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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' THIRD 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 (collectively, 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' Third Amended Joint Plan of Reorganization* [ECF No. 492] (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>.

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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 **II.**
2 **INFORMATION REGARDING THE PLAN AND DISCLOSURE STATEMENT**

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

4 **1. What is Chapter 11?**

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

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

12 The objective is the confirmation (*i.e.* approval by the bankruptcy court) of a plan of
13 reorganization.

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

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

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

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

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

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

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 and it does not mean that the Plan has been or will be approved by the
8 Bankruptcy Court. **Approval of the Disclosure Statement does not constitute certification by**
9 **the Bankruptcy Court that the Disclosure Statement is not without inaccuracies.**

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

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

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

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

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

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

11 Impaired Claims and Equity Securities include those whose legal, equitable, or
12 contractual rights are altered by the Plan, even if the alteration is beneficial to the Creditor or
13 Equity Security Holder, or if the full amount of the Allowed Claims will not be paid under the
14 Plan. Holders of Claims and Equity Securities which are not Impaired under the Plan will be
15 deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code, and
16 Debtors need not solicit acceptance of the Plan by Holders of such Unimpaired Claims and
17 Equity Securities. Holders of Claims and Equity Securities which are to receive nothing under
18 the Plan will be deemed to have voted to reject the Plan; there are no such Holders under the
19 Plan.

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

24 Unimpaired Classes of Claims and Equity Securities in Class 5 (Secured Tax Claims),
25 Class 6 (Other Secured Claims), Class 7 (Priority Unsecured Claims), Class 9 (Convenience
26 Claims) and Class 10 (Equity Securities) will not vote on the Plan.

27 **A VOTE FOR ACCEPTANCE OF THE PLAN BY HOLDERS OF CLAIMS WHO**
28 **ARE ENTITLED TO VOTE IS MOST IMPORTANT. DEBTORS BELIEVE THAT THE**

1 TREATMENT OF HOLDERS OF IMPAIRED CLAIMS UNDER THE PLAN IS THE
2 BEST ALTERNATIVE FOR EACH OF THEM, AND DEBTORS RECOMMEND THAT
3 THE HOLDERS OF THOSE ALLOWED CLAIMS VOTE IN FAVOR OF THE PLAN.

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

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

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

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

14 The primary objective of the reorganization and restructuring under the Plan is, through
15 the entitlement and development and/or sale of the Real Property, to maximize returns to those
16 Creditors entitled to recoveries from the Estates as well as the Equity Security Holders, which is
17 ultimately Mr. Sohacheski. Debtors intend to pay in full all Allowed Administrative Claims,
18 Allowed Secured Claims, Allowed Priority Claims, and Allowed General Unsecured Claims,
19 with present equity retaining their interest in Debtors.

20 **12. How do Debtors intend to do this?**

21 Debtors first choice is to achieve this objective through an amicable entitlement process
22 predicated upon PVT's approval of a special use permit no later than April 19, 2013, in
23 conjunction with the approval and execution of an Amended and Restated Development
24 Agreement by Debtors and PVT no later than April 19, 2013, providing for the development of
25 the Real Property (the "SUP Approval").

26 **13. What happens if there is no SUP Approval?**

27 When the Real Property was annexed into PVT in 1992, the PVT Council adopted
28 Ordinance 339 providing for R-43 Zoning for the Real Property. As a further inducement to the

1 then owners of the Real Property to agree to the annexation, the PVT Council also adopted as
2 part of Ordinance 339, and Ordinances 336 and 341, the approval and authorization of the
3 Development Agreement which provides continued use of all then existing improvements and
4 uses as well as for the future redevelopment of the Real Property. However, PVT is now taking
5 the position that the Development Agreement was adopted in violation of applicable Arizona
6 statutes and is potentially not enforceable in whole or in part. PVT now claims that the Real
7 Property is subject solely to R-43 Zoning with the existing improvements and uses of the Real
8 Property being a legal and non-conforming use. Therefore, based on recent actions of PVT
9 (including but not limited to adoption of zoning and zoning maps in 2005 by the duly elected
10 Council and Planning Commission, letters from PVT to Debtors in August and September 2012
11 in connection with the building permit applications, and various pleadings of PVT), Debtors
12 believe the Real Property is zoned R-43 which allows up to one home per acre. This provides
13 the opportunity for the Reorganized Debtor to sell individual R-43 lots as more particularly
14 described herein. Based upon appraisals and other relevant market information, Debtors believe
15 that the proceeds from such sales will be more than sufficient to achieve the objective stated
16 above.

17 In addition, Debtors believe that the Development Agreement is valid and enforceable in
18 conjunction with the R-43 Zoning and is applicable to the Real Property as originally provided
19 for in Ordinance 339. Debtors also believe that the existing improvements and uses of the Real
20 Property are legal conforming uses to the extent the Development Agreement is effective in
21 whole or in part in respect to such use. The existing improvements may be used, remodeled,
22 improved or rebuilt following a casualty and operated (including those portions of the Real
23 Property not currently operational) for all historical uses, and uses allowed in the Development
24 Agreement including, but not limited to, resort hotel, golf, retail, restaurant, residential, and all
25 uses appurtenant or incidental thereto.

26 As such, one alternative is to accept the R-43 Zoning and sue PVT for the damages which
27 will be sustained as a result of the development and sale of the Real Property under R-43 Zoning.
28 As a result of the position of PVT regarding the Development Agreement as not being valid

1 (with which Debtors disagree), Debtors would be damaged because of the difference in the value
2 of the Real Property under the Development Agreement versus the value without the
3 Development Agreement. Based upon appraisals and other relevant market information, Debtors
4 believe that the difference in value between utilization of the R-43 Zoning and the Development
5 Agreement is no less than \$25,000,000, and most likely more.

6 As set forth in Schedule 1.1.106 to the Plan, the 43 separate residential lots have been
7 grouped into 3 R-43 Parcels comprised of 9, 11 and 8 residential lots each for a total of 28
8 residential lots, with the remaining 15 residential lots being held for individual sales not subject
9 to bulk sale. Debtors project a value of \$70,299,300 for the 43 residential lots with minimum
10 sales proceeds of \$52,724,522.

11 Another alternative is to seek to enforce the Development Agreement as the Reorganized
12 Debtor would do for any other contract and develop the Real Property in accordance therewith

13 Given the April 19, 2013 deadline for the SUP Approval, Debtors will have a much
14 clearer picture of which of these alternatives it will pursue by the time Confirmation Hearing is
15 commenced.

16 **14. Can the Bankruptcy Court authorize Debtors to develop the Property as**
17 **proposed in their Plan?**

18 Debtors are *not* requesting that the Bankruptcy Court modify or order zoning on the Real
19 Property. In the event of the SUP Approval, Debtors will seek the Bankruptcy Court's approval
20 and authorization to execute the Amended and Restated Development Agreement, and if
21 necessary in the future, to enforce the Amended and Restated Development Agreement against
22 the claims or assertions of other parties in interest. If there is a referendum or challenge to the
23 SUP Approval (including the Amended and Restated Development Agreement), or if the SUP
24 Approval or the Amended and Restated Development Agreement is for any other reason set
25 aside, Debtors reserve their right to proceed with R-43 Zoning and/or enforcement of the
26 Development Agreement. Assuming the R-43 Zoning, the Reorganized Debtor will simply
27 proceed in accordance with its rights thereunder, reserving the right to seek Bankruptcy Court
28 intervention if a dispute arises related thereto. As for the Development Agreement, the

1 Reorganized Debtor reserves the right to pursue either its damage claim for breach of the
2 Development Agreement or to enforce the Development Agreement as it would do with any
3 other contract.

4 As such, Debtors dispute any contention by parties in interest that the Plan proposes the
5 Bankruptcy Court retain the right to zone by order, “zone by contract”, or any other such decree.

6 **15. What happens if the Bankruptcy Court does not confirm the Plan?**

7 Debtors believe that their current Plan does not present a risk to Creditors that the
8 Bankruptcy Court will not confirm the Plan. Debtors have amended the Plan to provide
9 ultimately for development and sale of the Real Property under the R-43 Zoning or an accepted
10 SUP which will generate sufficient proceeds to pay all creditors in full and return proceeds to the
11 Holder of the Equity Securities. While the Reorganized Debtor will retain the right to either sue
12 for damages for breach of the Development Agreement or, alternatively, to seek to enforce the
13 Development Agreement, the ability to sell the Real Property for sums far in excess of the
14 amounts due Creditors will assure payment.

15 **16. What will happen to the Golf Course?**

16 Prior to the purchase of any residential lots in Mountain Shadows West, the then owners
17 of the Real Property recorded a Declaration of Restrictions on April 24, 1962 in the records of
18 Maricopa County, Arizona which provided for the termination of the Golf Course any time after
19 December 31, 1987. Neither the Development Agreement nor the existing R-43 Zoning under
20 Ordinance 339 requires that the Golf Course be maintained. In fact, the R-43 Zoning
21 contemplates and provides for the construction of residences on the current location of the Golf
22 Course.

23 Under the SUP Approval, Debtors agree to maintain the Golf Course, though they intend
24 to redesign portions thereof and eliminate portions of the existing driving range (which were
25 never subject to the Golf Course Restriction) and portions of three existing holes. If the SUP
26 Approval is not in place, then Debtors intend to discontinue the operation of the Golf Course and
27 replace it with residential lots as provided for under the existing R-43 Zoning, or if alternatively,
28 Debtors seek to enforce the Development Agreement, there is no assurance that the Golf Course

1 will be maintained and operated.

2 Certain parties, such as the MTS West HOA, have asserted rights under *Shalimar*
3 *Association vs. D.O.C. Enterprises, Ltd.*, 142 Ariz. 36, 688 P.2d 682 (Ct. App. 1984), in which
4 the Court held that restrictions of homeowner's properties could create an implied restriction on
5 the golf course where no previous restriction had been filed with respect to the golf course.
6 Neither the MTS West HOA nor any homeowners have taken affirmative action before the
7 Bankruptcy Court to determine their rights as they relate to *Shalimar* or development of the Real
8 Property. However, even if any party does take actions to assert *Shalimar* rights, Debtors are
9 confident that they will succeed on the merits. Unlike in *Shalimar*, the Golf Course Restriction
10 was recorded in public records prior to any transfer of the Real Property to MTS West
11 homeowners and is clear and unequivocal that the obligation to restrict land for Golf Course
12 usage expired in 1987. It was the *Shalimar* Court which specifically cited in its ruling that the
13 implied restrictive covenant only arose because there was no written agreement to the contrary.
14 Here the written agreement is unambiguous on its face.

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

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

19 **18. What happens after the voting is completed?**

20 After the appropriate Holders of Allowed Claims and Allowed Equity Securities have
21 voted to accept or reject the Plan, there will be a Confirmation Hearing to determine whether the
22 Plan should be confirmed by the Bankruptcy Court. At the Confirmation Hearing, the
23 Bankruptcy Court will consider whether the Plan satisfies the requirements of the Bankruptcy
24 Code. The Bankruptcy Court will also receive and consider a Ballot summary, which will
25 present a tally of the votes cast by those Classes of Creditors entitled to vote on the Plan.

26 **19. What will be the effect of confirmation of the Plan?**

27 Confirmation of a the Plan by the Bankruptcy Court will make the Plan binding upon
28 Debtors, any issuer of securities under the Plan, any person acquiring property under the Plan,

1 and any Creditor of Debtors, regardless of whether such Creditor: (i) is impaired under, or has
2 accepted, the Plan; or (ii) receives or retains any property under the Plan. Subject to certain
3 limited exceptions, and other than as provided in the Plan itself or the Confirmation Order, the
4 Confirmation Order discharges Debtors from any debt that arose prior to the date of confirmation
5 of the Plan and substitutes the obligations specified under the Plan.

6 **20. *Has the Securities Exchange Commission reviewed and approved this***
7 ***Disclosure Statement?***

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

27 Debtors have not authorized any representations about the Plan, themselves, or the value
28 of their property other than those set forth in this Disclosure Statement. Holders of Claims

1 proceed at their own risk to the extent they rely on any information, representations, or
2 inducements made or given to obtain their approval of the Plan that differ from, or are
3 inconsistent with, the information contained herein and in the Plan.

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

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

12 **III.**
GENERAL OVERVIEW OF THE PLAN

13 **A. General Overview.**

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

19

<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 ³
Class 2	Hertz Loan Claim	Impaired. Solicitation required.	\$565,000
Class 3	Bookbinder Automobile Loan Claim	Impaired Solicitation required	\$5,248.95

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28 ³ This is the amount due as of the Petition Date as asserted by USB without accruals since the Petition Date.

