcy
9 Court, or as soon thereafter as is practicable; (iii) the fourteenth (14th) Business Day after such
10 Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder of such
11 Claim and Reorganized Debtors have agreed or shall agree.

12 Class 8 is Impaired under the Plan. The Holders of Class 7 Claims are entitled to vote on
13 this Plan.

14 **K. Class 9 – Equity Securities.**

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

18 **IV.**
19 **SUMMARY OF VOTING PROCESS**

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

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

26 The solicitation of votes on the Plan will be sought only from those Holders of Allowed
27 Claims whose Claims are impaired and which will receive property or rights under the Plan. As

28 ⁶ The Unsecured Interest Rate is the Federal Judgment rate on the Effective Date. See, Plan 1.1.140

1 explained more fully below, to be entitled to vote, a Claim must be both “Allowed” and
2 “Impaired.”

3 **B. Summary of Voting Requirements.**

4 In order for the Plan to be confirmed, the Plan must be accepted by at least one non-
5 insider, impaired class of claims, excluding the votes of insiders. A class of claims is deemed to
6 have accepted a plan when allowed votes representing at least two-thirds (2/3) in amount and a
7 majority in number of the claims of the class actually voting cast votes in favor of a plan. A
8 class of equity securities has accepted a plan when votes representing at least two-thirds (2/3) in
9 amount of the outstanding equity securities of the class actually voting cast votes in favor of a
10 plan.

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

<u>Class</u>	<u>Description</u>
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

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

19 **V.**
INFORMATION ABOUT DEBTORS’ BUSINESS AND THE CHAPTER 11 CASES

20 **A. Description of Debtors’ Business and Acquisition History.**

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

27 The Resort is situated along both sides of 56th Street south of Lincoln Drive in Paradise
28

1 Valley, Arizona. The Maricopa County Assessor's Parcel numbers as of October 1, 2012,
2 include: 169-43-004C, 169-30-071, 169-43-005, 169-43-006, 169-30-068A, 169-30-08B, 169-
3 30-067A, 169-30-072, 169-30-067B, 169-30-070 and 169-40-063. The Resort is described in the
4 Development Agreement (as defined herein) as 67.04 acres with a square footage of 2,920,262
5 and the SUP as 68.48 acres with a square footage of 2,982,771.

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

15 Legal and physical access to the subject property is by means of Lincoln Drive, a major
16 east/west arterial roadway that is improved with two lanes of traffic in each direction. Street
17 improvements include asphalt paving and concrete curbs, gutters, sidewalks and street lights..
18 56th Street is a collector street that is improved with two lanes of traffic. It is a paved roadway
19 without concrete curbs, gutters and sidewalk.

20 MTS Land generally owns the real property on which the Hotel portions of the Resort sit.
21 The Hotel has been closed since 2004. Additionally, MTS Land also currently owns part of the
22 Club. Specifically, the Club's first three golf holes, driving range and tennis courts, and adjacent
23 parking are located on the MTS Land portion of the real property. In addition, the only ingress
24 and egress to the Club is through the MTS Land portion of the real property for which no
25 easement or license for access exists.

26 MTS Golf generally owns the real property on which portions of the Club is located. The
27 Club hosts an 18 hole, par 56, 3,081-yard executive course (the "Golf Course"), restaurant &
28 grille, pro shop, fitness center, tennis courts, and a driving range. The Club is located west of

1 56th Street and south of Lincoln Drive and is an executive golf course with two sets of tee boxes
2 with distances of 2,606 and 3,081 yards. It was designed by Arthur Jack Snyder.

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

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

9 Debtors have certain rights under existing leases, being (a) a lease dated August 7, 1968
10 (the "Folkman Lease") for the property as set forth in the Folkman Lease (the "Folkman
11 Property") between Lawyer's Title of Arizona, formerly Arizona Title Insurance and Trust
12 Company, as lessor, and Marriott Motor Hotels, Inc., which was subsequently merged into
13 Marriott Corporation ("Marriott"), as lessee, and (b) a lease dated March 22, 1978 the (the
14 "Mummy Mountain Lease") for the property set forth in the Mummy Mountain lease (the
15 "Mummy Mountain Property") between Marriott, as lessee, and Mummy Mountain
16 Development Corporation, as lessor. Marriott caused the construction of an 18 hole golf course
17 on the Folkman Property (the "Camelback Course"). Marriott also caused the construction of an
18 18 hole golf course on the Mummy Mountain Property (the "North Course"). Potomac Hotel
19 Limited Partnership ("Potomac") was the owner of the Resort. The Resort was operated by
20 Marriott, as general partner of Potomac.

21 Under the Assignment of Lease and Agreement (the "F&M Agreement") made on July
22 13, 1982 and effective on July 16, 1982 by and between Marriott and Potomac regarding the
23 Folkman Lease and the Mummy Mountain Lease, Marriott "irrevocably and unconditionally"
24 granted to the "guests of Mountain Shadows the right to exercise all of the privileges of Inn
25 Members" at the Camelback Country Club. Resort guests "shall have the present and continuing
26 right to ingress and egress to and the use and enjoyment" of the Camelback Course and North
27 Course, including all ancillary facilities (the "Camelback Courses") based upon "an equitable
28 sharing of use privileges between guests of the Camelback Inn and guests of Mountain

1 Shadows.”

2 The F&M Agreement also provides that “no modification, amendment, waiver or release
3 made in the provisions of this Agreement or any right, obligation, claim or cause of action
4 arising hereunder or any termination or cancellation of this Agreement shall be valid or binding
5 for any purpose whatsoever unless in writing and duly executed by the party against whom the
6 same is sought to be asserted...” Moreover, the F&M Agreement “shall run with the land” and
7 “inure to the benefit of and be binding upon the parties hereto, their respective successors and
8 assigns...”

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

13 The Resort is subject to certain deed restrictions as follows:

14 **1. Mountain Shadows West Declaration of Restrictions.**

15 Mountain Shadows West is Lots 69-127 of Mountain Shadow Resort Unit Two-Amended
16 recorded on June 6, 1961, at Book 95 of Maps, page 3, of the records of Maricopa County,
17 Arizona. A declaration of restrictions was recorded by Paul Construction Co. on September 6,
18 1961, in Docket 3832, page 453, and re-recorded on April 24, 1962, in Docket 4115, page 43, of
19 the records of Maricopa County, Arizona (the “Mountain Shadows West Declaration of
20 Restrictions”). The Mountain Shadows West Declaration of Restrictions generally provide that
21 the owners of lots in Mountain Shadows West have a right of access to the general facilities at
22 the Resort on the East side of 56th Street that include the use of cocktail lounge, dining room,
23 recreational areas and general park areas without charges of dues or special charges other than
24 such charges as may be specifically incurred for use of guest-residence facilities, food, drink, and
25 special services, such as barber, maid, valet, and catering. Having no ownership in the general
26 facilities at the Resort on the East side of 56th Street at the time the Mountain Shadows West
27 Declaration of Restrictions was first recorded, Paul Construction Co. had no authority to affect
28 these general facilities by recording the Mountain Shadows West Declaration of Deed

1 Restrictions. Therefore, the portion of the Mountain Shadows West Declaration of Restrictions
2 that purports to give a right of access to owners of Mountain Shadows West to the general
3 facilities located on the East side of 56th Street is ineffective.

4 The Mountain Shadows West Declaration of Restrictions also provides that the Mountain
5 Shadows West owners have a right of access to the golf club house, driving range, tennis courts,
6 swimming pool, and golf course, without charge other than those charges incurred as green fees,
7 food, drink, and special services. Although this provision of the Mountain Shadows West
8 Declaration of Restrictions provides a right of access to these amenities if they are available, this
9 provision does not require Debtors to build, operate, or maintain any or all of these amenities. In
10 addition, Debtors may put in place rules and regulations regarding the exercise of this right of
11 access as Debtors deems necessary or appropriate from time to time.

12 As successor in interest to Mountain Shadow Co., Debtors may exercise the rights
13 granted to Mountain Shadow Co. in the Mountain Shadows West Declaration of Restrictions,
14 namely to (i) appoint a member to the Mountain Shadow West Management Board; (ii) grant or
15 deny permission to changes in the exterior design by enlarging, remodeling or adding to
16 residences, patios, and patio fences; and (iii) grant or deny permission to changes by adding to or
17 taking from the original landscape within lots.