1	Class 4	Bookbinder Equipment Loan Claim	Impaired Solicitation required	\$7,199.99
2				
3	Class 5	Secured Tax Claims	Unimpaired No solicitation required.	\$1,344,037.53
4				
5	Class 6	Other Secured Claims	Unimpaired No solicitation required	\$0
6				
7	Class 7	Priority Unsecured Claims	Unimpaired No solicitation required.	\$500
8				
9	Class 8	General Unsecured Claims	Impaired. Solicitation required.	\$2,098,424.53 (Per the Schedules) ⁴
10				
11	Class 9	Convenience claims	Unimpaired No solicitation required	\$500.00 ⁵
12				
13	Class 10	Equity Securities	Unimpaired. No solicitation required.	N/A

14 **B. Treatment of Administrative Claims.**

15 Pursuant to Section 1123(a)(1), Allowed Administrative Claims are not designated as a
16 Class. The Holders of such unclassified Claims shall be paid in full under the Plan consistent
17 with the requirements of Section 1129(a)(9)(A) and are not entitled to vote on the Plan. The
18 amount of Administrative Claims incurred, but unpaid as of the Confirmation Hearing is
19 estimated to be \$1,800,000 as follows: DIP Loan Claims of \$1,080,000 plus accrued interest
20 addressed in Sections 2.3 of the Plan as well as the amount outstanding to Debtors' duly-retained
21

22 ⁴ The HOAs (and with regard to the MTS West Objection (as defined below), five MTS West Homeowners (as
23 defined below) contend that they are Creditors because they allege their rights will be negatively altered as a result
24 of the Plan and specifically by (1) the enforcement of the Development Agreement; (2) the unrestricted use of the
25 Golf Course land; and (3) revisions related to Lot 68 (by the MTS East HOA (as defined below). As further set forth
26 herein, the Development Agreement provides Debtors contractual rights to perform every act related to land use that
27 is set forth in the Plan. Debtors' rights are further supported by the now expired Golf Course Restriction (as defined
28 below). The HOAs' arguments are without merit. Debtors believe that neither the HOAs nor any of the MTS West
Homeowners (as defined below) or MTS East homeowners has allowed Claims in the Chapter 11 Cases, and if
Claims are filed in the Chapter 11 Cases, Debtors will seek to disallow such Claims, including on the basis that the
Claims were not filed by the Bar Date.

⁵ This includes the Claims filed by the MTS West HOA for \$33.52 in each of the Chapter 11 Cases.

1 professionals. Pursuant to Section 331 of the Bankruptcy Code, Debtors' duly-retained
2 professionals are able to seek the allowance and payment of their incurred fees and costs and
3 may do so prior to the Confirmation Hearing. To date, this Court has approved approximately
4 \$680,000 in administrative fees and Debtors anticipate they will seek the approval and payment
5 of approximately \$400,000 in additional fees prior to confirmation. Debtors anticipate the
6 following accrued but unpaid professional fees at the time of confirmation: (1) Debtors' then
7 unpaid professional fees and costs estimated to be \$300,000; (2) Debtors' special counsel for
8 land use and zoning matters fees estimated to be \$100,000; (3) Ordinary Course Professional
9 fees estimated to be \$100,000; and (4) Debtors' interest rate and feasibility expert's fees
10 estimated to be \$50,000. Any fees due and unpaid on or after the Effective Date will be paid
11 through the Exit Loan.

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 (14th) Business Day of the first full calendar month following the Effective Date, and on the
27 fourteenth (14th) Business Day of each subsequent month up to and including the twenty-fourth
28 (24th) full month after the Effective Date, Reorganized Debtor shall distribute to the DIP Lender

1 principal and interest payments on the outstanding balance of the Restated DIP Promissory Note
2 amortized over a period of twenty (20) years at the DIP Interest Rate; (d) the unpaid balance of
3 the Restated DIP Promissory Note shall be due and payable on December 31, 2016 (the
4 “Restated DIP Loan Maturity Date”); and (e) there shall be no penalty for prepayment for all or
5 part of the Restated DIP Promissory Note prior to the Restated DIP Loan Maturity Date.

6 **1. Class 1 – USB Loan Claim.**

7 Class 1 is comprised of the Secured Portion of the USB Loan Claim, which is calculated
8 as follows: The outstanding principal and accrued interest at the non-default rate due and owing
9 by Debtors to USB under the USB Note as of the Petition Date, which principal and interest
10 totals \$32,450,046.03, minus the Adequate Protection Payments tendered on account of the USB
11 Note, if any, plus: (i) any accrued and unpaid interest from the Petition Date up to the Effective
12 Date at the rate set forth in the USB Note; and (ii) reasonable attorney’s fees, costs, and expenses
13 incurred by USB post-petition and prior to the Effective Date, solely to the extent that such fees,
14 costs, and expenses are approved by entry of a Final Order of the Bankruptcy Court.⁶

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

24 **1. Principal Balance.** The principal balance of the Restated USB Note shall be: (i)
25 the Secured Portion of the Allowed USB Loan Claims as determined by the Bankruptcy
26 Court at the Confirmation Hearing or as otherwise agreed to in writing by USB and
Debtor less the Guarantor Contribution; or (ii) to the extent that USB makes the 1111(b)

27 ⁶ To the extent Debtors enter into an agreement with U.S. Bank regarding the treatment of the USB Loan
28 Claim, the Plan will be modified accordingly and Debtors will comply with the requirement of Section
1125 in this regard.

1 Election, the Allowed USB Loan Claims less the Guarantor Contribution.

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

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

8 **4. Monthly Payments.** Beginning on the fourteenth (14th) Business Day of the first
9 (1st) full month after the Effective Date, and on each subsequent month up to and through
10 the Restated UBS Loan Maturity Date, Reorganized Debtor shall distribute to USB
11 monthly principal and interest payments on the Secured Portion of the outstanding
12 balance of the Restated USB Note amortized over a period of twenty-five (25) years at
13 the USB Restated Interest Rate.

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

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

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

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

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

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

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

38 **a. Single Sale.** Prior to the Restated USB Loan Maturity Date, Reorganized

1 Debtor shall have the absolute right to sell the Real Property in one sale transaction free
2 and clear of USB's Liens; provided, however, that the proceeds of such sale are sufficient
3 at the time of closing of such sale to pay, and are utilized to pay, all sums then due and
owing under the Restated USB Note, unless USB otherwise agrees in its sole discretion.

4 b. R-43 Parcel Sales. In the event that Debtors or Reorganized Debtor, as
5 applicable, elects after April 19, 2013 that the R-43 Zoning is chosen as the course for the
6 Real Property, prior to the Restated USB Loan Maturity Date, Reorganized Debtor shall
7 have the absolute right to sell one or more of the R-43 Parcels from time to time for not
less than the R-43 Parcel Sales Prices and obtain a release of the applicable R-43
Parcel(s) free and clear of the Lien of the Restated USB Loan Documents on the
following conditions:⁷

8 1. USB shall have received from Reorganized Debtor written notice
9 of the request for the release of the R-43 Parcel at least ten (10) Business Days before the
proposed closing date for the R-43 Parcel Sale.

10 2. USB shall receive the R-43 Sale Price in cash on or the closing of
11 the applicable R-43 Parcel Sale in full satisfaction of the Lien of the Restated USB Loan
12 Documents against the applicable R-43 Parcel, unless within five (5) Business Days of
13 receipt of the written notice, USB elects in writing to credit the amount of the R-43
14 Parcel Sale Price against the then outstanding balance of the Restated USB Note and
receive title to the applicable R-43 Parcel free and clear of all Liens and claims, including
the Liens securing the Restated Chavi Note.

15 3. No Event of Default and no uncured event, for which notice has
16 been given by USB, that, with the passage of time, would be an Event of Default, shall
17 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.

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

22 d. Court Jurisdiction. In the event of a dispute regarding the operation or
23 satisfaction of any terms regarding this subsection governing R-43 Parcel Sales, the
24 parties shall be required to meet and confer in a good faith attempt to resolve any such
25 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
26 order shortening time for the adjudication such issues.

27 ⁷ As set forth in Schedule 1.1.106 to the Plan, the 43 separate residential lots have been grouped into 3 R-43 Parcels
28 comprised of 9, 11 and 8 residential lots each for a total of 28 residential lots, with the remaining 15 residential lots
being held for individual sales not subject to R-43 Parcel Sales.

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

8 **10. USB Loan Documents, USB Loan Agreement and USB Modification Agreement.**

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

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

25 c. Reorganized Debtor's entitlements and authorization to develop the Real
26 Property in accordance with the SUP Approvals, R-43 Zoning or Development
27 Agreement as provided for in the Plan satisfies the provisions of Section 7.15 of the USB
28 Loan Agreement as modified by the USB Modification Agreement (including with
respect to the USB Loan Documents, including the USB Deed of Trust).

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

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

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

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

1 state or local law.

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

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

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

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

16 h. With specific regard to Section 2.5 of the Modification Agreement
17 (including with respect to the USB Loan Documents, including the USB Deed of Trust),
18 as of the Effective Date, Reorganized Debtor is authorized and allowed to make any and
19 all Planned Improvements which Reorganized Debtor determines in its sole discretion are
20 in accordance with the SUP Approvals, R-43 Zoning or the Development Agreement
21 without USB consent or approval.

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

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

29 **2. Class 2 – Hertz Loan Claim.**

30 On the Effective Date, the Hertz Loan Documents shall remain in full force and effect,
31 save and except that: (i) without any further action by Debtors, Reorganized Debtor, or Hertz, all
32 of the Loan Documents shall be deemed to have been amended and modified (the “Restated
33 Hertz Loan Documents”) as follows; and (ii) the Allowed Hertz Loan Claims will be evidenced

1 by the Restated Hertz Note, which will be effective on the Effective Date and will generally
2 incorporate the terms of the Hertz Note as modified as follows:

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

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

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

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

16 **5. Maturity Date.** The unpaid balance of the Restated Hertz Note shall be due and
17 payable on the Restated Hertz Loan Maturity Date which is the last day of the twelfth
18 (12th) month after the commencement of interest payments on the Restated Hertz Loan.

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

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

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

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

b. **R-43 Parcel Sales.** Prior to the Restated Hertz Loan Maturity Date and
until such time as the Restated USB Note is paid in full, in the event that Debtors or
Reorganized Debtor, as applicable, elects after April 19, 2013, that the R-43 Zoning is the
course for the Real Property, prior to the Restated Hertz Loan Maturity Date,
Reorganized Debtor shall have the absolute right to sell one or more of the R-43 Parcels
from time to time for not less than the R-43 Parcel Sales Prices and obtain a release of the
applicable R-43 Parcel(s) free and clear of the Lien of the Restated Hertz Loan

1 Documents without payment of any portion of the R-43 Parcel Sales Price to the Holder
2 of the Allowed Hertz Loan Claims, provided no Event of Default and no uncured event,
3 for which notice has been given by USB or the Holder of the Hertz Note, that, with the
4 passage of time, would be an Event of Default, shall have occurred and be continuing.
5 Subsequent to the payment in full of the Restated USB Note, the Holder of the Restated
6 Hertz Note shall receive the R-43 Sale Price (or such remaining portion thereof after the
7 payment of the Restated USB Note) in cash on or the closing of the applicable R-43
8 Parcel Sale in full satisfaction of the Lien of the Restated Hertz Loan Documents against
9 the applicable R-43 Parcel.

10
11 c. Cooperation. Subject to the terms and conditions herein, the Reorganized
12 Debtor and Hertz shall use their commercially reasonable best efforts to cooperate and to
13 consummate each such proposed Parcel sale, including any reasonable requests for
14 information or execution of applicable documents, including releases and reconveyances
15 from the Liens of the Restated Hertz Loan Documents that are needed to effectuate such
16 a R-43 Parcel Sale.

17
18 d. Court Jurisdiction. In the event of a dispute regarding the operation or
19 satisfaction of any terms regarding this subsection governing R-43 Parcel Sales, the
20 parties shall be required to meet and confer in a good faith attempt to resolve any such
21 disputes; if the parties are unable to resolve such disputes, the Bankruptcy Court shall
22 retain jurisdiction to determine the satisfaction of the conditions in this subsection
23 governing R-43 Parcel Sales and each of the Reorganized Debtor and Hertz hereby
24 consents to an order shortening time for the adjudication such issues.

25
26 **9. Insolvency and Bankruptcy Relief.** Debtors' pre-Effective Date insolvency,
27 inability to pay its debts as they mature, the making of an assignment for the benefit of
28 creditors by Debtors or the Hertz Guarantor, the appointment of a receiver of the property
of Debtors or the Hertz Guarantor, or the filing of a voluntary or involuntary petition
under the Bankruptcy Code or similar proceeding under law against Debtors or the Hertz
Guarantor shall not constitute an event of default under the Loan Documents.

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

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

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

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

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

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

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

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

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

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

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

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

4. Class 4 – Bookbinder Equipment Loan Claim.

 On the Effective Date, the Bookbinder Equipment Loan Documents shall remain in full
force and effect, save and except that: (i) without any further action by Debtors, Reorganized

1 Debtors, or Bookbinder, all of the Bookbinder Equipment Loan Documents shall be deemed to
2 have been amended and modified (the “Restated Bookbinder Equipment Loan Documents”) as
3 follows; and (ii) the Allowed Bookbinder Equipment Loan Claim will be evidenced by the
4 Restated Equipment Note, which will be effective on the Effective Date and will generally
5 incorporate the terms of the Equipment Note as modified as follows:

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

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

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

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

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

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

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

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

27 **5. Class 5 – Secured Tax Claims.**

28 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 Exit Loan upon
the latest of: (i) the Effective Date or as soon thereafter as practicable; (ii) such date as may be
fixed by the Bankruptcy Court; (iii) the fourteenth (14th) Business Day after such Claim is
Allowed; and (iv) such date as agreed upon by the Holder of such Secured Tax Claim and

1 Debtors, and after the Effective Date, Reorganized Debtor.

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

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

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

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

13 **7. Class 7 – Priority Unsecured Claims.**

14 Each Priority Unsecured Claim,⁹ if any, shall, in full and final satisfaction of such
15 Claims, be paid in full in Cash on the latest of: (i) the Effective Date, or as soon thereafter as is
16 practical; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as is
17 practicable; (iii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon
18 thereafter as is practicable; or (iv) such date as the Holder of such Claim and Reorganized
19 Debtors have agreed or shall agree.

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

22 **8. Class 8 – General Unsecured Claims.**

23 A General Unsecured Claim is a Claim, including a Claim arising under Section 502(g)
24 of the Bankruptcy Code that is not secured by a charge against or interest in property in which
25

26 ⁸ “Other Secured Claims” are any Secured Claim, other than the USB Loan Claims, the Hertz Loan
27 Claims, the Bookbinder Automobile Loan Claim and the Bookbinder Equipment Loan Claim.

28 ⁹ “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 the Estate has an interest and is not an unclassified Claim, Administrative Claim, or Priority
2 Unsecured Claim.

3 Except to the extent that a Creditor with an Allowed General Unsecured Claim agrees to
4 less favorable treatment, each Creditor with an Allowed General Unsecured Claim, shall, in full
5 and final satisfaction of such Claim, be paid in full in Cash, plus post-Effective Date interest at
6 the Unsecured Interest Rate.

7 a. In the event that USB is determined by the Bankruptcy Court to be entitled to the
8 1111(b) Election and elects to make it: on the latest of: (i) the first (1st) anniversary of the
9 Effective Date, as soon thereafter as is practical; (ii) such date as may be fixed by the Bankruptcy
10 Court, or as soon thereafter as is practicable; (iii) the fourteenth (14th) Business Day after such
11 Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder of such
12 Claim and Reorganized Debtor have agreed or shall agree.

13 b. In the event that USB is determined by the Bankruptcy Court to be entitled to the
14 1111(b) Election and elects not to make it: The total amount of Allowed General Unsecured
15 Claims (including the Allowed unsecured portion of the USB Claims) plus interest at the
16 Unsecured Interest Rate, shall be paid in sixty (60) equal monthly payments beginning on the
17 fourteenth (14th) Business Day of the first (1st) full month after the Effective Date, and on the
18 same day of each subsequent month; provided, however, in the event that the Class 1 USB Loan
19 Claims and the Class 2 Hertz Loan Claims are paid in full prior to the sixtieth (60th) month, then
20 all net proceeds from the sale of the remaining Real Property shall be distributed Pro Rata among
21 the Holders of Allowed General Unsecured Claims until paid in full.

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

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

27 **9. Class 9 – Convenience Claims.**

28 On the latest of: (i) the Effective Date, or as soon thereafter as is practical; (ii) such date

1 as may be fixed by the Bankruptcy Court, or as soon thereafter as is practicable; (iii) the
2 fourteenth (14th) Business Day after such Claim is Allowed, or as soon thereafter as is
3 practicable; or (iv) such date as the Holder of such Claim and Reorganized Debtor have agreed,
4 in full satisfaction, settlement, release and discharge of and in exchange for the Convenience
5 Claims, each Holder of any Allowed Convenience Claim shall receive Cash in the full amount
6 of such Holder's Allowed Convenience Claim.

7 Class 9 is Unimpaired under the Plan, and the Holders of Convenience Claims are
8 deemed to have accepted the Plan and are not entitled to vote on the Plan.

9 **10. Class 10 – Equity Securities.**

10 On the Effective Date, the Holders of Equity Securities of Debtors shall retain all of their
11 legal interests. The Holders of the Class 10 Equity Securities are Unimpaired, and are therefore
12 deemed to have accepted the Plan and are not entitled to vote on the Plan

13 **IV.**
14 **SUMMARY OF VOTING PROCESS**

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

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

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

25 **B. Summary of Voting Requirements.**

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

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

5 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

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

12
13 **V.**
INFORMATION ABOUT DEBTORS' BUSINESS AND THE CHAPTER 11 CASES

14 **A. Description of Debtors' Business and Acquisition History.**

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

21 The Resort is situated along both sides of 56th Street south of Lincoln Drive in Paradise
22 Valley, Arizona. The Maricopa County Assessor's Parcel numbers as of October 1, 2012,
23 include: 169-43-004C, 169-30-071, 169-43-005, 169-43-006, 169-30-068A, 169-30-068B, 169-
24 30-067A, 169-30-072, 169-30-067B, 169-30-070, 169-30-073, and 169-30-063. The Resort is
25 described in the Development Agreement (as defined herein) as 67.04 acres with a square
26 footage of 2,920,262 and the SUP as 68.48 acres with a square footage of 2,982,771.

27 The east and west portions of the Resort are generally rectangular with the exception of
28

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

9 Legal and physical access to the subject property is by means of Lincoln Drive, a major
10 east/west arterial roadway that is improved with two lanes of traffic in each direction. Street
11 improvements include asphalt paving and concrete curbs, gutters, sidewalks and street lights.
12 56th Street is a collector street that is improved with two lanes of traffic. It is a paved roadway
13 without concrete curbs, gutters and sidewalk.

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

19 MTS Golf generally owns the real property on which portions of the Club is located. The
20 Club hosts an 18 hole, par 56, 3,081-yard executive course (the "Golf Course"), restaurant &
21 grille, pro shop, fitness center, tennis courts, and a driving range. The Club is located west of
22 56th Street and south of Lincoln Drive and is an executive golf course with two sets of tee boxes
23 with distances of 2,606 and 3,081 yards. It was designed by Arthur Jack Snyder.

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

28 A separate but affiliated company, MTS Beverages, LLC ("MTS Beverages"), owns the

1 liquor licenses necessary for the operation of the Resort.

2 Debtors, along with MTS Beverages, are each owned by Cool Mountain Holdings, LLC
3 *fka* Mountain Shadows Holdings, LLC (“Cool Mountain”), which is in-turn owned by Crown
4 MTS, LLC (“Crown MTS”) which is solely owned by Jaime Sohacheski. MTS Land was
5 formed on August 31, 2005, MTS Golf and Crown MTS were each formed on December 19,
6 2006, and MTS Beverages was formed on January 5, 2007. Each entity was formed under the
7 laws of the State of Delaware.

8 In January 2007, Debtors appointed MTS Beverages as their manager under a *Property*
9 *Management Agreement*. As a result, much of the activity for MTS Golf and MTS Land is
10 conducted by MTS Beverages. On that same date, MTS Beverages appointed Crown Realty &
11 Development, LLC (“Crown Development”) as sub-manager to provide all services and oversee
12 the day-to-day operations of MTS Beverages pursuant to the *Sub-Management Agreement*.
13 Additionally, in March 2010, Debtors and MTS Beverages entered into a *Contribution*
14 *Agreement*.¹⁰ The Contribution Agreement authorizes each of the signatories to advance money
15 on behalf of each other and to share in all debts. The Contribution Agreement explicitly
16 recognized that while Debtors were separate legal entities, they have been and remain mutually
17 dependent for integrated operations, unified businesses, and jointly and severally liable for all
18 debts.

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

23 Since January 31, 2007, the Club has been operated by In Celebration of Golf
24 Management, LLC (“ICOG”), a well-known golf facilities manager that currently operates nine
25 Arizona golf courses. ICOG took control of all operational duties associated with the Club
26 pursuant to a Golf Facility Management Agreement (“Golf Management Agreement”). The Golf
27

28 ¹⁰ In March of 2012, Crown MTS was added as a signatory to the Contribution Agreement.

1 Management Agreement was amended in March 2009 to extend the termination date from
2 December 31, 2011 to a date provided with ninety days' notice.

3 **1. Debtors' Property - Related Leases.**

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

7 Debtors have certain rights under existing leases, being (a) a lease dated August 7, 1968
8 (the "Folkman Lease") for the property as set forth in the Folkman Lease (the "Folkman
9 Property") between Lawyer's Title of Arizona, formerly Arizona Title Insurance and Trust
10 Company, as lessor, and Marriott, as lessee, and (b) a lease dated March 22, 1978 the (the
11 "Mummy Mountain Lease") for the property set forth in the Mummy Mountain lease (the
12 "Mummy Mountain Property") between Marriott, as lessee, and Mummy Mountain
13 Development Corporation, as lessor. Marriott caused the construction of an 18 hole golf course
14 on the Folkman Property (the "Camelback Course"). Marriott also caused the construction of an
15 18 hole golf course on the Mummy Mountain Property (the "North Course").

16 Under the Assignment of Lease and Agreement (the "F&M Agreement") made on July
17 13, 1982 and effective on July 16, 1982 by and between Marriott and Potomac regarding the
18 Folkman Lease and the Mummy Mountain Lease, Marriott "irrevocably and unconditionally"
19 granted to the "guests of Mountain Shadows the right to exercise all of the privileges of Inn
20 Members" at the Camelback Country Club. Resort guests "shall have the present and continuing
21 right to ingress and egress to and the use and enjoyment" of the Camelback Course and North
22 Course, including all ancillary facilities (the "Camelback Courses") based upon "an equitable
23 sharing of use privileges between guests of the Camelback Inn and guests of Mountain
24 Shadows."

25 The F&M Agreement also provides that "no modification, amendment, waiver or release
26 made in the provisions of this Agreement or any right, obligation, claim or cause of action
27 arising hereunder or any termination or cancellation of this Agreement shall be valid or binding
28 for any purpose whatsoever unless in writing and duly executed by the party against whom the

1 same is sought to be asserted...” Moreover, the F&M Agreement “shall run with the land” and
2 “inure to the benefit of and be binding upon the parties hereto, their respective successors and
3 assigns...”

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

8 **2. Debtors’ Deed Restrictions.**

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

10 a. Mountain Shadows West Declaration of Restrictions.

11 Mountain Shadows West is Lots 69-127 of Mountain Shadow Resort Unit Two-Amended
12 recorded on June 6, 1961, at Book 95 of Maps, page 3, of the records of Maricopa County,
13 Arizona. A declaration of restrictions was recorded by Paul Construction Co. on September 6,
14 1961, in Docket 3832, page 453, and re-recorded on April 24, 1962, in Docket 4115, page 43, of
15 the records of Maricopa County, Arizona (the “Mountain Shadows West Declaration of
16 Restrictions”). The Mountain Shadows West Declaration of Restrictions generally provide that
17 the owners of lots in Mountain Shadows West (“MTS West Homeowners”) have a right of
18 access to the general club facilities at the Resort on the east side of 56th Street that include the
19 use of cocktail lounge, dining room, recreational areas and general park areas without charges of
20 dues or special charges other than such charges as may be specifically incurred for use of guest-
21 residence facilities, food, drink, and special services, such as barber, maid, valet, and catering.
22 Having no ownership in the Real Property east of 56th Street at the time the Mountain Shadows
23 West Declaration of Restrictions was first recorded, Paul Construction Co. had no authority to
24 affect the Real Property east of 56th Street by recording the Mountain Shadows West
25 Declaration of Deed Restrictions. Therefore, the portion of the Mountain Shadows West
26 Declaration of Restrictions that purports to give a right of access to MTS West Homeowners to
27 the general facilities located on the East side of 56th Street is ineffective.

28 The Mountain Shadows West Declaration of Restrictions also provides that the MTS

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

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

16 b. Golf Course Restriction.