18 **2. Mountain Shadows East Deed Restrictions.**

19 Mountain Shadows East is Lots 2-6, 8-13, 15-23, 25-37, 39-45, 47-52, and 54-66, of
20 Mountain Shadow Resort Amended recorded on January 20, 1958, in Book 75 of Maps, page 34,
21 of the records of Maricopa County, Arizona. The recorded deeds from Mountain Shadows
22 Resort, Inc., as grantor, for the lots within Mountain Shadows East included deed restrictions
23 (the "Mountain Shadows East Deed Restrictions"), which generally provide that the owners of
24 lots in Mountain Shadows East have a right of access to the general facilities at the Resort that
25 includes use of cocktail lounge, dining room, recreational areas and general park areas without
26 charges of dues or special charges other than such charges as may be specifically incurred for use
27 of guest-residence facilities, cabanas, food, drink, and special services, such as barber, maid,
28 valet, and catering. Although this provision of the Mountain Shadows East Deed Restrictions

1 provides a right of access to these amenities if they are available, this provision does not require
2 Debtors to build, operate, or maintain any or all of these amenities. In addition, Debtors may put
3 in place rules and regulations regarding the exercise of this right of access as Debtors deem
4 necessary or appropriate from time to time.

5 As successor in interest to Mountain Shadow Resort Inc., Debtors may exercise the rights
6 granted to Mountain Shadow Resort Inc. in the Mountain Shadows East Deed Restrictions,
7 namely to appoint a member to the Mountain Shadow Estates Management Board. Pursuant to
8 the Mountain Shadows East Deed Restrictions, office space for use by the Mountain Shadow
9 Estates Management Board will be provided when available as determined by the Debtors,
10 subject to rules and regulations regarding such use as Debtors deems necessary or appropriate
11 from time to time.

12 **3. Mountain Shadows East Guest Ranch Restrictions.**

13 The deed restrictions recorded on August 12, 1957, in Docket 2250, page 207, of the
14 records of Maricopa County, Arizona (the "Mountain Shadows East Guest Ranch Restrictions")
15 generally provide that a portion of the Resort will be operated as a single guest ranch operation
16 with common facilities for all of the buildings on the property. There is a restriction on sales
17 being subject to the approval of the guest ranch management. There is another restriction as to
18 streets or road. Finally, there is a restriction on the number of units per acre if the property is no
19 longer used a guest ranch. The Mountain Shadows East Guest Ranch Restrictions are not
20 applicable to and do not limit in any way the use of the Real Property.

21 **4. Golf Course Restriction.**

22 The declaration of restrictions recorded on April 24, 1962, in Docket 4115, page 48, of
23 the records of Maricopa County, Arizona (the "Golf Course Restriction") was recorded by the
24 developers of Mountain Shadows West (generally the neighborhood of single family homes
25 around the Club). The Golf Course Restriction limited the use of the Golf Course to certain uses,
26 including golf course, county club, club house, certain recreational facilities, and certain
27 buildings. The Golf Course Restriction expressly excluded existing holes #1 and #2 and most of
28 the existing driving range and existing hole # 3. The Golf Course Restriction states that it was

1 “effective and binding upon said real property until December 31, 1987, at which time the same
2 shall terminate.”

3 **5. Lot 68.**

4 Lot 68 of Mountain Shadow Resort Amended, recorded on January 20, 1958, in Book 75
5 of Maps, page 34, of the records of Maricopa County, Arizona, generally provides access to the
6 Real Property and Mountain Shadows East. Lot 68 is the private roadway system shown on the
7 recorded plat for Mountain Shadows East. Originally, each of the 59 lots and the Resort owner
8 had a 1/60th interest in Lot 68. Within the past few years, approximately 55 of the separate
9 interests in Lot 68 have been transferred to the home owner’s association for Mountain Shadows
10 East. A depiction of the three segments of Lot 68 being, (i) the Circular Entrance Area, (ii) the
11 Loop Road, and (iii) the Interior Roads, is included as **Exhibit “3”** to this Disclosure Statement.
12 Debtors may relocate this access as described in Section VI A. 10(e) *infra*.

13 **6. Lots 130 and 130-A**

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

20 **B. Management and Ownership of Debtors.**

21 Debtors, along with MTS Beverages, are each owned by Cool Mountain Holdings, LLC
22 *fka* Mountain Shadows Holdings, LLC (“Cool Mountain”), which is in-turn owned by Crown
23 MTS, LLC (“Crown MTS”) which is solely owned by Jaime Sohacheski. MTS Land was
24 formed on August 31, 2005, MTS Golf and Crown MTS were each formed on December 19,
25 2006, and MTS Beverages was formed on January 5, 2007. Each entity was formed under the
26 laws of the State of Delaware.

27 In January 2007, Debtors appointed MTS Beverages as their manager under a *Property*
28 *Management Agreement*. As a result, much of the activity for MTS Golf and MTS Land is

1 conducted by MTS Beverages. On that same date, MTS Beverages appointed Crown Realty &
2 Development, LLC (“Crown Development”) as sub-manager to provide all services and oversee
3 the day-to-day operations of MTS Beverages pursuant to the *Sub-Management Agreement*.
4 Additionally, in March 2010, Debtors and MTS Beverages entered into a *Contribution*
5 *Agreement*.⁷ The Contribution Agreement authorizes each of the signatories to advance money
6 on behalf of each other and to share in all debts. The Contribution Agreement explicitly
7 recognized that while Debtors were separate legal entities, they have been and remain mutually
8 dependent for integrated operations, unified businesses, and jointly and severally liable for all
9 debts.

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

14 Since January 31, 2007, the Club has been operated by In Celebration of Golf
15 Management, LLC (“ICOG”), a well-known golf facilities manager that currently operates nine
16 Arizona golf courses. ICOG took control of all operational duties associated with the Club
17 pursuant to a Golf Facility Management Agreement (“Golf Management Agreement”). The Golf
18 Management Agreement was amended in March 2009 to extend the termination date from
19 December 31, 2011 to a date provided with ninety days’ notice.

20 **C. Resort Entitlements.**

21 **1. Development Agreement and Special Use Permit.**

22 The Real Property was annexed into the Town of Paradise Valley (“PVT”) pursuant to
23 Ordinance Number 339 adopted March 26, 1992. Ordinance Number 339 states that the Real
24 Property “is zoned as R-43 pursuant to the Zoning Ordinance of the Town of Paradise Valley and
25 subject to a development agreement signed by the Town ...” On the same day that Ordinance
26 Number 339 was adopted, PVT also adopted Ordinance Number 341, which authorized the

27 _____
28 ⁷ In April of 2012, Crown MTS was added as a signatory to the Contribution Agreement.

1 mayor to sign a development agreement. Prior to the annexation, PVT had adopted Ordinance
2 Number 336 on March 12, 1992, which also had authorized the mayor to sign a development
3 agreement. On or about April 10, 1992, PVT and Potomac, Debtors' predecessors in interest,
4 entered into a development agreement setting forth certain rights for the use and development of
5 the Resort (the "Development Agreement"). The Development Agreement was recorded as
6 document number 92-0191356 on April 10, 1992, and re-recorded as document number 92-
7 262862 on May 14, 1992, in the records of Maricopa County Recorder.⁸

8 The Development Agreement includes allowances for rights regarding, *inter alia*,
9 property use, density and height of new construction, and parking requirements. However, the
10 Development Agreement is unique and favorable to Debtors because new construction may be
11 commenced and completed without amendment to the site plan or the Development Agreement
12 provided that the new construction does not exceed the height of similar buildings, structures, or
13 improvements and does not encroach on the setback lines in the Development Agreement. See
14 Development Agreement, § 5(b).

15 The Development Agreement, despite its more than twenty year existence, remains a
16 blueprint for the future development of the Resort and is in line with Debtors' ultimate visions
17 and expectations for the Resort. The Development Agreement governs development of the
18 Resort in its entirety. Among other things, restrictions related to density (lot coverage and
19 quantity of units, etc.) and lot coverage are based on the entire land area.

20 Despite the provisions set forth in the binding and effective Development Agreement, in
21 approximately 2005, even prior to, but in anticipation of, acquiring the Resort, Debtors sought a
22 special use permit⁹ (the "SUP") whereby Debtors, in conjunction with its issuance, would agree
23 to alter and amend the Development Agreement to ensure that their development goals were in

24 ⁸ As such, the Development Agreement runs with the property and is in full force and effect so long as all
25 or a portion of the Resort is devoted to Resort Uses (as defined in the Development Agreement). See
26 Development Agreement, ¶ 11. As further set forth in the Development Agreement, in the event the
27 Development Agreement were not to be valid or enforceable, PVT is required to issue a special use
28 permit containing rights and obligations which are identical to those contained in the Development
Agreement. See, Development Agreement, ¶ 13.