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

27 In a deposition of James Pope Paul conducted on December 15 and 16, 2004 (the “Paul”
28

1 Deposition”),¹¹ Paul stated that he was aware that the Golf Course Restriction had a 25-year term
2 when he signed it and that he probably would have told prospective purchasers of Mountain
3 Shadows West about the 25-year term of the Golf Course Restriction when he was selling lots,
4 even though he also said that he had intended that the MTS West Homeowners enjoy the golf
5 course “forever.” See Paul Deposition at pg. 76. Paul also stated that he told the MTS West
6 Homeowners prior to the 1987 expiration date of the Golf Course Restriction that they should
7 “keep on top of dates and keep renewing the deal” with regards to restrictions affecting the golf
8 course that would expire. See Paul Deposition at pg. 84. In fact, Paul made a concerted effort to
9 organize the MTS West Homeowners in efforts to seek an extension of the pending expiration.
10 Those efforts failed, and the then owner of the Golf Course had no interest in an extension of the
11 restriction. See Paul Deposition, Ex. 27. Additionally, Paul had conversations with the board of
12 the MTS West HOA, which declined to seek any extensions. See Paul Deposition at pgs. 172,
13 173. Paul also had conversations with the then owner of the Golf Course, which also declined to
14 seek any extension.

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

20 On February 1, 2013, the Mountain Shadows West Homeowners Association (the “MTS
21 West HOA”) and MTS West Homeowners Jay Stuckey, William Mallener, Patrick Dickinson,
22 Gerald Ritt and Roger Nelson (collectively, with the MTS West HOA, the “MTS West
23 Objectors”) filed their *Mountain Shadows West Homeowners Association, Inc. Objection to the*
24 *Disclosure Statement to Accompany Debtors’ First Amended Joint Plan of Reorganization* (the
25 MTS West Objection”) [ECF No. 451].

26
27 ¹¹ A copy of the deposition in Case No. CV2004-015482 in the Superior Court of the State of Arizona in
28 and for the County of Maricopa and conducted by Francis J. Slavin of Francis J. Slavin, P.C. on behalf of
the Petitioners in the proceeding is attached to the Appendix hereto as **Exhibit “2”**.

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

16 In the Chapter 11 Cases, unlike *Shalimar*, the Golf Course Restriction provided a specific
17 termination date for the restriction in 1987 and was recorded prior to the conveyance of any
18 home sites to MTS West Homeowners. Not only was the 1987 termination a matter of record,
19 but Mr. Paul remembered advising the MTS West Homeowners that the restriction affecting
20 Mountain Shadows West expired and would need to be renewed. See Paul Deposition at pg. 84,
21 107-09, 169-70. In cases with facts similar to those in this case, courts have refused to find an
22 implied covenant that would extend the term of an express, recorded covenant that has expired
23 on its face. *See Owens v. Ousey*, 241 S.W.3d 124 (Tex. Ct. App. 2007)(finding a restrictive
24 covenant prohibiting mobile homes could not be renewed or amended after it had expired on its
25 face and the theory of implied easements could not be used to continue its effects); *Sampson v.*
26 *Kaufman*, 75 N.W.2d 64 (Mich. 1956)(holding that an express restriction regarding construction
27 of homes could not be extended after expiration and could not be extended by implication based
28 upon uniform development); *Frazer v. Tyson*, 587 So.2d 330 (Ala. 1991)(holding that an expired

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

8 c. Mountain Shadows East Deed Restrictions.

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

26 As successor in interest to Mountain Shadow Resort Inc., Debtors may exercise the rights
27 granted to Mountain Shadow Resort Inc. in the Mountain Shadows East Deed Restrictions
28 including, but not limited to, to appoint a member to the Mountain Shadow Estates Management

1 Board. Pursuant to the Mountain Shadows East Deed Restrictions, office space for use by the
2 Mountain Shadow Estates Management Board will be provided when available as determined by
3 Debtors, subject to rules and regulations regarding such use as Debtors deem necessary or
4 appropriate from time to time.

5 d. Lot 68.

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

16 e. Lots 130 and 130-A.

17 Lots 130 and 130-A are private roadways and are shown on the recorded plat for
18 Mountain Shadows West. Debtors own 130-A, but not 130. Lots 130 and 130-A of Mountain
19 Shadow Resort Unit Two-Amended recorded on June 6, 1961, at Book 95 of Maps, page 3, of
20 the records of Maricopa County, Arizona, are private roadways that generally provide access to
21 the Real Property and Mountain Shadows West. Debtors may relocate this access as described in
22 Section VI(A)(4) *infra*.

23 **3. Resort Entitlements.**

24 a. Mountain Shadows East Guest Ranch Restrictions.

25 The deed restrictions recorded on August 12, 1957, in Docket 2250, page 207, of the
26 records of Maricopa County, Arizona (the "Mountain Shadows East Guest Ranch Restrictions")
27 generally provide that the portion of the Resort east of 56th Street (along with the Mountain
28 Shadows East lots) will be operated as a single guest ranch operation with common facilities for

1 all of the buildings on the property. There is a restriction on sales being subject to the approval
2 of the guest ranch management. There is another restriction as to streets or road. Finally, there is
3 a restriction on the number of units per acre if the property is no longer used a guest ranch.

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

8 First, private covenants have nothing to do with the administration of zoning ordinances.
9 5 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 82:3 (4th ed. 2012); *Whiting v. Seavey*, 188
10 A.2d 276, 279-80 (Maine 1963)(noting that the law is well established that restrictive covenants
11 are distinct and separate from the provisions of a zoning law and have no influence or part in the
12 administration of a zoning law). A restrictive covenant does not affect a developer's ability to
13 have property rezoned or be granted a variance, special exception, or building permit even if the
14 private covenant would prohibit the use. 5 RATHKOPF'S THE LAW OF ZONING AND PLANNING §
15 82:3; *Sills v. Walworth County Land Management Committee*, 648 N.W.2d 878, 887-89 (Ct.
16 App. Wis. 2002)(holding that a private restrictive covenant was not grounds for denial of a
17 proposed use).
18

19 Prior to annexation into the Town of Paradise Valley ("PVT"), the Property was zoned
20 Rural-43 with a special use permit by Maricopa County. The MTS West Objectors argue that
21 the zoning adopted by PVT in 1992 is invalid and therefore the Property remains subject to the
22 Maricopa County's Rural-43 with a special use permit classification. However, the general rule
23 is that upon annexation, the regulations of the jurisdiction from which the property came no
24 longer apply and the property is received by the new jurisdiction unzoned, unless otherwise
25 provided by statute. 83 AM. JUR. 2D *Zoning and Planning* § 98 (2013); 41 A.L.R.2d 1463
26 (2013); 101A C.J.S. *Zoning & Land Planning* § 103 (2012); 1 AM. LAW ZONING § 6:27 (5th ed.
27 2012); 3 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 35:9 (4th ed. 2012)(noting that
28

1 Mississippi appears to be the only state in which the contrary is held except where zoning carries
2 over by statute)¹²; see e.g., *Burt v. City of Idaho Falls*, 665 P.2d 1075, 1077 (Idaho 1983)(noting
3 that upon annexation, the annexed land was not rezoned, but initially zoned); *Louisville &*
4 *Jefferson County Planning and Zoning Com'n v. Fortner*, 243 S.W.2d 492, 494 (Ky. Ct. App.
5 1951)(stating that territory, upon being annexed by the city, goes into the city with the status of
6 unzoned property regardless of its zoning status before annexation); *City of South San Francisco*
7 *v. Berry*, 260 P.2d 1045 (Cal. Ct. App. 1953)(finding that county single-family zoning ordinance
8 did not “run with the land” when the land left the county upon being annexed to a city).
9 Therefore, according to the majority rule, invalidation of PVT’s zoning and entitlements would
10 leave the Property unzoned.¹³

11 The MTS West Objectors also assert that they have “vested property rights” warranting
12 enforcement of the original Maricopa County zoning and use permit. To obtain vested rights in
13 a project, one must apply for a permit or other approval and then, once approved, rely upon
14 existing zoning to substantially change position in furtherance of completing construction under
15 that permit. See *Town of Paradise Valley v. Gulf Leisure Corp.*, 27 Ariz. App. 600, 608, 557 P.2d
16 532, 540 (1976)(finding that owners had vested rights in a use permit that prevented the town
17 from denying an extension and allowed the court to order an extension to allow the completion
18

19
20 ¹² States have addressed zoning upon annexation in a variety of ways. See 3 RATHKOPF’S THE LAW OF
21 ZONING AND PLANNING § 35:9. For example, Ohio statutes provide that upon annexation, zoning
22 regulations remain in effect and shall continue to be enforced by the jurisdiction from which the property
23 is annexed until the new jurisdiction adopts the existing zoning or enacts new zoning for the property. *Id.*
24 at n.4. Another example is the Illinois statute that authorizes municipalities to provide by ordinance that
when property is annexed, it is automatically classified to the highest restrictive uses under the annexing
municipality’s ordinance. *Id.* at n.5. Arizona has addressed this by allowing municipalities to carry over
county zoning by ordinance for up to six months after annexation. ARIZ. REV. STAT. § 9-462.04(E).

25 ¹³ In the past, Maricopa County and the City of Page were left unzoned when there was a failure to follow
26 zoning procedures. *Specht v. City of Page*, 128 Ariz. 593, 598, 627 P.2d 1091, 1096 (Ct. App.
27 1981)(finding the City of Page’s zoning ordinance invalid for insufficient notice); see *Hart v. Bayless*, 86
28 Ariz. 379, 390-91, 346 P.2d 1107, 1109-10 (1959)(holding Maricopa County zoning ordinances invalid
for failure to follow notice and hearing requirements). Of course, if zoning is found invalid and property
is left unzoned, a municipality is always free to initiate proceedings to establish new zoning on the
property. *Schwartz v. City of Flint*, 395 N.W.2d 678, 692 (Mich. 1986).

1 of construction of a resort hotel); 4 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 70:10 (4th
2 ed. 2012); *City of Parkland v. Septimus*, 428 So.2d 681, 683-84 (Fla. Dist. Ct. App.
3 1983)(refusing to apply equitable estoppel or find vested rights where the plaintiffs were not
4 owners when the land received its permitted density, nor were they in privity with the
5 governmental unit that fixed the density, nor did they substantially change position in reliance
6 upon the government act, although the change may have affected their investment). Vested rights
7 in a particular zoning classification generally cannot accrue to neighboring property owners. 4
8 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 70:10; *Spiker v. City of Lakewood*, 603 P.2d
9 130, 133 (Colo. 1979)(holding that property owners did not have vested rights that were
10 impaired when the time for approving a neighbor's plat was extended); *Bentley v. Valco, Inc.*,
11 741 P.2d 1266, 1269 (Colo. Ct. App. 1987)(holding that adjacent landowners did not have vested
12 rights in the denial of a special use permit, nor would equitable estoppel prevent its issuance).

13
14
15 A municipality has the right to amend its zoning ordinances and one who purchases land
16 is charged with the understanding that zoning classifications may change. *1350 Lake Shore*
17 *Associates v. Randall*, 928 N.E.2d 181, 187 (Ill. App. Ct. 2010). Therefore, although property
18 owners may have an interest in opposing zoning changes affecting adjacent land, or their own
19 land for that matter, that interest does not amount to a vested right. 4 RATHKOPF'S THE LAW OF
20 ZONING AND PLANNING § 70:10; see *Dawe v. City of Scottsdale*, 119 Ariz. 486, 487, 581 P.2d
21 1136, 1137 (1978)(noting that a subdivision lot becomes legally established as to size and
22 description when a plat containing it is recorded but does not remain unaffected by subsequent
23 zoning enactments).

24
25 As further set forth in the Mountain Shadows East Guest Ranch Restrictions, "In the
26 event the property no longer operates as a guest ranch and it becomes necessary to sell separate
27 house units or other units on the premises free of the overall guest ranch operation, such units,
28

1 tracts or houses shall contain not less than one (1) acre, or such area as is at that time permitted
2 under existing zoning with a radius of one (1) mile from the premises.”

3 b. Development Scenarios.

4 Debtors and PVT agree that the zoning for the Property is R-43. The parties disagree as
5 to how the R-43 Zoning is impacted by the Development Agreement and the enforceability of
6 the Development Agreement with PVT asserting the authorization of the land use provisions of
7 the Development Agreement violated Arizona statues, and as such, the land uses allowed by the
8 Development Agreement is not enforceable by Debtors. Debtors believe otherwise.

9 Debtors disagree and believe they have three viable options for development: (i) the
10 adoption by PVT of a special use permit (“SUP”) and an Amended and Restated Development
11 Agreement acceptable to both PVT and Debtors, each in their sole and absolute discretion; (ii)
12 development using R-43 Zoning allowing for the platting of the Real Property into residential
13 parcels of not less than one acre which is consistent with PVT’s position regarding the R-43
14 zoning; or (iii) Debtors seeking to enforce the Development Agreement. With regard to (ii) and
15 (iii), Debtors, and Reorganized Debtor, as applicable, will pursue claims for damages against
16 PVT as a result of PVT not honoring the Development Agreement.

17 (i) R-43 Zoning

18 R-43 Zoning is intended to promote and preserve a low-density residential character and
19 maintain open space and natural features. The principal land use is single-family dwellings and
20 uses incidental or accessory thereto, a lot size of at least 43,560 sq. ft is required.