⁹ 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.

1 line with those of PVT and to further foster an expeditious and collaborative working
2 relationship with PVT and their neighbors. The SUP envisions development of the whole Resort
3 to include a hotel, residences, and a golf course. However, following their acquisition of the
4 Resort and due to the general economic decline, Debtors put their discussions with PVT on hold
5 pending potential sales of the Resort. In 2012, Debtors reactivated their SUP application process
6 to continue with their ultimate goal of developing the Resort.

7 PVT has a lengthy process for requesting and obtaining a SUP. After a SUP application
8 is filed, the Town Council reviews the application and issues a Statement of Direction (“SOD”)
9 that is intended to provide guidance to the PVT Planning Commission (“PC”) in reviewing the
10 SUP application. After holding several public meetings/public hearing to discuss the SOD, the
11 Town Council issued the SOD on June 28, 2012. The PC held its first meeting to consider the
12 SUP application on June 29, 2012 and thereafter held seven public meetings to consider the SUP
13 application and to receive input from the public. On September 24, 2012, the PC voted to
14 recommend to the Town Council approval of the SUP, subject to over 100 stipulation/conditions.
15 After receipt of the PC recommendation on the SUP, the Town Council then holds additional
16 public meetings to consider the SUP. As of January 11, 2013, the Town Council has held ten
17 such public meetings and it is anticipated that several additional public meetings will be held. In
18 addition to the public meetings, numerous meetings have been held and will be held with PVT
19 staff to discuss a new development agreement. At some point, the Town Council will vote to
20 approve or disapprove the SUP and a new development agreement. Debtors believe this will
21 occur in February 2013.

22 If the SUP is approved by the Town Council, there remains the possibility that persons
23 opposing the approval of the SUP may attempt to process a referendum to overturn the SUP
24 approval. The approval of a new SUP in PVT is generally considered to be the same as a
25 rezoning of property, which in Arizona is a legislative act that is subject to referendum. The
26 right of referendum is established by the Arizona Constitution and Arizona statutes further set
27 forth requirements and procedures applicable to referenda. In general, if 10% of the persons who
28 voted in a recent PVT election sign referendum petitions, such petitions are submitted to PVT

1 within 30 days after the Town Council adopts the SUP, and other requirements are met, the SUP
2 approval is held in abeyance until a vote of the PVT electorate is held. At such vote, the PVT
3 electorate will either approve or disapprove the granting of the SUP. Based on certain statutory
4 requirements and whether the PVT Council decides to schedule the vote at a special election or
5 the next regular PVT election, such vote could be held anywhere from 4-6 months to
6 approaching two years after the Town Council votes to approve the SUP. There is also a
7 possibility that persons opposing the approval of the SUP may attempt a judicial challenge to
8 overturn the SUP approval and the new development agreement.

9 If the SUP is not approved, Debtors intend to move forward with development of the
10 Resort under the Development Agreement. Although Debtors have not formulated detailed
11 development plans should they be required to proceed under the Development Agreement,
12 Debtors envision a mixed use development similar to that proposed with the SUP in that it is
13 anticipated that the development will contain residential, resort, and commercial components.
14 However, as the Development Agreement contains certain limitations that would not allow the
15 configuration of the development as proposed under the proposed SUP, the development will
16 likely ultimately require reconfiguration or removal of the Golf Club. As Debtors are committed
17 to working with PVT and neighboring homeowners to work on a mutually beneficial
18 development for the Resort, Debtors have not spent significant resources on detailed
19 development plans under the Development Agreement.

20 **D. Detailed Description of the Mountain Shadows Resort.**

21 **1. Paradise Valley Background.**

22 The 16-square mile town stretches north of Camelback Mountain to Shea Blvd. and from
23 Scottsdale Road west to 32nd Street. PVT is zoned exclusively for single-family residential use
24 with non-residential uses which include resorts, medical office, religious facilities, private
25 schools, non-profit organizations, historical/entertainment sites and public/quasi-private
26 facilities. On May 24, 1961, incorporation was granted and PVT was established. With a
27 population of approximately 2,000, the first Town Council was formed. During the early years of
28 PVT's history, the Town Council spent most of its time establishing the Planning and Zoning

1 Commission, the Board of Adjustment, redefining zoning ordinances, and annexing property.
2 By 1968, the boundaries of PVT were pretty well set with only a few scattered county islands
3 and a handful of neighborhoods adjacent to PVT boundaries that would eventually be annexed.
4 In 2000, with a population over 13,000, only two county islands remained: a portion of the
5 community of Clearwater Hills west of Tatum Boulevard and the Franciscan Renewal Center on
6 Lincoln Drive.

7 **2. Personal Property Owned by Debtors.**

8 Debtors had approximately \$517,999.68 in personal property on the Petition Date.
9 Debtors had money in a checking account and cash on hand of \$104,790.69. Debtors had a
10 security deposit with Arizona Public Service of \$3,660. Debtors were owed approximately
11 \$12,149 from memberships at the Club. On the Petition Date, Debtors had food and beverage
12 inventory of \$6,253 and an inventory of clothing, golf balls and other golf paraphernalia worth
13 approximately \$51,988. Debtors own a 2006 Chevrolet Silverado 2500 that is worth
14 approximately \$6,600 and a John Deere fairway mower worth \$9,792. MTS Golf owns a 1999
15 Ford F-350 dump truck worth \$15,000. Debtors own 60 EZ Go golf carts worth approximately
16 \$30,000. The personal property, including additional machinery, used for the Golf Course
17 operations in the clubhouse, fitness center, kitchen and locker rooms totals \$291,220.

18 **3. Valuation of the Resort.**

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

23 **Scenario 1**

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

27 **Scenario 2**

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

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

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

7 **4. Causes of Action.**

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

13 In addition, Debtors may have a cause of action against PVT arising from the
14 Development Agreement if a SUP and new development agreement acceptable to Debtors is not
15 approved and becomes effective and PVT chooses to breach the Development Agreement by not
16 issuing building permits as provided for in the Development Agreement. Debtors' damages
17 would be the difference between what the Resort is worth with the Development Agreement and
18 what it is under whatever land use rights PVT asserts apply.

19 **E. Debtors' Secured Loan Obligation.**

20 **1. The USB Loan.**

21 In order to secure funding to acquire the Resort, on or about January 26, 2007 Debtors
22 entered into a Loan Agreement, pursuant to which San Diego National Bank ("San Diego Bank")
23 agreed to lend Debtors the principal sum of \$32,000,000 (the "USB Loan"). The Loan, which is
24 evidenced by a Promissory Note, originally had a maturity date of January 26, 2009, with two
25 options for six months extensions at San Diego Bank's option. In connection with the Loan,
26 Jaime Sohacheski executed an Unconditional Limited Guarantee of Payment (the "Guaranty")
27 which purports to obligate Jamie Sohacheski in an amount up to \$11 million of the total USB
28

1 Loan amount.¹⁰

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

8 On March 20, 2009, Debtors and San Diego Bank entered into a Modification Agreement
9 which allowed generally for the transfer of the loan to a new borrower under certain conditions.
10 Consistent therewith, on March 20, 2009, Debtors also executed a Modification of Deed of Trust.

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

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

15 On or about October 7, 2010, U.S. Bank National Association (“USB”) acquired the USB
16 Loan, Promissory Note, Guaranty, and other loan documents from the FDIC. On October 27,
17 2010, USB delivered a Payment Event of Default and Acceleration Notice to Debtors. On April
18 11, 2012, Debtors further received an Event of Default Notice; Loan to MTS Land, LLC and
19 MTS Golf, LLC.

20 **2. The Hertz Loan.**

21 Pursuant to a Secured Promissory Note (the “Hertz Note”) dated July 11, 2012, by and
22 between Debtors and MTS Beverages, as borrowers, and Chavi Hertz, an individual, as lender
23 (“Hertz”), Hertz tendered a loan to Debtors and MTS Beverages in the principal amount of
24 \$565,000 (the “Hertz Loan”). The proceeds of the Hertz Loan were utilized, in part: (1) to pay
25 amounts owed for goods and services provided to Debtors and MTS Beverages, for payments to
26 the Arizona Department of Revenue, and to fund anticipated cash needs of MTS Beverages; (2)

27 _____
28 ¹⁰ Subsequently, Jaime Sohacheski made a voluntary payment to USB and reduced the outstanding
obligation under the Guaranty to \$7 million.

1 to purchase sixty electric golf carts (the “Golf Carts”) from ICOG necessary for the operation of
2 Club; (3) to fund Debtors’ ongoing business operations; and (4) certain other pre-Petition Date
3 obligations.

4 On the same date, Debtors also entered into a Security Agreement (the “Hertz Security
5 Agreement”), thereby granting Hertz a purchase money security interest in the Golf Carts, as
6 well as any attachments or replacements, and any proceeds from the sale or other disposition of
7 the Golf Carts and a continuing security interest in all of Debtors’¹¹ personal property. UCC-1
8 financing statements were subsequently filed with the Delaware Secretary of State. To the extent
9 that USB has a lien in the Hertz Collateral other than the Golf Carts, the lien of the Hertz
10 Security Agreement is in second position behind the lien of USB.

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

15 On the Petition Date, the balance due and owing on the Hertz Loan was approximately
16 \$565,000.

17 **3. The Bookbinder Loans.**

18 Roger S. Bookbinder (“Bookbinder”) made two secured loans to Debtors.

19 a. **John Deer Fairway Mower Purchase Money Loan.**

20 The first Bookbinder loan, in the amount of \$7,833.60 was made on May 15, 2012
21 (“Bookbinder Equipment Loan”). The Bookbinder Equipment Loan is secured by a John Deere
22 3253C Fairway mower evidenced by a signed security agreement and a UCC-1 filed in the State
23 of Delaware. As of the Petition Date, the amount owing on the Bookbinder Equipment Loan was
24 \$7,199.99.

25 b. **Chevrolet Silverado 2500 Purchase Money Loan**

26 The second Bookbinder loan in the amount of \$9,498 was made on July 15, 2010 (the

27 _____
28 ¹¹ The Hertz Security Agreement also includes a continuing security interest in MTS Beverages’ personal property.

1 “Bookbinder Automobile Loan” and together with the Bookbinder Equipment Loan, the
2 “Bookbinder Loans”). The Bookbinder Automobile Loan is secured by a 2006 Chevrolet
3 Silverado 2500 as evidenced by a lien on the vehicle’s title and a UCC-1 filed in Arizona. As of
4 the Petition Date \$5,248.95.

5 **4. Secured Tax Claim**

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

10 **F. The Events Necessitating the Commencement of the Chapter 11 Cases.**

11 Debtors were unable to reach a resolution with USB and, on April 20, 2012, USB
12 recorded its Notice of Trustee’s Sale. The Trustee’s sale was set for July 26, 2012. Despite the
13 fact that there was significant equity in the Real Property, in order to preserve the value of
14 Debtors’ Estates for the benefit of all of their creditors and equity security holders, Debtors
15 commenced their Chapter 11 Cases on July 19, 2012.

16 **G. Commencement of the Chapter 11 Cases and Significant Events in the Cases.**

17 **1. The Initial Filings and UST Requirements.**

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

21 Debtors attended an initial debtor interview with the U.S. Trustee’s office and they
22 concluded their Section 341 meetings of creditors. See *Minutes of Meeting* [ECF No. 99; Case
23 No. 2:12-bk-16259-EWH, ECF No. 24]. Debtors have also filed all monthly operating reports
24 required to date. See *Monthly Operating Reports* [ECF Nos. 170-173, 224, 225, 312, 313, 386,
25 387].

26 **2. First Day Motions and DIP Financing.**

27 Debtors sought and obtained relief in First Day Motions necessary to continue their
28 normal operations. These motions included Debtors’ *Emergency Motion for Entry of an Interim*

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

22 The cash on hand, cash collateral, and cash from existing operations were insufficient to
23 allow Debtors to continue operations and prepare the Resort for redevelopment. To further the
24 goals of the Chapter 11 Cases, Debtors obtained a commitment from their ultimate owner, Jamie
25 Sohacheski, for \$1.08 million of unsecured debt to help fund Debtors’ operations during the
26 projected course of Bankruptcy Cases and sought approval of the loan through their *Emergency*
27 *Motion Seeking Interim and Final Orders (1) Authorizing Debtors to Obtain Post-Petition*
28 *Financing, (2) Allowing the DIP Lender’s Claim as an Administrative Expense Pursuant to*

1 *Section 364(b) of the Bankruptcy Code, and (3) Setting and Prescribing the Form and Manner of*
2 *Notice for a Final Hearing* [ECF No. 50] (the “DIP Financing Motion”). The DIP Financing
3 Motion was supported by the *Declaration of Robert Flaxman in Support of Emergency Motion*
4 *Seeking Interim and Final Orders (1) Authorizing Debtors to Obtain Post-Petition Financing,*
5 *(2) Allowing the DIP Lender’s Claim as an Administrative Expense Pursuant to Section 364(b)*
6 *of the Bankruptcy Code, and (3) Setting and Prescribing the Form and Manner of Notice for a*
7 *Final Hearing* [ECF No. 51]. Debtors’ DIP Financing Motion was granted on an interim basis
8 on September 19, 2012 [ECF No. 149] and then on a final basis on December 17, 2012 [ECF No.
9 391].

10 **3. Litigation with USB in the Chapter 11 Cases**

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

18 USB filed an *Emergency Motion to Modify and Terminate the Automatic Stay, and for*
19 *Related Relief, With Respect to 68 Acres of Real Property in Paradise Valley, Arizona* [ECF No.
20 55] that was heard and denied at a hearing on August 22, 2012. See, *Minute Entry* [ECF No.
21 103]. USB also filed *U.S. Bank’s Motion to Dismiss or Convert Bankruptcy Cases* [ECF No.
22 169] which was heard and denied on October 29, 2012. See, *Minute Entry* [ECF 274]. USB
23 filed a second *Motion to Modify and Terminate the Automatic Stay, and for Related Relief, With*
24 *Respect to 68 Acres of Real Property in Paradise Valley, Arizona* [ECF No. 106] which came on
25 for hearing on November 8, 2012 and December 7, 2012, and was ultimately denied. See,
26 _____ [ECF No. ____].

27 **4. Additional Motions.**

28 Although there are technically 330 “parties-in-interest” in the Bankruptcy Cases, the

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

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

19 On October 5, 2012, Debtors filed a *Motion to Enforce Automatic Stay Pursuant to 11*
20 *U.S.C. § 362(a)* [ECF No. 191] (the “Enforcement Motion”) against PVT as a result of PVT’s
21 denial of two building permit applications submitted pursuant to the Development Agreement.
22 Debtors and PVT have agreed to postpone any briefing and the hearing while they further
23 negotiate the SUP. Debtors and PVT have entered into several stipulated orders extending the
24 briefing schedule on the Enforcement Motion, which is not scheduled for hearing but is
25 anticipated to be set after March 2013. See ECF Nos. 211, 282, 228, 291, 402, 403.

26 On December 14, 2012, Debtors filed a *Motion for Entry of an Order Fixing Bar Date*
27 *and Procedures for Filing Proofs of Claim* [ECF No. 385] (the “Bar Date Motion”), which
28 sought to establish a bar date of January 31, 2013 as the deadline to file proofs of claims. The

1 Bar Date Motion was approved on January 9, 2013. See ECF No. 416.

2 **5. Adversary Proceeding.**

3 Debtors filed an adversary proceeding (the “Adversary Proceeding”) seeking an
4 injunction against USB to prevent USB from pursuing a writ of attachment or execution on a
5 judgment against Debtors’ guarantor, Jamie Sohacheski. See 2:12-ap-01781-EWH. In the
6 Adversary Proceeding, Debtors sought a temporary restraining order and a preliminary
7 injunction. The preliminary injunction was granted on December 7, 2012.

8 **6. Debtors’ Employment of Professionals.**

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

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

24 On August 22, 2012, Debtors filed an *Application for Order Authorizing Employment of*
25 *Squire Sanders as Special Real Estate Counsel for Debtors* (the “Squires Retention
26 Application”) [ECF No. 94] seeking to employ Squires Sanders as special counsel on real estate
27 issues related to the Resort in the Chapter 11 Cases. On August 23, 2012, the Bankruptcy Court
28 entered an order approving the Squires Retention Application. See *Order Authorizing*

1 *Employment of Squire Sanders as Special Real Estate Counsel for Debtors* [ECF No. 94].
2 Squires Sanders subsequently determined that it had a conflict and could not represent Debtors.