21 Fleet Fischer, Debtors’ civil engineer, has prepared a plat of the Real Property that
22 complies with the existing R-43 zoning and all other requirements of the PVT Town Code and
23 Subdivision Ordinance. The One Acre Sketch Lot Plan is attached hereto as **Exhibit “4”** and
24 results in there being 43 residential lots which Debtors estimate will generate no less than
25 \$70,000,000 in gross sales over a period of no more than 4 years from the Effective Date of the
26 Plan.

1 Debtors have determined that the Real Property can be reasonably bundled into three R-
2 43 Parcels containing 28 individual lots and 15 remaining individual lots. Debtors believe there
3 is a realistic possibility that the three R-43 Parcels can be sold as bulk. Alternatively, all of the
4 parcels may be sold individually.

5 (ii) Development Agreement

6 Prior to 1992, PVT sought to annex the Property to enhance tax revenues and to eliminate
7 “County Islands” within the boundaries of PVT. The Real Property was annexed into PVT
8 pursuant to Ordinance Number 339 adopted March 26, 1992. Ordinance Number 339 states that
9 the Property “is zoned as R-43 pursuant to the Zoning Ordinance of the Town of Paradise Valley
10 and subject to a development agreement signed by [PVT]” On the same day that Ordinance
11 Number 339 was adopted, PVT also adopted Ordinance Number 341, which authorized the
12 mayor to sign a development agreement. Prior to the annexation, PVT had adopted Ordinance
13 Number 336 on March 12, 1992, which also had authorized the mayor to sign a development
14 agreement for the Property. On or about April 10, 1992, PVT and Potomac, Debtors’
15 predecessors in interest, entered into a development agreement setting forth certain rights for the
16 use and development of the Resort (the “Development Agreement”). The Development
17 Agreement was recorded as document number 92-0191356 on April 10, 1992, and re-recorded as
18 document number 92-262862 on May 14, 1992, in the records of Maricopa County Recorder.¹⁴
19 The Development Agreement includes allowances for rights regarding, *inter alia*, property use,
20 density and height of new construction, and parking requirements. In particular, the
21 Development Agreement provides as follows:

22 a. For purposes of the Development Agreement, the “Gross Acreage” of the
23 Property is 67.0414 acres. ¶ 1.¹⁵

24
25 ¹⁴ As such, the Development Agreement runs with the property and is in full force and effect so long as all
26 or a portion of the Resort is devoted to Resort Uses (as defined in the Development Agreement). See
27 Development Agreement, ¶ 11. As further set forth in the Development Agreement, in the event the
28 Development Agreement were not to be valid or enforceable, PVT is required to issue a special use
permit containing rights and obligations which are identical to those contained in the Development
Agreement. See, Development Agreement, ¶ 13.

¹⁵ According to a survey prepared by Wood/Patel dated February 23, 2005, job no. WP#042324.80, the

1 b. Allows the Property to be used “for Resort Uses, or for residential uses, or
2 both.” ¶ 3.

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

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

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

13 f. The maximum ground coverage allowed for “fully enclosed” buildings
14 devoted to Resort Uses is 13.41 acres (20% of the Gross Acreage); the area of buildings
15 is calculated based on the building footprint excluding “overhangs, patios and the like.” ¶
16 4(c).

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

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

24 i. New construction may be done without amendment to the site plan or
25 Development Agreement, provided such new development does not exceed the height of
26 similar buildings, structures, or improvements and does not encroach on the setback lines

27 _____ (continued)
28 total acreage of the Property is 68.48 acres

1 shown on Exhibit B to the Development Agreement. ¶ 5(b).

2 j. Exhibit B shows a 132-foot setback along Lincoln Drive; as to setbacks
3 other than Lincoln Drive, 40-foot side and rear yard setbacks are required.

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

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

14 (iii) Special Use Permit.

15 PVT has a lengthy process for requesting and obtaining a SUP. After a SUP application
16 is filed, the PVT Council reviews the application and issues a Statement of Direction (“SOD”)
17 that is intended to provide guidance to the PVT Planning Commission (“PC”) in reviewing the
18 SUP application. After holding several public meetings/public hearing to discuss the SOD, the
19 PVT Council issued the SOD on June 28, 2012. The PC held its first meeting to consider the
20 SUP application on June 29, 2012 and thereafter held seven public meetings to consider the SUP
21 application and to receive input from the public. On September 24, 2012, the PC voted to
22 recommend to the PVT Council approval of the SUP, subject to over 100 stipulations/conditions.
23 After receipt of the PC recommendation on the SUP, the PVT Council then holds additional
24 public meetings to consider the SUP. One such public meeting was held on February 14, 2013,
25 and it is anticipated that several additional public meetings will be held. In addition to the public
26 meetings, numerous meetings have been held and will be held with PVT staff to discuss an
27 amended and restated Development Agreement (the “Amended and Restated Development
28 Agreement”). While negotiations have been ongoing between Debtors and PVT staff regarding

1 an acceptable SUP and Amended and Restated Development Agreement, the parties have not
2 come to an agreement as of the date of this Disclosure Agreement. If such a resolution is
3 reached, the PVT Council will vote to approve or disapprove the SUP and Amended and
4 Restated Development Agreement (the “SUP Approval”). Debtors have determined that in order
5 to determine their means to develop the Real Property and confirm the Plan within a reasonable
6 period of time, the SUP Approval must be accomplished no later than April 19, 2013.

7 If there is a timely SUP Approval, there remains the possibility that persons opposing the
8 SUP Approval may attempt to process a referendum to overturn the SUP. The approval of a new
9 SUP in PVT is generally considered to be the same as a rezoning of property, which in Arizona
10 is a legislative act that is subject to referendum. The right of referendum is established by the
11 Arizona Constitution and Arizona statutes further set forth requirements and procedures
12 applicable to referenda. In general, if 10% of the persons who voted in a recent PVT election
13 sign referendum petitions, such petitions are submitted to PVT within 30 days after the PVT
14 Council adopts the SUP, and other requirements are met, the SUP approval is held in abeyance
15 until a vote of the PVT electorate is held. At such vote, the PVT electorate will either approve or
16 disapprove the granting of the SUP. Based on certain statutory requirements and whether the
17 PVT Council decides to schedule the vote at a special election or the next regular PVT election,
18 such vote could be held anywhere from 4-6 months to approaching two years after the PVT
19 Council votes to approve the SUP. While there has been some discussion to the effect that
20 persons opposing the SUP may attempt a judicial challenge to overturn the SUP Approval and
21 the Amended and Restated Development Agreement, Debtors believe that in light of the
22 involvement of Debtors and property of the Estates, any such action must be brought before the
23 Bankruptcy Court whether commenced prior to or subsequent to the Effective Date of the Plan.

24 **4. Objections and Debtors’ Reply.**

25 PVT, the MTS West Objectors and MTS East HOA have asserted that the Development
26 Agreement is unenforceable as result of PVT’s failure to follow proper zoning procedures.
27 Debtors submit that these arguments are incorrect. PVT specifically states in the PVT Objection
28 that the Development Agreement does not comply with the approved zoning for the Property (R-

1 43) and that PVT in enacting the various ordinances did not act in compliance with the notice
2 and hearing requirements imposed by Arizona law. Evidence which will be presented to the
3 Bankruptcy Court at the Confirmation Hearing will show that the Development Agreement as
4 adopted by PVT was in compliance with then-applicable law and ordinances and is enforceable
5 in all respects.

6 The Development Agreement is authorized by ARIZ. REV. STAT. § 9-500.05, which
7 expressly allows a municipality to agree to specify permitted uses, height, and density within a
8 property. Although there are no Arizona decisions addressing whether a development agreement
9 can rezone property, a number of courts, including those in the Ninth Circuit, have held that a
10 local government may contractually agree to establish zoning or rezone property so long as it
11 retains some control as to the zoning and does not promise not to rezone the property in the
12 future. *See Stevens v. City of Vista*, 994 F.2d 650, 655 (9th Cir. 1993) (holding that a city could
13 contract for a guaranteed density without surrendering control of all of its land use authority);
14 *Santa Margarita Area Residents Together et al. v. San Louis Obispo County*, 100 Cal.Rptr.2d
15 740, 747-48 (Ct. App. 2000) (finding that a zoning freeze for a proposed development project
16 pursuant to a development agreement between a developer and the county was not an improper
17 “surrender” of the county’s police power); *City of Orange Beach v. Perdido Pass Dev., Inc.*, 631
18 So.2d 850, 854 (Ala. 1993) (holding that an annexation or zoning agreement is permissible if the
19 city does not abdicate its legislative responsibility and the city is involved in the negotiations and
20 development of the property); *Gernalnes B.V. v. City of Greenwood Village*, 583 F. Supp. 830,
21 840 (D. Colo. 1984) (noting that a preannexation agreement that imposed zoning restrictions
22 without promising that land would never be rezoned was a valid exercise of police powers); *Save*
23 *Elkhart Lake, Inc. v. Village of Elkhart Lake*, 512 N.W.2d 202, 205 (Wis. Ct. App. 1993)
24 (finding that a city may agree to cooperate with a property owner to further the objectives of a
25 development agreement without engaging in unlawful contract zoning or bargaining away of its
26 police powers).

27 Courts have allowed restrictions on the exercise of a local government’s police power
28 when the restrictions are set out in a contract that is expressly authorized by statute. *See Santa*

1 *Margarita Area Residents Together*, 100 Cal. Rptr.2d at 748 (finding county had statutory
2 authority to enter into a development agreement to carry out the function of land use regulation);
3 *Housing Authority of Los Angeles v. City of Los Angeles*, 243 P.2d 515, 523 (Cal. 1952)
4 (agreement entered into between city and housing authority pursuant to the housing authority law
5 is not an unauthorized attempt by the city to bind itself as to the exercise of governmental
6 functions; it is simply an authorized contract to cooperate in the performance of those functions
7 and as such is valid).

8 As a contract authorized under Arizona statutes, PVT properly entered into and
9 executed the Development Agreement after lengthy negotiations and a public hearing, and it
10 remains a valid and binding contract. Even if the adoption of the Development Agreement was
11 procedurally defective, it is clear that PVT cannot simply walk away from the contract it signed.
12 Legal theories, such as equitable and/or promissory estoppel and laches (discussed in Section
13 V(A)(5) below), prevent PVT from repudiating the deal it made in 1992 when it induced the then
14 owners to annex into PVT.

15 PVT and the MTS East HOA have suggested that Debtors' pursuit of the SUP is an
16 admission by Debtors that the Development Agreement is unenforceable. Debtors request for a
17 SUP is not an admission that the Development Agreement is unenforceable. Rather, despite
18 acknowledging that Debtors are within their legal rights to enforce the Development Agreement,
19 Debtors have chosen to pursue the SUP (i) because certain development parameters (e.g. heights
20 and setbacks from Lincoln Drive) are being requested that are not allowed by the Development
21 Agreements, and (ii) as a goodwill gesture and in the hopes that Debtors can work with PVT and
22 the neighboring homeowners in order to present a development plan that is workable for all
23 parties involved. Since Debtors have been committed to a mutually beneficial development for
24 the Resort, Debtors have not spent significant resources on detailed development plans under the
25 Development Agreement.

26 If the SUP is not approved by April 19, 2013, Debtors reserve the right at any time
27 thereafter to move forward with development of the Resort under the Development Agreement
28 or using R-43 Zoning and retain all rights to pursue PVT for damages related to breach of the

1 Development Agreement. Although Debtors have not formulated detailed development plans
2 should they be required to proceed under the Development Agreement, Debtors envision a mixed
3 use development similar to that proposed with the SUP in that it is anticipated that the
4 development will contain residential, resort, and commercial components. Debtors have also
5 prepared, through their engineer Fleet Fisher, a development plan for 43, R-43 lots. Fleet Fisher
6 has reviewed this development plan with PVT planning officials, and determined that it complies
7 with the R-43 Zoning requirements.

8 The MTS West Objectors indicate that they intend to appeal plan check responses by
9 PVT related to two proposed building permits that Debtors submitted to PVT for two residential
10 units to be built on the current Golf Course. They also contend that the Debtors are barred from
11 pursuing development of the Real Property under the Development Agreement. PVT has
12 advised Debtors that PVT's unsigned issuances related to the two building permits are advisory
13 and not final determinations subject to appeal. Therefore, Debtors are not aware of any bar to
14 pursuing development of the Real Property pursuant to R-43 Zoning or the Development
15 Agreement. In these plan check responses issued by PVT in August and September 2012, PVT
16 advised that the R-43 Zoning applied to the Real Property, and that Debtor could resubmit the
17 proposed plans to comply with R-43 for permit issuance.

18 **5. Debtors' Causes of Actions Related to the Development Agreement.**

19 a. Enforceability of the Development Agreement.

20 PVT has asserted its position that the land use entitlements provided for in the
21 Development Agreement were not adopted in conformance with applicable Arizona laws.
22 Therefore, PVT contends that as a result of its wrongful acts, the land use entitlements provided
23 for in the Development Agreement are unenforceable. Debtors dispute PVT's position and
24 believe that the Development Agreement was properly adopted as set forth in the Section
25 V(A)(4) and therefore, is enforceable.

26 However, even if the Development Agreement was not properly adopted, Debtors
27 contend the following make the Development Agreement applicable to the Real Property and bar
28 PVT from asserting that the Development Agreement cannot be enforced.

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

2 “Where municipalities have received and accepted the benefits of a contract, they are
3 estopped to deny validity of the very contract through which they received benefits.” *Mahoney*
4 *Grease Service, Inc. v. City of Joliet*, 406 N.E.2d 911, 915 (Ill. App. Ct. 1980). Three elements
5 must generally be present to establish the defense of estoppel: “(1) the party to be estopped
6 commits acts inconsistent with a position it later adopts; (2) reliance by the other party; and (3)
7 injury to the latter resulting from the former’s repudiation of its prior conduct.” *Valencia Energy*
8 *Co. v. Arizona Dep’t of Revenue*, 191 Ariz. 565, 576-77, 959 P.2d 1256, 1267-68 (1998). When
9 asserting estoppel against a government, a person must also prove that the government’s
10 wrongful conduct threatens to work a serious injustice and the public interest would not be
11 unduly damaged by allowing estoppel. *Freightways, Inc. v. Arizona Corp. Comm’n*, 129 Ariz.
12 245, 248, 630 P.2d 541, 544 (1981). Only an affirmative act that bears a degree of formalism
13 can form the basis for applying estoppel against the government. *Id.* at 248, 630 P.2d at 544.

14 In Arizona, a 2008 Court of Appeals decision applied estoppel in a zoning case to
15 effectively rezone property. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 181
16 P.3d 219 (App. 2008). The city had issued a permit to construct a billboard in a zone that did not
17 allow billboards. *Id.* at 192, 181 P.3d at 239. The appellate court found that the billboard
18 company had a right to rely on the permit issued by the department with permitting authority and
19 that the permit satisfied the requirement for a formal act. *Id.* at 192-93, 181 P.3d at 239-40. The
20 appellate court concluded that it had been reasonable for the trial court to find that construction
21 of the billboard pursuant to the permit and loss of income after relying on the permit for 20 years
22 would constitute an injury sufficient to invoke estoppel without frustrating the public interest.
23 *Id.* at 194, 181 P.3d at 241. The appellate court also found that the trial court had not abused its
24 discretion in fashioning an equitable remedy by allowing the billboard to remain rather than
25 ordering its removal. *Id.* at 187, 181 P.3d at 235.¹⁶

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

1 Equitable estoppel has also been applied in other instances, such as to prevent a city from
2 denying the validity of a rezoning ordinance because of its failure to hold public hearings after
3 the city had received the benefits of a settlement agreement in which it agreed to rezone land.
4 *Mahoney Grease Service*, 406 N.E.2d at 915; see *Branigar v. Village of Riverdale*, 72 N.E.2d
5 201, 205 (Ill. 1947)(holding that where a party has performed in good faith under a contract with
6 a municipality that the municipality has the power to make, but the contract was irregularly made
7 (*i.e.*, notice was failed to be published), a municipality cannot use the irregularity as a basis for
8 refusing to perform, otherwise a municipality could set up irregularities as a basis for refusing to
9 pay); *Benson v. City of DeSoto*, 510 P.2d 1281, 1288 (Kan. 1973)(holding that on principles of
10 estoppel, a municipality can be precluded from asserting the invalidity of its zoning ordinances,
11 especially where the municipality is objecting to procedural irregularities); *O.P. Corporation v.*
12 *Village of North Palm Beach*, 278 So.2d 593, 594-95 (Fla. 1973)(applying estoppel to prevent a
13 village from denying a permit on a claim that its zoning ordinance was invalid due to failure to
14 comply with notice procedures after it had held out the zoning to the public for ten years; also
15 applying estoppel to neighboring property owners who knew of the zoning on the subject
16 property at the time of their purchase); *Northville Area Non-Profit Housing Corp. v. City of*
17 *Walled Lake*, 204 N.W.2d 274, 280 (Mich. Ct. App. 1972)(concluding that it would be contrary
18 to public policy to permit a municipality to invalidate a zoning ordinance amendment due to a
19 failure to publish notice after four years had elapsed and noting that it is essential that people
20 buying and selling real estate must be able to rely on the validity of the public record).

21 Similarly, the Arizona Supreme Court has held that estoppel could be applied against the
22 government where there were procedural irregularities in the issuance of a motor carrier's
23 certificate of convenience, but the government knew (i) that irregularities existed, (ii) that the
24 certificate would be used by the certificate-holder and his successors in interest, (iii) that the
25 certificate would be recognized by the public, and (iv) that the certificate had, in fact, been used
26 and relied upon for over fifty years. *Freightways, Inc. v. Arizona Corp. Comm'n*, 129 Ariz. 245,
27 247-48, 630 P.2d 541, 543-44 (1981). Likewise, the Arizona Court of Appeals has estopped a
28 municipality from applying a new zoning ordinance that would prevent a party from building a

1 residence planned on a site where the municipality had previously issued a variety of permits and
2 a variance to allow the party to build at its desired location. *Pingitore v. PVT of Cave Creek*, 194
3 Ariz. 261, 265, 981 P.2d 129, 133 (Ct. App. 1998).

4 If PVT were to take the position that the land use entitlements granted in the recorded
5 Development Agreement were invalid, estoppel will prevent PVT from refusing to abide by the
6 Development Agreement. The then-owners agreed to annexation and entered into the
7 Development Agreement in reliance on the PVT's grant of land use entitlements, which have
8 been relied on by subsequent owners and owners of neighboring property. The invalidation of
9 the Development Agreement over 20 years after the annexation would result in unfair injury to
10 Debtors much greater than any injury to the public interest. As to injury to the public, the
11 virtually identical deal between the PVT and Camelback Inn negates any such claim by the PVT.

12 (ii) Laches.

13 Laches is a defense similar to estoppel, but is based on unreasonable delay by one party
14 and either acquiescence in the act of which that party complains or prejudice to the other party
15 resulting from the delay. *People v. Dep't of Housing & Community Dev.*, 119 Cal. Rptr. 266,
16 273 (Cal. Ct. App. 1975). For example, laches prevented a building permit from being rescinded
17 five months after its issuance for failure to obtain a statement of environmental impact required
18 by statute because the applicant had waited several months for a decision regarding the
19 applicability of the requirement and had spent \$40,000 after receiving the permit. *Id.* at 273-76.
20 Here, PVT and the HOAs cannot complain about procedural defects 20 years after the
21 Development Agreement was entered into and recorded.¹⁷

22 b. Debtors' Additional Causes of Action.

23 If Debtors and PVT do not agree to the SUP Approval or the SUP Approval is
24 subsequently overturned by referendum or determined by judicial determination to be ineffective
25 or invalid, Debtors or Reorganized Debtor, as applicable, will determine whether to proceed

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

1 with the platting and development of the Real Property pursuant to the R-43 Zoning and pursue
2 a claim for damages against PVT for the diminution in value resulting from the inability to
3 develop the Real Property pursuant to the Development Agreement or, alternatively, to seek to
4 enforce the Development Agreement and for damages resulting from the breach of the
5 Development Agreement by PVT utilizing the following causes of actions and remedies:

6 (i) Specific Performance.

7 To receive the remedy of specific performance, which orders a party to perform as
8 promised in a contract, (1) there must be a valid contract; (2) the terms of that contract must be
9 certain and fair; (3) the party seeking specific performance must not have acted inequitably; (4)
10 specific enforcement must not inflict hardship on the other party or public that outweighs the
11 anticipated benefit to the party seeking specific performance; and (5) there must be no adequate
12 remedy at law. *See The Power P.E.O., Inc. v. Employees Ins. of Wausau*, 201 Ariz. 559, 563, 38
13 P.3d 1224, 1228 (App. 2002). The remedy of specific performance is one remedy that has been
14 granted in the context of annexation agreements. *See Morrison Homes Corp. v. City of*
15 *Pleasanton*, 130 Cal. Rptr. 196, 201 (Cal. Ct. App. 1976)(affirming the order of the trial judge
16 which ordered the city to specifically perform its promise in an annexation agreement to furnish
17 sewer connections and improve facilities as necessary for such purposes); *see also Housing*
18 *Authority of City of Los Angeles v. City of Los Angeles*, 243 P.2d at 524 (requiring the city to
19 perform the terms of agreements entered into with the housing authority and exercise the
20 promises it agreed to undertake in cooperating with that authority, such as acquiring land and
21 vacating streets). Therefore, if PVT refused to recognize the land use entitlements granted in the
22 Development Agreement a court could order PVT to comply.

23 (ii) Breach of Contract.

24 In light of the PVT objection, Debtors have amended Schedule 1.1.85 to the First
25 Amended Plan to provide for a retained cause of action against PVT for damages related to the
26 Development Agreement. While Debtors cannot yet ascertain with certainty the damages which
27 will accrue as a result of a breach of the Development Agreement, Debtors believe that damages
28 will exceed \$25,000,000, which represents the difference between the value of the Property with

1 the Development Agreement in place and with the Development Agreement not being effective
2 as a result of the actions of PVT.

3 An example of damages that can be awarded for breach of contract is found in the case of
4 *Stephens v. City of Vista*. 944 F.2d 650 (9th Cir. 1993). Stephens sued the city after the city
5 down-zoned its property. *Id.* at 652. Stephens then entered into a settlement agreement with the
6 city in which the city agreed to approve a rezoning of his property. *Id.* The Ninth Circuit held
7 that the city's subsequent failure to rezone was a breach of the settlement agreement, which
8 entitled Stephens to monetary damages of \$727,500, equaling the difference between the fair
9 market value of the property with a density of 140 units as promised and the fair market value of
10 the property without such entitlements. *Id.* at 657. Another example can be found in *City of*
11 *Orange Beach v. Perdido Pass Dev., Inc.*, 631 So.2d 850, 852 (Ala. 1993), which involved an
12 action for breach of an annexation agreement. The property owner had agreed to annexation on
13 the understanding that the property would subsequently be zoned to allow a certain planned
14 development. *Id.* at 853. The property owner was awarded \$4.5 million based upon expert
15 testimony as to the amount of lost profits calculated from estimates on lot values and
16 development costs. *Id.* at 854.

17 In a final example, where a town had not yet breached a development agreement but had
18 repudiated it by refusing to allow the project to move forward, the developer was awarded
19 damages of \$30 million based on expert opinions of the current value of the project (and
20 \$2,361,130 in attorneys' fees). *Mammoth Lakes Land Acquisition, LLC, v. Town of Mammoth*
21 *Lakes*, 120 Cal. Rptr.3d 797, 812 (Ct. App. 2010). Therefore, monetary damages representing
22 the difference in value of the property with density contemplated by the Development
23 Agreement versus R-43 (single family residential) may be available to Debtors if PVT was found
24 in breach of the Development Agreement.

25 (iii) Breach of Implied Covenant of Good Faith and Fair Dealing.

26 Arizona law implies a covenant of good faith and fair dealing in every agreement. *Enyart*
27 *v. Transamerica Ins. Co.*, 195 Ariz. 71, 76, 985 P.2d 556, 561 (App. 1998). Implied terms are as
28 much a part of a contract as are the express terms. *Golder v. Crain*, 7 Ariz. App. 207, 209, 437

1 P.2d 959, 961 (1968). The duty arises by operation of law but exists by virtue of a contractual
2 relationship. *See Rawlings v. Apodaca*, 151 Ariz. 149, 158, 726 P.2d 565, 574 (1986). The
3 implied covenant of good faith and fair dealing prohibits a party from doing anything to prevent
4 other parties to the contract from receiving the benefits and entitlements of the agreement and
5 provides a basis for imposing contract damages. *Wells Fargo Bank v. Arizona Laborers*, 201
6 Ariz. 474, 490-91, 38 P.3d 12, 28-29 (2002); *Burkons v. Ticor Title Insurance Co.*, 168 Ariz.
7 345, 355, 813 P.2d 715, 720 (1991). A party may breach its duty of good faith without actually
8 breaching an express covenant in the contract if a party manipulates bargaining power to its own
9 advantage. *Id.* at 491, 38 P.3d at 29. Good faith requires faithfulness to an agreed common
10 purpose and consistency with the justified expectations of the other party. *Id.* at 492, 38 P.3d at
11 30. For example, in *Tooele Associates Ltd. Partnership v. Tooele City*, the Utah Court of
12 Appeals found that a city had breached the covenant of good faith and fair dealing, in part by
13 hindering a developer's completion of public improvements and withholding approval for phases
14 of development. 284 P.3d 709, 719 (Utah Ct. App. 2012). The court noted that the covenant
15 encompassed an implied duty that the parties would refrain from taking actions that would
16 intentionally destroy or injure the other party's right to receive the fruits of the contract. *Id.* at
17 718. Therefore, PVT may be liable for contract damages for breaching the covenant of good
18 faith and fair dealing by making promises regarding land use entitlements when it annexed the
19 Property and entered into the Development Agreement, if it later refuses to perform those
20 promises, especially after receiving the benefits (such as tax revenue and jurisdictional powers)
21 from the Property's annexation for over 20 years.