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

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

18 On September 14, 2012, Debtors filed an *Application for Order Authorizing the*
19 *Employment of Fleet-Fisher Engineering Inc. as Civil Engineer for the Debtors Nunc Pro Tunc*
20 *to the Petition Date* (the “FFE Retention Application”) [ECF No. 142] seeking to employ Fleet-
21 Fisher Engineering, Inc. as a civil engineer on the Resort in the Chapter 11 Cases. On September
22 18, 2012, the Bankruptcy Court entered an order approving the FFE Retention Application *nunc*
23 *pro tunc* to the Petition Date. See *Order Authorizing the Employment of Fleet-Fisher*
24 *Engineering Inc. as Civil Engineer for the Debtors Nunc Pro Tunc to the Petition Date* [ECF
25 No. 152].

26 On October 25, 2012, Debtors filed an *Application for Order Authorizing the*
27 *Employment of Kenneth B. Funsten as Debtors’ Interest Rate and Feasibility Expert* (the
28 “Funsten Retention Application”) [ECF No. 254] seeking to employ Kenneth B. Funsten as an

1 interest rate and feasibility expert in support of confirmation on Debtors' Plan. On October 30,
 2 2012, the Bankruptcy Court entered an order approving the Funsten Retention Application *nunc*
 3 *pro tunc* to the Petition Date. See Amended Order Authorizing the Employment of Kenneth B,
 4 Funsten as Debtors' Interest Rate and Feasibility Expert [ECF No. 276].

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

12 **7. Applications for Authority to Pay Professionals.**

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

Date	Application	Amount	Status
October 25, 2012	<i>First Monthly Application of Forrest Richardson & Associates seeking Interim Compensation for Services Rendered as Debtors' Golf Course Architect through September 25, 2012</i> [ECF No. 250]	\$2,084.48.	Approved
October 29, 2012	<i>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</i> [ECF No. 269]	\$86,009.41.	Approved
November 1, 2012	<i>First Monthly Application of Fleet-Fisher Engineering, Inc. Seeking Interim Compensation for Services Rendered as Debtors' Civil Engineer Through September 30, 2012</i> [ECF No. 285]	\$28,931.93	Approved
November 1, 2012	<i>First Monthly Application Seeking Interim Compensation of Oz Architects, Inc. for Services Rendered as Debtors' Architect Through September 30, 2012</i> [ECF No. 288]	\$61,357.36	Approved
January 7, 2013	<i>Second Interim Application of Fleet Fisher Engineering Inc. Seeking Compensation for Services</i>	\$20,931.38	Pending

1		<i>Rendered as Civil Engineer for Debtors from October 1, 2012 through November 30, 2012 [ECF No. 407]</i>		
2				
3	January 8, 2013	<i>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]</i>	\$486,829.47	Pending
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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.

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

1 UCC-1 financing statements are to be filed with the DL SOS, and the Reorganized Debtor is
2 authorized to commence drawing the Exit Loan proceeds.

3 **2. Post Effective-Date Events and Financing**

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

12 The Debtor has a commitment for the Exit Financing and the Guarantor is ready willing
13 and able to pay down the USB Loan.

14 Once the obligation to USB has been reduced the Resort may be redeveloped with
15 additional payments to secured lenders triggering lien release provision provided in the Plan.

16 **3. The Amended and Restated Notes and Loan Documents.**

17 On the Effective Date, the Restated DIP Loan Documents, Restated USB Loan
18 Documents, Restated Hertz Loan Documents, Restated Bookbinder Automobile Loan
19 Documents and Restated Bookbinder Equipment Loan Documents shall remain in full force and
20 effect, save and expect that without any further action by Reorganized Debtor or the DIP Lender,
21 USB Lender or Hertz Lender, as applicable, all of the DIP Loan Documents, USB Loan
22 Documents, Hertz Loan Documents, Bookbinder Equipment Loan Documents, and Bookbinder
23 Automobile Loan Documents shall be deemed to have been amended and restated as set forth in
24 Sections 2.3, 2.4, 4.1 4.2 4.3 and 4.4 of the Plan. All amendments necessary to implement and
25 effectuate the provisions of this Plan shall be deemed to have been made. All potential
26 discrepancies or inconsistencies between the DIP Loan Documents, USB Loan Documents,
27 Hertz Loan Documents, Bookbinder Automobile Loan Documents, Bookbinder Equipment Loan
28 Documents, Restated DIP Loan Documents, Restated USB Loan Documents Restated Hertz

1 Loan Documents, Restated Bookbinder Automobile Loan Documents, and Restated Bookbinder
2 Equipment Loan Documents and this Plan shall be construed and resolved in favor of the
3 effectuation and implementation of the provisions and intentions of this Plan.

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

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

10 **5. Effectuation of Transactions.**

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

17 **6. Notice of Effectiveness.**

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

23 **7. No Governance Action Required.**

24 As of the Effective Date: (i) the adoption, execution, delivery, and implementation or
25 assignment of all contracts, leases, instruments, releases, and other agreements related to or
26 contemplated by the Plan; and (ii) the other matters provided for under or in furtherance of the
27 Plan involving corporate action to be taken by or required of Debtors shall be deemed to have
28 occurred and be effective as provided herein, and shall be authorized and approved in all respects

1 without further order of the Bankruptcy Court or any requirement of further action by the
2 members or managers of Debtors.

3 **8. Filing with the Delaware Secretary of State.**

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

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

10 From and after the Effective Date, Reorganized Debtor will continue to be managed by
11 Debtors' pre-petition manager, MTS Beverages as manager and Crown Development as sub-
12 manager, which management may subsequently be modified to the extent provided by
13 Reorganized Debtor's articles of organization, by-laws, operating agreement (as amended,
14 supplemented, or modified) and management agreements. On and after the Effective Date, the
15 appropriate managers or members of Reorganized Debtor are authorized to issue, execute,
16 deliver, and consummate the transactions contemplated by or described in the Plan in the name
17 of and on behalf of Reorganized Debtor without further notice to or order of the Bankruptcy
18 Court, act or action under applicable law, regulation, order, rule, or any requirements of further
19 action, vote, or other approval or authorization by any Person.

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

25 **10. Development Agreement, PVT Approvals, Golf Course Development, and**
26 **Property Restrictions.**

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

1 a. **Development Agreement.**

2 The Development Agreement runs with the Real Property and is in full force and effect
3 so long as all or a portion of the Real Property is devoted to “Resort Uses” (as defined in the
4 Development Agreement), subject to being superseded by the PVT Approvals set forth in part
5 (b) infra. Portions of the Real Property have been continuously devoted to Resort Uses since the
6 Development Agreement was adopted. Based on the Development Agreement, the Real
7 Property can be developed in accordance with the Development Agreement and the
8 Development Agreement Entitlements. On the Effective Date, the Reorganized Debtor shall be
9 entitled and authorized to develop the Real Property in accordance with the Development
10 Agreement and the Development Agreement Entitlements as set forth in Schedule 5.3.1 to the
11 Plan.

12 PVT shall promptly approve all building plans and permits as contemplated in the
13 Development Agreement and the Development Agreement Entitlements in accordance with
14 applicable building codes.

15 b. **PVT Approvals.**

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

17 (i) If the PVT Approvals are approved by PVT and Debtors or
18 Reorganized Debtor, as applicable, and in effect by March 31, 2013, then the
19 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.

20 (ii) If any improvements constructed under and in accordance with
21 PVT Approvals, then in the event of a subsequent invalidation, such
22 improvements will be considered legal non-conforming uses under the
Development Agreement.

23 (iii) If the PVT Approvals are not approved by PVT and Debtors or
24 Reorganized Debtor, as applicable, and in effect by March 31, 2013 or such PVT
25 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
26 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.

27 c. **Golf Course Restrictions.**

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

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

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

7 (iii) As part of the PVT Approvals, the Reorganized Debtor may agree
8 to restrict a portion of the Real Property to use as a golf course or open space.
9 Unless new restrictions are imposed by the Reorganized Debtor, there is no
restriction that requires a portion of the Real 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.