22 **6. Detailed Description of the Mountain Shadows Resort.**

23 a. Paradise Valley Background.

24 The 16-square mile town stretches north of Camelback Mountain to Shea Blvd. and from
25 Scottsdale Road west to 32nd Street. PVT is zoned exclusively for single-family residential use
26 with non-residential uses which include resorts, medical office, religious facilities, private
27 schools, non-profit organizations, historical/entertainment sites and public/quasi-private
28 facilities. On May 24, 1961, incorporation was granted and PVT was established. During the

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

8 b. Debtors' Purchase and Operations of the Resort.

9 In January 2007, Debtors jointly obtained a loan for the purchase of the Real Property.
10 Since that time, despite ownership of separate but intertwined parcels, Debtors have sought to
11 develop the entire Real Property jointly. In line with these goals, Debtors share common
12 ownership, management, and obligations. Given that Debtors have always intended to be, and
13 have always been viewed as. one business enterprise for the purposing of jointly developing the
14 Real Property as a collective project, Debtors intend through the Plan to substantively
15 consolidate into one Reorganized Debtor.

16 c. Personal Property Owned by Debtors.

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

- 21 (i) Money in bank accounts and cash on hand of \$104,481;
- 22 (ii) A security deposit with Arizona Public Service of \$3,660;
- 23 (iii) Golf Club membership receivables totaling \$12,149;
- 24 (iv) Food and beverage inventory of \$6,253;
- 25 (v) Inventory of clothing, golf balls and other golf paraphernalia worth
26 approximately \$51,988;
- 27 (vi) Machinery and equipment used for the Golf Club operations on the
28 Golf Course, in the Clubhouse, fitness center, kitchen and locker

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rooms valued at \$291,220;

- (vii) 2006 Chevrolet Silverado 2500 worth approximately \$5,600;
- (viii) John Deere fairway mower worth approximately \$9,792;
- (ix) 60 EZ Go golf carts worth approximately \$30,000;
- (x) MTS Golf separately owns a 1999 Ford F-350 dump truck worth \$15,000

d. Valuation of the Resort.

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

Scenario 1

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

Scenario 2

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

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

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

Debtors also requested that Martori prepare a valuation for the Property using the R-43 Zoning platting (the “Martori Appraisal Supplement”). The Martori Appraisal Supplement concludes that as of April 19, 2013, the aggregate retail value of the Property using R-43 Zoning is \$51,600,000.

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1 e. Current Budget and Operations.

2 Current daily operations at the Resort involve only the Golf Club. The Hotel has been
3 closed the entire time that Debtors have owned the Resort and is only used minimally for
4 Debtors' own secondary office space at the Resort. For the first six months of 2012, the Golf
5 Club had a net operating profit of approximately \$214,000 without accounting for any debt
6 service or taxes for the Real Property. Ultimately, due to a decrease in Golf Club revenues
7 during the summer months, the Golf Club suffered a net loss of approximately \$5,000 for all of
8 2012. The Golf Club income is insufficient to service the debt secured by the Resort and the real
9 property taxes. The Golf Club income must be supplemented by additional revenue sources.

10 The value of the Resort lies in its redevelopment, and, as a result, the Resort has incurred
11 significant costs that are not included in the Golf Club operations. During the first six months of
12 2012, Debtors incurred approximately \$546,000 in other expenses seeking to protect and
13 redevelop the Resort. Current operations of the Golf Club will not support redevelopment of the
14 Resort, and any redevelopment must be funded by additional loans to or investment in Debtors.
15 As described in Section V(A)(6)(e) of this Disclosure Statement, post-petition Debtors have
16 borrowed \$1.08 million dollars to pay ongoing administrative expenses which include those
17 professionals working to position the Resort for redevelopment. The Plan provides for additional
18 funding for redevelopment after confirmation that is not otherwise available to Debtors.

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

23 f. Causes of Action.

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

1 In addition, Debtors retain the right to pursue litigation against PVT arising from the
2 Development Agreement if a SUP and Amended and Restated Development Agreement
3 acceptable to Debtors is not approved and becomes effective and PVT chooses to breach the
4 Development Agreement by not issuing building permits as provided for in the Development
5 Agreement. Debtors' damages would be the difference between what the Resort is worth with
6 the Development Agreement and what it is under whatever land use rights PVT asserts apply,
7 expected to be no less than \$25,000,000.

8 g. Debtors' Secured Loan Obligation.

9 (i) The USB Loan.

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

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

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

27 _____
28 ¹⁸ Subsequently, Jaime Sohacheski made a voluntary payment to USB and reduced the outstanding
obligation under the Guaranty to \$7 million.

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

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

5 On or about October 7, 2010, U.S. Bank National Association (“USB”) acquired the USB
6 Loan, Promissory Note, Guaranty, and other loan documents from the FDIC. On October 27,
7 2010, USB delivered a Payment Event of Default and Acceleration Notice to Debtors. On April
8 11, 2012, Debtors further received an Event of Default Notice; Loan to MTS Land, LLC and
9 MTS Golf, LLC.

10 (ii) The Hertz Loan.

11 Pursuant to a Secured Promissory Note (the “Hertz Note”) dated July 11, 2012, by and
12 between Debtors and MTS Beverages, as borrowers, and Chavi Hertz, an individual, as lender
13 (“Hertz”), Hertz tendered a loan to Debtors and MTS Beverages in the principal amount of
14 \$565,000 (the “Hertz Loan”). The proceeds of the Hertz Loan were utilized, in part: (1) to pay
15 amounts owed for goods and services provided to Debtors and MTS Beverages, for payments to
16 the Arizona Department of Revenue, and to fund anticipated cash needs of MTS Beverages; (2)
17 to purchase sixty electric golf carts (the “Golf Carts”) from ICOG necessary for the operation of
18 Club; (3) to fund Debtors’ ongoing business operations; and (4) certain other pre-Petition Date
19 obligations.

20 On the same date, Debtors also entered into a Security Agreement (the “Hertz Security
21 Agreement”), thereby granting Hertz a purchase money security interest in the Golf Carts, as
22 well as any attachments or replacements, and any proceeds from the sale or other disposition of
23 the Golf Carts and a continuing security interest in all of Debtors’¹⁹ personal property. UCC-1
24 financing statements were subsequently filed with the Delaware Secretary of State. To the extent
25 that USB has a lien in the Hertz Collateral other than the Golf Carts, the lien of the Hertz
26 Security Agreement is in second position behind the lien of USB.

27 _____
28 ¹⁹ The Hertz Security Agreement also includes a continuing security interest in MTS Beverages’ personal property.

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

5 On the Petition Date, the balance due and owing on the Hertz Loan was approximately
6 \$565,000.

7 (iii) The Bookbinder Loans.

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

9 ***John Deere Fairway Mower Purchase Money Loan.***

10 The first Bookbinder loan, in the amount of \$7,833.60 was made on May 15, 2012
11 ("Bookbinder Equipment Loan"). The Bookbinder Equipment Loan is secured by a John Deere
12 3253C Fairway mower evidenced by a signed security agreement and a UCC-1 filed in the State
13 of Delaware. As of the Petition Date, the amount owing on the Bookbinder Equipment Loan was
14 \$7,199.99.

15 ***Chevrolet Silverado 2500 Purchase Money Loan.***

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

21 h. Secured Tax Claim.

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

26 **The Events Necessitating the Commencement of the Chapter 11 Cases.**

27 Beginning in 2007, the real estate market in Maricopa County, Arizona, as well as across
28 the southwestern United States, experienced a significant downturn due to plummeting real

1 estate values, substantially reduced mortgage loan originations and securitizations, increased
2 residential mortgage foreclosures, and more generalized credit market dislocations and
3 significant contraction in available liquidity. In fact, Arizona's foreclosure and unemployment
4 rates have consistently been among the highest in the country. These factors, combined with
5 declining business and consumer confidence and significantly increased unemployment,
6 precipitated the recession resulting in significant delays in development of the Resort and a
7 decrease in the expected revenue from the Golf Club.

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

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

19 As a result of their efforts to locate a purchaser for the Resort, on or about December 6,
20 2011, Debtors and JDM Mt Shadows, LLC ("JDM") entered into an *Agreement of Purchase and*
21 *Sale and Joint Escrow Instructions* for the sale of the Resort (the "JDM Agreement"). In March
22 2012, USB approved the JDM Agreement through a *Consent Agreement*. USB's execution of
23 the Consent Agreement was a material term of the JDM Agreement.

24 Despite the four months it had to close the transaction, JDM failed to do so. During that
25 period of time, JDM and USB were in communication about the Resort and Consent Agreement.
26 On April 4, 2012, JDM unilaterally served a notice of termination of the JDM Agreement.
27 Debtors performed all their obligations under the JDM Agreement.

28 ///

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

7 Furthermore, Debtors informed USB that it would substantially meet the terms approved
8 for the sale to JDM without contingency. In other words, Debtors would invest substantial funds
9 (at least equal to the amount offered by JDM), without delay or need for further approvals from
10 PVT. USB rejected this request outright and has refused to negotiate with Debtors toward a
11 meaningful resolution regarding the terms of the loan since Debtors' offer. On April 19, 2012,
12 USB recorded and served a notice setting a foreclosure sale on the Resort for July 26, 2012.

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

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

17 a. 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 b. 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 c. 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 Debtors filed their petitions for relief, USB
13 filed a *Motion to Determine that MTS Land is a Single Asset Entity* (the “SARE Motion”) [ECF
14 No. 7]. Debtors filed a *Motion for Substantive Consolidation of the Bankruptcy Estate of MTS*
15 *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 d. 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 Debtors' assets, and for
12 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 did 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. Debtors have since filed a
19 *Second Motion for Order Extending the 180 Day Exclusivity Period for Obtaining Acceptances*
20 *of a Plan of Reorganization*, which is set for hearing on March 22, 2013. See ECF Nos. 485,
21 489.

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

1 On December 14, 2012, Debtors filed a *Motion for Entry of an Order Fixing Bar Date*
2 *and Procedures for Filing Proofs of Claim* [ECF No. 385] (the “Bar Date Motion”), which
3 sought to establish a bar date of January 31, 2013 as the deadline to file proofs of claims. The
4 Bar Date Motion was approved on January 9, 2013 and the Bar Date was set for February 15,
5 2013. See ECF No. 416.

6 e. Adversary Proceeding.

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

13 f. Debtors’ Employment of Professionals.

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

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

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

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

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

23 On September 14, 2012, Debtors filed an *Application for Order Authorizing the*
24 *Employment of Fleet-Fisher Engineering Inc. as Civil Engineer for the Debtors Nunc Pro Tunc*
25 *to the Petition Date* (the “FFE Retention Application”) [ECF No. 142] seeking to employ Fleet-
26 Fisher Engineering, Inc. as a civil engineer on the Resort in the Chapter 11 Cases. On September
27 18, 2012, the Bankruptcy Court entered an order approving the FFE Retention Application *nunc*
28 *pro tunc* to the Petition Date. See *Order Authorizing the Employment of Fleet-Fisher*

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

3 On October 25, 2012, Debtors filed an *Application for Order Authorizing the*
4 *Employment of Kenneth B. Funsten as Debtors' Interest Rate and Feasibility Expert* (the
5 "Funsten Retention Application") [ECF No. 254] seeking to employ Kenneth B. Funsten as an
6 interest rate and feasibility expert in support of confirmation on Debtors' Plan. On October 30,
7 2012, the Bankruptcy Court entered an order approving the Funsten Retention Application *nunc*
8 *pro tunc* to the Petition Date. See Amended Order Authorizing the Employment of Kenneth B,
9 Funsten as Debtors' Interest Rate and Feasibility Expert [ECF No. 276].

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

17 g. Applications for Authority to Pay Professionals.