10 d. **Mountain Shadows East and Mountain Shadows West Restrictions.**

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

15 e. **Lot 68 Restrictions.**

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

17 (i) The owners of Mountain Shadows East (a) currently use
18 portions of Lot 68 and property owned by Mountain Shadows East to
19 access the driveway to Lincoln Drive and (b) currently use portions of Lot
20 68 and portions of the Real Property to access the driveway to 56th Street.
21 The Debtors (a) currently use portions of Lot 68 and property owned by
22 Mountain Shadows East to access the driveway to Lincoln Drive, (b)
23 currently use portions of Lot 68 to access the Real Property, and (c)
24 currently use portions of Lot 68 and portions of the Real Property to
25 access Lincoln Drive and 56th Street. Such current access is generally
26 depicted on **Exhibit "3"** to this Disclosure Statement.

27 (ii) After the Effective Date, the Reorganized Debtor (a) may,
28 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, at 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"** to this Disclosure Statement or over relocated access to
56th Street, as determined by the Reorganized Debtor in its sole
discretion.

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

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

6 a. Demolish existing improvements, including buildings, curb, gutter,
7 striping, lighting, and landscaping;

8 b. Construct new improvements, including driveways and parking
9 (including but not limited to medians, lighting, striping, curbs, and gutters);
10 landscaping (including but not limited to irrigation equipment and lines, lighting,
11 trees, shrubs, and other plants); drainage facilities (including but not limited to
12 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; and
related improvements, equipment, and installations from time to time; and

13 c. Fully and exclusively utilize such area.

14 f. **Lot 130 and Lot 130-A Restrictions.**

15 With regard to the use of Lot 130-A, the Confirmation Order shall provide that owners of
16 Mountain Shadows West shall have continuous paved access (i) from the northernmost part of
17 Lot 130 to the driveway to Lincoln Drive and 56th Street as such access exists on the Effective
18 Date or (ii) from the northernmost part of Lot 130 to either Lincoln Drive or 56th Street or both,
19 as such access may be relocated and constructed after the Effective Date by the Reorganized
20 Debtor at its sole cost and discretion. Upon completion of the access contemplated by (ii), the
21 owners of Mountain Shadows West shall thereafter have no right to use Lot 130-A. With regard
22 to the existing guardhouse used by Mountain Shadows West and located on Lot 130-A, such
23 guardhouse may remain in its current footprint as constructed as of the Effective Date, provided
24 that Mountain Shadows West shall (i) continue to own the guardhouse improvements (ii) be
25 solely responsible for all cost and expenses relating to the ownership, use, maintenance, and
26 repair of the guardhouse, and (iii) to the fullest extent allowed by law, indemnify, defend, and
27 hold harmless Debtors and Reorganized Debtor for, from, and against all claims, costs, and
28 expenses (including attorneys' fees) arising from or related to the guardhouse.

1 g. **Sewers.**

2 With regard to the Sewer Locations-Recorded and the Sewer Locations-Unrecorded, the
3 Confirmation Order shall provide that the sewer lines may be relocated at the cost of the
4 Reorganized Debtor, with any further maintenance performed at the cost of owners of Mountain
5 Shadows West. With respect to the Sewer Locations-Recorded, all other terms of the Sewer
6 Easement recorded on September 28, 1961, in Docket 3863, page 75, of the records of Maricopa
7 County, Arizona, shall remain in effect.

8 h. **Camelback Golf Course Leases.**

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

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

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

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

21 **B. Executory Contracts and Unexpired Leases.**

22 1. **Executory Contracts.**

23 Except for Executory Contracts and Unexpired Leases specifically addressed in the Plan
24 or set forth on the schedule of rejected Executed Contracts and Unexpired Leases attached as
25 Schedule 6.1 to the Plan (which may be supplemented and amended up to the date that the
26 Bankruptcy Court enters the Confirmation Order), all Executory Contracts and Unexpired Leases
27 that exist on the Confirmation Date shall be deemed assumed by Debtors on the Effective Date.
28 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

1 Unexpired Leases on Schedule 6.1 to the Plan.

2 **2. Approval of Assumption or Rejection.**

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

18 **3. Cure of Defaults.**

19 Reorganized Debtor shall Cure any defaults respecting each Executory Contract or
20 Unexpired Lease assumed pursuant to Section 6.1 of the Plan upon the latest of: (i) the Effective
21 Date or as soon thereafter as practicable; (ii) such dates as may be fixed by the Bankruptcy Court
22 or agreed upon by Debtors, and after the Effective Date, Reorganized Debtor; or (iii) the
23 fourteenth (14th) Business Day after the entry of a Final Order resolving any dispute regarding:
24 (a) a Cure amount; (b) the ability of Reorganized Debtor to provide “adequate assurance of
25 future performance” under the Executory Contract or Unexpired Lease assumed pursuant to the
26 Plan in accordance with Section 365(b)(1); or (c) any matter pertaining to assumption,
27 assignment, or the Cure of a particular Executory Contract or an Unexpired Lease.

28 ///

1 **4. Objection to Cure Amounts.**

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

11 **5. Confirmation Order.**

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

20 **6. Post-Petition Date Contracts and Leases.**

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

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

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

1 **C. Manner of Distribution of Property Under the Plan.**

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

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

16 **D. Conditions to Confirmation of the Plan.**

17 **1. Conditions to Confirmation.**

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

20 **2. Conditions to Effectiveness.**

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

22 (1) The Confirmation Order shall be a Final Order, except that Debtors
23 reserve the right to cause the Effective Date to occur notwithstanding the pendency of an appeal
24 of the Confirmation Order;

25 (2) No request for revocation of the Confirmation Order under Section 1144
26 of the Bankruptcy Code shall have been made, or, if made, shall remain pending, including any
27 appeal; and
28

1 (3) All documents necessary to implement the transactions contemplated by
2 the Plan shall be in form and substance reasonably acceptable to Debtors.

3 **3. Waiver of Conditions.**

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

7 **VII.**
8 **RISK FACTORS**

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

11 **A. Debtors Have No Duty To Update.**

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

17 **B. Information Presented Is Based on Debtors' Books and Records, and Is Unaudited.**

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

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

23 Certain information in this Disclosure Statement is, by nature, forward looking, and
24 contains estimates and assumptions which might ultimately prove to be incorrect, and projections
25 which may differ materially from actual future results. There are uncertainties associated with
26 all assumptions, projections, and estimates, and they should not be considered assurances or
27 guarantees of the amount of Claims in the various Classes that will be allowed. The allowed
28 amount of Claims in each Class, as well as Administrative Claims, could be significantly more

1 than projected, which in turn, could cause the value of Distributions to be reduced or to be
2 tendered over a longer period of time than anticipated.

3 **D. No Assurance of Sale or Capital Infusions.**

4 The Plan contemplates various payments to Holders of Allowed Claims, including the
5 Restated USB Loan, Restated Hertz Loan, Restated Automobile Note, Restated Equipment Note,
6 Exit Loan, DIP Loan and Allowed General Unsecured Claims. While Debtors believe that
7 revenues will be sufficient to meet all of these obligations on a timely basis, there is no assurance
8 that Reorganized Debtor will be able to refinance its obligations, sell Parcels of Real Property or
9 infuse sufficient working capital to insure these payments.

10 **E. No Legal or Tax Advice Is Provided to You By this Disclosure Statement.**

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

15 **F. No Admissions Made.**

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

19 **G. No Waiver of Right to Object or Right to Recover Transfers and Estate Assets.**

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

24 **H. Bankruptcy Law Risks and Considerations.**

25 **1. Confirmation of the Plan Is Not Assured.**

26 Confirmation requires, among other things, a finding by the Bankruptcy Court that it is
27 not likely there will be a need for further financial reorganization and that the value of
28 distributions to dissenting members of Impaired Classes of Creditors and Holders of Equity

1 Interests would not be less than the value of distributions such Creditors and Holders of Equity
2 Interests would receive if Debtors were liquidated under Chapter 7 of the Bankruptcy Code.
3 Although Debtors believe that the Plan will not be followed by a need for further financial
4 reorganization and that dissenting members of Impaired Classes of Creditors and Holders of
5 Equity Interests will receive distributions at least as great as they would receive in a liquidation
6 under Chapter 7, there can be no assurance that the Bankruptcy Court will conclude that this test
7 has been met.

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

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

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

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

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

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

27 In the Best Interests Analysis discussed herein, Debtors have projected the value of the
28 Assets that would be available for payment of expenses and Distributions to Holders of Allowed

1 Claims, as set forth in the Plan in the event of liquidation of the Assets. Debtors have made
2 certain assumptions in their Best Interests Analysis in arriving at a liquidation distribution, which
3 should be read carefully.

4 **I. Risks Related to Debtors' Business Operations.**

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

7 **1. Effect of the Chapter 11 Cases.**

8 If the Chapter 11 Cases continue for a prolonged period of time, the proceedings could
9 adversely affect Debtors business and operations. The longer the Chapter 11 Cases continue, the
10 more likely it is that Debtors' customers, suppliers, and agents as well as prospective purchasers
11 of the Real Property and funding sources could lose confidence in Debtors' ability to
12 successfully reorganize their business and will seek to establish alternative commercial
13 relationships. Consequently, Debtors might lose valuable business in the course of the Chapter
14 11 Cases.

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

20 **2. Force Majeure.**

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

23 **3. Leadership and Management.**

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

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

28 From time to time, federal, state, and local legislators and other government officials

1 have proposed and adopted changes in tax laws, or in the administration of those laws affecting
2 commerce. It is not possible to determine the likelihood of changes in tax laws or in the
3 administration of those laws. If adopted, changes to applicable tax laws could have a material
4 adverse effects on Debtors' business, financial condition, and results of operations. Any increase
5 in taxes may impact Debtors' future profitability.

6 **5. Enforceability of Development Agreement.**

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

15 **6. Regulatory Approvals.**

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

19 **VIII.**
20 **POST EFFECTIVE DATE OPERATIONS AND PROJECTIONS**

21 **A. Summary of Title to Property and Dischargeability.**

22 **1. Vesting of Assets.**

23 Subject to the provisions of the Plan, pursuant to Section 5.1 of the Plan and as permitted
24 by Section 1123(a)(5)(B) of the Bankruptcy Code, the Assets shall be transferred to Reorganized
25 Debtor on the Effective Date following substantive consolidation. As of the Effective Date, all
26 such property shall be free and clear of all Liens, Claims, and Equity Securities except as
27 otherwise provided herein. On and after the Effective Date, Reorganized Debtor may operate its
28 business and may use, acquire, and dispose of property and compromise or settle any Claim

1 without the supervision of or approval of the Bankruptcy Court and free and clear of any
2 restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly
3 imposed by the Plan or the Confirmation Order.

4 **2. Preservation of Avoidance Actions and Litigation Claims.**

5 In accordance with Section 1123(b)(3) of the Bankruptcy Code, and except as otherwise
6 expressly provided in the Plan, all Litigation Claims shall be assigned and transferred to
7 Reorganized Debtor pursuant to Section 5.1 of the Plan. Notwithstanding the foregoing, on and
8 after the Effective Date, the prosecution of the Litigation Claims lies in the sole and absolute
9 discretion of Reorganized Debtor.

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

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

1 such lawsuits.

2 **3. Discharge.**

3 On the Effective Date, unless otherwise expressly provided in the Plan or the
4 Confirmation Order, Debtors shall be discharged from any and all Claims to the fullest extent
5 provided in the Bankruptcy Code, including Sections 524 and 1141 of the Bankruptcy Code. All
6 consideration distributed under the Plan or the Confirmation Order shall be in exchange for, and
7 in complete satisfaction, settlement, discharge, and release of all Claims of any kind or nature
8 whatsoever against Debtors or any of their Assets or properties, and regardless of whether any
9 property shall have been distributed or retained pursuant to the Plan on account of such Claims.
10 Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the
11 Effective Date, Debtors shall be deemed discharged and released under and to the fullest extent
12 provided under Section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims of any
13 kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before
14 the Confirmation Date, and all debts of the kind specified in Section 502(g), 502(h), or 502(i) of
15 the Bankruptcy Code.

16 **4. Injunction.**

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

1 with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.

2 **5. Exculpation.**

3 From and after the Effective Date, neither Debtors, Reorganized Debtor, the
4 professionals employed on behalf of the Estate, nor any of their respective present or
5 former members, directors, officers, managers, employees, advisors, attorneys, or agents,
6 shall have or incur any liability, including derivative claims, but excluding direct claims, to
7 any Holder of a Claim or Equity Security or any other party-in-interest, or any of their
8 respective agents, employees, representatives, financial advisors, attorneys, or Affiliates, or
9 any of their successors or assigns, for any act or omission in connection with, relating to, or
10 arising out of (from the Petition Date forward), the Chapter 11 Cases, Reorganized Debtor,
11 the pursuit of confirmation of the Plan, or the consummation of the Plan, except for gross
12 negligence and willful misconduct, and in all respects shall be entitled to reasonably rely
13 upon the advice of counsel with respect to their duties and responsibilities under the Plan
14 or in the context of the Chapter 11 Cases.

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

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

26 **IX.**
27 **CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

28 THE FOLLOWING SUMMARY DOES NOT CONSTITUTE EITHER A TAX

1 OPINION OR TAX ADVICE TO ANY PERSON. NO REPRESENTATIONS REGARDING
2 THE EFFECT OF IMPLEMENTATION OF THE PLAN ON INDIVIDUAL CREDITORS
3 ARE MADE HEREIN OR OTHERWISE. RATHER, THE TAX DISCLOSURE IS
4 PROVIDED FOR INFORMATIONAL PURPOSES ONLY. ALL CREDITORS ARE URGED
5 TO CONSULT THEIR RESPECTIVE TAX ADVISORS REGARDING THE TAX
6 CONSEQUENCES OF THE PLAN.

7 Creditors, Equity Security Holders, and any Person affiliated with the foregoing are
8 strongly urged to consult their respective tax advisors regarding the federal, state, local, and
9 foreign tax consequences which may result from the confirmation and consummation of the Plan.
10 This Disclosure Statement shall not in any way be construed as making any representations
11 regarding the particular tax consequences of the confirmation and consummation of the Plan to
12 any Person. This Disclosure Statement is general in nature and is merely a summary discussion
13 of potential tax consequences and is based upon the Internal Revenue Code of 1986, as amended
14 (the "IRC"), and pertinent regulations, rulings, court decisions, and treasury decisions, all of
15 which are potentially subject to material and/or retroactive changes. Under the IRC, there may
16 be federal income tax consequences to Debtors, its Creditors, its Equity Security Holders, and/or
17 any Person affiliated therewith as a result of confirmation and consummation of the Plan.

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

28 CREDITORS SHOULD CONSULT THEIR TAX ADVISOR REGARDING THE TAX

1 TREATMENT (INCLUDING FEDERAL, STATE, LOCAL, AND FOREIGN TAX
2 CONSEQUENCES) OF THEIR RESPECTIVE ALLOWED CLAIMS. THIS DISCLOSURE IS
3 NOT A SUBSTITUTE FOR TAX PLANNING AND SPECIFIC ADVICE FOR PERSONS
4 AFFECTED BY THE PLAN.

5 **X.**
6 **CONFIRMATION OF THE PLAN**

7 **A. Confirmation Of The Plan.**

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

12 **B. Objections to Confirmation of the Plan.**

13 Section 1128(b) provides that any party-in-interest may object to confirmation of a plan.
14 Any objections to confirmation of the Plan must be in writing, must state with specificity the
15 grounds for any such objections, and must be timely filed with the Bankruptcy Court and served
16 upon counsel for Debtors at the following address:

17 GORDON SILVER
18 Attn: Robert C. Warnicke
19 One East Washington Suite 400
20 Phoenix Arizona 85004

21 For the Plan to be confirmed, the Plan must satisfy the requirements stated in Section
22 1129. In this regard, the Plan must satisfy, among other things, the following requirements.

23 **1. Best Interest of Creditors and Liquidation Analysis.**

24 Pursuant to Section 1129(a)(7) of the Bankruptcy Code, for the Plan to be confirmed, it
25 must provide that Creditors and Holders of Equity Securities will receive at least as much under
26 the Plan as they would receive in a liquidation of Debtors under Chapter 7 of the Bankruptcy
27 Code (the "Best Interest Test"). The Best Interest Test with respect to each impaired Class
28 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

1 Date, that is not less than the value such Holder would receive or retain if Debtors were
2 liquidated under Chapter 7 of the Bankruptcy Code. The Bankruptcy Court will determine
3 whether the value received under the Plan by the Holders of Allowed Claims in each Class of
4 Creditors or Equity Securities equals or exceeds the value that would be allocated to such
5 Holders in a liquidation under Chapter 7 of the Bankruptcy Code. Debtors believe that the Plan
6 meets the Best Interest Test and provides value which is not less than that which would be
7 recovered by each such holder in a Chapter 7 bankruptcy proceeding.

8 Generally, to determine what Holders of Allowed Claims and Equity Securities in each
9 impaired Class would receive if Debtors were liquidated, the Bankruptcy Court must determine
10 what funds would be generated from the liquidation of Debtors' Assets and properties in the
11 context of a Chapter 7 liquidation case, which for unsecured creditors would consist of the
12 proceeds resulting from the disposition of the Assets of Debtors, including the unencumbered
13 Cash held by Debtors at the time of the commencement of the liquidation case. Such Cash
14 amounts would be reduced by the costs and expenses of the liquidation and by such additional
15 Administrative Claims and Priority Claims as may result from the termination of Debtors'
16 businesses and the use of Chapter 7 for the purpose of liquidation.

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

1 in some amount for all funds distributed from the Estates.

2 It is further anticipated that a Chapter 7 liquidation would result in significant delay in the
3 payment, if any, to Creditors. Among other things, Chapter 7 cases could trigger a new bar date
4 for filing Claims that would be more than ninety (90) days following conversion of the Chapter
5 11 Cases to Chapter 7. Hence, a Chapter 7 liquidation would not only delay distribution but
6 raises the prospect of additional Claims that were not asserted in the Chapter 11 Cases.
7 Moreover, Claims that may arise in the Chapter 7 cases or result from the Chapter 11 Cases
8 would be paid in full from the Assets before the balance of the Assets would be made available
9 to pay pre-Chapter 11 Allowed Priority Claims, Allowed General Unsecured Claims, and Equity
10 Securities.

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

16 As set forth in the Liquidation Analysis¹² and accompanying notes annexed hereto as
17 **Exhibit “4,”** Debtors have determined that confirmation of the Plan will provide each Holder of
18 a Claim in an Impaired Class¹³ with no less of a recovery than he/she/it would receive if Debtors
19 were liquidated under Chapter 7. If the Plan is confirmed, Debtors project that all Creditors will
20 be paid 100% of their Allowed Claims.

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

25 _____
26 ¹² 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.

27 ¹³ The Impaired Classes are Class 1 (USB Secured Loan Claims), Class 2 (Hertz Secured Loan Claims), Class 3
28 (Bookbinder Automobile Loan Claim), Class 4 (Bookbinder Equipment Loan Claim), and Class 7 (General
Unsecured Claims).

1 Priority Unsecured Claims, General Unsecured Claims, and Equity Securities.

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

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

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

24 Thus, as evidenced by the Liquidation Analysis and the accompanying notes annexed
25 hereto as **Exhibit "4,"** the value provided under the Plan to the Holders of Allowed Claims in the
26 Impaired Classes is equal to or better than they would receive under a Chapter 7 liquidation.
27 *Specifically, as has been explained herein, if the Plan is confirmed, all Allowed Claims will be*
28 *paid in full with interest at the rates set forth in the Plan. Additionally, Holders of Equity*

1 *Securities as of the Record Date will retain all of their rights thereunder. Thus, Debtors*
2 *strongly encourages all Impaired Classes to vote in favor of confirmation of the Plan.*

3 **2. Feasibility.**

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

10 As demonstrated by the previous discussion of Debtors' financial condition, Debtors'
11 operations and Exit Loans generate sufficient cash flow to meet its payment obligations under
12 the Plan until the Real Property can be developed or refinanced and Parcels sold. Further, as
13 demonstrated by the Martori Appraisal, the value of Debtors' Assets exceeds the Secured
14 Claims, thereby enabling Debtor to sell the Real Property or to obtain refinancing prior to repay
15 in full the all Allowed Claims consistent with the provisions of the Plan. Furthermore, as
16 demonstrated by the Projections attached hereto as **Exhibit "2,"** Debtors will be able to satisfy
17 their obligations under the Plan. Provided the foregoing, Debtors are confident that it can
18 establish, and the Bankruptcy Court will find, that the Plan is feasible within the meaning of
19 Section 1129(a)(11) of the Plan.

20 **3. Accepting Impaired Class.**

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

24 **4. Acceptance of Plan.**

25 For an impaired Class of Claims to accept the Plan, those representing at least two-thirds
26 (2/3) in amount and a majority in number of the Allowed Claims voted in that Class must be cast
27 for acceptance of the Plan.

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1 **5. Confirmation Over a Dissenting Class (“Cram Down”).**

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

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

16 **6. Allowed Claims.**

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

26 Under the Plan, the deadline for filing objections to Claims is ninety (90) calendar days
27 following the Effective Date. If your Claim is not an Allowed Claim, it is a Disputed Claim and
28 you will not be entitled to vote on the Plan unless the Bankruptcy Court temporarily or

1 provisionally allows your Claim for voting purposes pursuant to Bankruptcy Rule 3018. If you
2 are uncertain as to the status of your Claim or Equity Security or if you have a dispute with
3 Debtors, you should check the Bankruptcy Court record carefully, including the Schedules of
4 Debtors, and you should seek appropriate legal advice. Debtors and its professionals cannot
5 advise you about such matters.

6 **7. Impaired Claims and Equity Securities.**

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

14 **8. Voting procedures.**

15 a. Submission of Ballots.

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

20 GORDON SILVER
21 Attn: Robert C. Warnicke
22 One East Washington Suite 400
23 Phoenix, Arizona 85004

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

26 b. Incomplete Ballots.

27 Unless otherwise ordered by the Bankruptcy Court, Ballots which are signed, dated, and
28 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.

1 c. Withdrawal of ballots.

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

5 d. Questions and Lost or Damaged Ballots.

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

9 **XI.**
10 **ALTERNATIVES TO THE PLAN**

11 **A. Debtors' Considerations.**

12 Debtors believe that the Plan provides Creditors with the best and most complete form of
13 recovery available. As a result, Debtors believe that the Plan serves the best interests of all
14 Creditors and parties-in-interest in the Chapter 11 Cases. In formulating and developing the
15 Plan, Debtors have explored other alternatives. Debtors believe not only that the Plan, as
16 described herein, fairly adjusts the rights of various Classes of Creditors and enables the
17 Creditors to realize the greatest sum possible under the circumstances, but also that rejection of
18 the Plan in favor of some theoretical alternative method of reconciling the Claims and Equity
19 Securities of the various Classes will not result in a better recovery for any Class.

20 **B. Alternative Plans of Reorganization.**

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

1 acceptances to the Plan.

2 **C. Liquidation Under Chapter 7.**

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

7 As previously stated, Debtors believe that a liquidation under Chapter 7 would result in a
8 substantially reduced recovery of funds by its Creditors because of: (i) additional Administrative
9 Expenses involved in the appointment of a Chapter 7 trustee for Debtors and attorneys and other
10 professionals to assist such Chapter 7 trustee; (ii) additional expenses and Claims, some of which
11 may be entitled to priority, which would be generated during the Chapter 7 liquidation; and (iii)
12 the possibility that Holders of Allowed Secured Claims would be entitled to relief from the
13 automatic stay in such Chapter 7 bankruptcy case, thereby likely resulting in a foreclosure sale of
14 the Real Property, which will reduce the recovery by Debtors' other Creditors and Equity
15 Security Holders. Accordingly, Debtors believe that all Holders of Allowed Claims will receive
16 a smaller, if any, distribution under a Chapter 7 liquidation.

17 **XII.**
18 **AVOIDANCE ACTIONS**

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

28 A bankruptcy trustee (or the entity as debtor-in-possession) may avoid as a fraudulent

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

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

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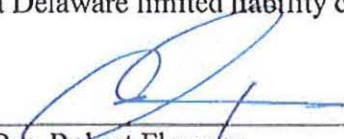
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XIII.
RECOMMENDATION AND CONCLUSION

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.

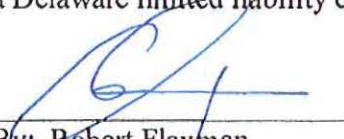
DATED this 14 day of January, 2013.

MTS LAND LLC,
a Delaware limited liability company



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

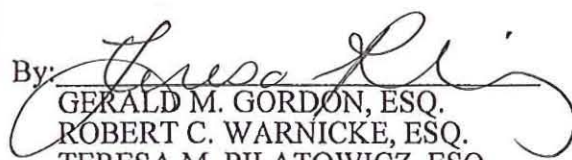
MTS GOLF LLC,
a Delaware limited liability company



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"	FINANCIAL PROJECTIONS
EXHIBIT "3"	LOT 68 VISUAL AID
EXHIBIT "4"	LIQUIDATION ANALYSIS