18 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

1 2 3	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 [ECF No. 285]</i>	\$28,931.93	Approved
4 5 6	November 1, 2012	<i>First Monthly Application Seeking Interim Compensation of Oz Architects, Inc. for Services Rendered as Debtors' Architect Through September 30, 2012 [ECF No. 288]</i>	\$61,357.36	Approved
7 8 9	January 7, 2013	<i>Second Interim Application of Fleet Fisher Engineering Inc. Seeking Compensation for Services Rendered as Civil Engineer for Debtors from October 1, 2012 through November 30, 2012 [ECF No. 407]</i>	\$20,931.38	Approved
10 11 12 13	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	Approved in the amount of \$464,540.97
14 15 16 17	January 24, 2013	<i>Second Interim Application of Jordan, Bischoff & Hiser P.L.C. Seeking Compensation for Services Rendered as Special Land Use and Zoning Counsel to Debtors from October 1, 2012 Through November 30, 2012 [ECF No. 442]</i>	\$95,313.51	Pending

**VI.
DETAILED DESCRIPTION OF THE PLAN**

A. Means of Implementation of the Plan.

1. Effective Date.

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

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

1 conformance with the Plan or by proper governance action after the Effective Date.

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

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

10 d. The Exit Loan Documents shall be executed by the Reorganized Debtor
11 and the Exit Loan Lender, as applicable an the Exit Loan Note shall be delivered to the
12 Exit Loan Lender.

13 e. If not already paid, the USB Loan Guarantor shall pay the Guarantor
14 Contribution.

15 f. The Reorganized Debtor is authorized to commence drawing the Exit
16 Loan proceeds to pay the payments required under the Plan, including Allowed
17 Administrative Claims, post-Effective Date operational costs and entitlement and
18 development costs for the SUP Approval or the R-43 Zoning, as applicable.

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

1 and the Plan shall be construed and resolved in favor of the effectuation and
2 implementation of the provisions and intentions of the Plan

3 h. In the event of a dispute regarding the operation or satisfaction of any
4 terms regarding R-43 Parcel Sales, the parties shall be required to meet and confer in a
5 good faith attempt to resolve any such disputes; if the parties are unable to resolve such
6 disputes, the Bankruptcy Court shall retain jurisdiction to determine the satisfaction of
7 the conditions in this subsection governing R-43 Parcel Sales.

8 **2. SUP Approval Implementation.**

9 If the SUP Approval for the Real Property is adopted by PVT and chosen by Debtors as
10 the course for the Real Property, the Real Property will be developed in accordance with the SUP
11 Approval. As part of the SUP Approval, the Reorganized Debtor may agree to restrict a portion
12 of the Real Property to use as a golf course or open space. Except to the extent these new
13 restrictions are imposed by the Reorganized Debtor, the Golf Course may be developed in
14 accordance with the SUP Approval.

15 **3. R-43 Zoning and Development Agreement Implementation.**

16 If either the SUP Approval is not available and chosen by Debtors or the SUP Approval
17 is available but subsequently determined to be invalid in whole or in part for any reason,
18 including but not limited to as a result of a referendum or by the final order of a court of
19 competent jurisdiction, or as Debtors determine such course after April 19, 2013, then the Real
20 Property will be developed in accordance with the R-43 Zoning or the Development Agreement.

21 In light of the termination of the Golf Course Restriction, under the R-43 Zoning option,
22 the Reorganized Debtor intends to cease to operate the Golf Course and develop the portion of
23 the Real Property previously dedicated to the Golf Course pursuant to the R-43 Zoning.

24 Whether the Reorganized Debtor pursues either the R-43 Zoning or enforcement of the
25 Development Agreement, the Reorganized Debtor will retain the right to seek damages from
26 PVT as a result of the loss of value if the Development Agreement is not valid and enforceable.

27 **4. Provisions applicable to Real Property.**

28 The Mountain Shadows East Deed Restrictions, the Mountain Shadows East Guest Ranch

1 Restrictions, and the Mountain Shadows West Declaration of Restrictions shall relate to the Real
2 Property, Mountain Shadows East, and Mountain Shadows West as set forth on Schedule 5.4.1
3 of the Plan.

4 ***With regard to the use of Lot 68:***

5 a. The owners of Mountain Shadows East (a) currently use portions of Lot
6 68 and property owned by Mountain Shadows East to access the driveway to Lincoln
7 Drive and (b) currently use portions of Lot 68 and portions of the Real Property to access
8 the driveway to 56th Street. Debtors (a) currently use portions of Lot 68 and property
9 owned by Mountain Shadows East to access the driveway to Lincoln Drive, (b) currently
10 use portions of Lot 68 to access the Real Property, and (c) currently use portions of Lot
11 68 and portions of the Real Property to access Lincoln Drive and 56th Street. Such
12 current access is generally depicted on **Exhibit “3”** included in the Appendix.

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

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

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

27 (i) Demolish existing improvements, including buildings, curb, gutter,
28 striping, lighting, and landscaping;

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

13 (iii) Fully and exclusively utilize such area.

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

1 Plan.

2 ***With regard to the Sewer Locations-Recorded***, Sewer lines may be relocated at the cost
3 of the Reorganized Debtor, with any further maintenance performed at the cost of owners of
4 Mountain Shadows West. With respect to the Sewer Locations-Recorded, all other terms of the
5 Sewer Easement shall remain in effect. With regard to the Sewer Locations-Unrecorded, sewer
6 lines may be relocated at the cost of the owners of Mountain Shadows West, that the owners of
7 Mountain Shadows West shall indemnify the Reorganized Debtor for matters arising from such
8 relocation, and that owners of Mountain Shadows West shall be responsible for all further
9 maintenance.

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

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

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

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

22 **5. Post Effective-Date Events and Financing.**

23 There will be one loan from the Exit Loan Lender to the Reorganized Debtor approved in
24 accordance with and pursuant to the Plan. The Exit Loan shall be in the amount of \$9,625,000 if
25 Reorganized Debtor proceeds with development using R-43 Zoning or \$12,085,000 if
26 Reorganized Debtor proceeds with the Amended and Restated Development Agreement, or such
27 additional amount as agreed to by Reorganized Debtor. The Exit Loan is in addition to a \$7
28 million dollar principal paydown to USB by the Guarantor, which will be paid by the Guarantor,

1 Jamie Sohacheski, and provide a commensurate credit to Reorganized Debtor.

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

6 The Exit Loan will be repaid by Reorganized Debtor with a maturity date on the earlier of
7 (i) six (6) months after payment in full of the Allowed Claims in Class 1, Class 2, Class 3, Class
8 4, Class 6 and Class 8 and the DIP Loan Claim, and (ii) six (6) years from the Effective Date.
9 Commencing on the 14th Business Day of the first full calendar month following the Effective
10 Date, and on the fourteenth 14th Business Day of each subsequent month up to and through the
11 Exit Loan Maturity Date, provided there are no payments default to Holders of Allowed Claims
12 due pursuant to the Plan, Reorganized Debtor shall pay to the Exit Loan Lender monthly interest
13 payments on the outstanding balance of the Exit Loan Note at the Exit Loan Interest Rate. The
14 unpaid balance of the Exit Loan Promissory Note shall be due and payable on the Exit Loan
15 Maturity Date.

16 **6. 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 the 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 the Plan shall be construed and resolved in favor of the
3 effectuation and implementation of the provisions and intentions of the Plan.

4 **7. 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 **8. 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 **9. 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 **10. 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 **11. 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 **12. 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. ICOG will continue to manage the
15 day to day operations. ICOG will continue to be paid under the terms of the Golf Management
16 Agreement.²⁰ The individuals responsible for continued management decisions will be Robert
17 Flaxman and Jamie Sohacheski. Neither Mr. Flaxman nor Mr. Sohacheski will directly draw a
18 salary from Debtors but rather, are compensated through Crown Development, which is paid a
19 fee of 3% of the monthly Gross Revenues for the preceding month for any month during the term
20 of the Sub-Management Agreement or (ii) \$1,000 from MTS Beverages as a result of the *Sub-*
21 *Management Agreement*. Crown Development is also entitled to reimbursement of its costs and
22 expenses related to management of the Property pursuant to the *Sub-Management Agreement* and
23 *Agreement of Appointment of Administrative Agent*, as amended.

24 On and after the Effective Date, the appropriate managers or members of Reorganized
25 Debtor are authorized to issue, execute, deliver, and consummate the transactions contemplated

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

1 by or described in the Plan in the name of and on behalf of Reorganized Debtor without further
2 notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order,
3 rule, or any requirements of further action, vote, or other approval or authorization by any
4 Person.

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

10 **13. Executory Contracts and Unexpired Leases.**

11 a. Executory Contracts.

12 Except for Executory Contracts and Unexpired Leases specifically addressed in the Plan
13 or set forth on the schedule of rejected Executed Contracts and Unexpired Leases attached as
14 Schedule 6.1 to the Plan (which may be supplemented and amended up to the date that the
15 Bankruptcy Court enters the Confirmation Order), all Executory Contracts and Unexpired Leases
16 that exist on the Confirmation Date shall be deemed assumed by Debtors on the Effective Date.
17 Debtors, up to the Effective Date, may modify the schedule of rejected executory contracts, with
18 notice to the non-debtor party to the contract affected by such modification. All executory
19 contracts and unexpired leases not identified on Schedule 6.1 to the Plan shall be deemed
20 assumed on the Effective Date. Debtors have not scheduled any Executory Contracts or
21 Unexpired Leases on Schedule 6.1 to the Plan.

22 b. Approval of Assumption or Rejection.

23 Entry of the Confirmation Order shall constitute as of the Effective Date: (i) approval,
24 pursuant to Section 365(a), of the assumption by Reorganized Debtor of each Executory Contract
25 and Unexpired Lease to which Debtors are a party that is not listed on Schedule 6.1 to the Plan,
26 not otherwise provided for in the Plan, and neither assigned, assumed and assigned, nor rejected
27 by separate order of the Bankruptcy Court prior to the Effective Date; and (ii) rejection by
28 Debtors of each Executory Contract and Unexpired Lease to which Debtor is a party that is listed

1 on Schedule 6.1 to the Plan. Upon the Effective Date, each counter party to an assumed
2 Executory Contract or Unexpired Lease listed shall be deemed to have consented to an
3 assumption contemplated by Section 365(c)(1)(B), to the extent such consent is necessary for
4 such assumption. To the extent applicable, all Executory Contracts or Unexpired Leases of
5 Reorganized Debtor assumed pursuant to Article 6 of the Plan shall be deemed modified such
6 that the transactions contemplated by the Plan shall not be a “change of control,” regardless of
7 how such term may be defined in the relevant Executory Contract or Unexpired Lease and any
8 required consent under any such Executory Contract or Unexpired Lease shall be deemed
9 satisfied by confirmation of the Plan.

10 c. Cure of Defaults.

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

20 d. Objection to Cure Amounts.

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

1 of a Final Order resolving the dispute and approving the assumption.

2 e. Confirmation Order.

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

11 f. Post-Petition Date Contracts and Leases.

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

16 g. Bar Date for Executory Contracts and Unexpired Leases Rejection.

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

20 **14. Manner of Distribution of Property Under the Plan.**

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

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

7 **15. Conditions to Confirmation of the Plan.**

8 a. Conditions to Confirmation.

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

11 b. Conditions to Effectiveness.

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

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

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

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

21 c. Waiver of Conditions.

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

25 **VII.**
RISK FACTORS

26 In addition to risks discussed elsewhere in this Disclosure Statement, the Plan involves
27 the following risks, which should be taken into consideration.
28

1 **A. Bankruptcy Court Jurisdiction to Enter Confirmation Order Regarding Property**
2 **Development.**

3 MTS East HOA, MTS West HOA, and PVT has asserted that this Court does not have
4 jurisdiction to enter a Confirmation Order as requested in the Plan as those parties contend that
5 the Bankruptcy Court will be issuing “land use orders” or participating in “contract zoning.”

6 However, the Bankruptcy Court will not be asked to zone the Real Property or overrule
7 the zoning decision of PVT. Rather, Debtors are merely asking the Bankruptcy Court to (i)
8 approve the Amended and Restated Development Agreement if there is a SUP Approval; (ii)
9 determine that the Plan is feasible if the Real Property is to be developed under the R-43 Zoning;
10 or (iii) if the Debtors elect the Development Agreement alternative, to enforce the Development
11 Agreement; and under (ii) and (iii) hear and determine any rights or monetary damages which
12 are due to Reorganized Debtor thereunder.

13 “[C]ourts have consistently held that contract rights are property of the estate, and that
14 therefore those rights are protected by the automatic stay.” *Elder-Beerman Stores Corp. v.*
15 *Thomasville Furniture Indus. Inc. (In re Elder-Beerman Stores Corp.)*, 195 B.R. 1019, 1023
16 (Bankr. S.D.Ohio 1996) (holding attempts to terminate sale distribution contract which was
17 property of the estate in violation of the automatic stay); *Computer Communication v. Codex*,
18 824 F.2d 725, 731-32 (9th Cir. 1987) (holding that executory contract is property of the
19 bankruptcy estate and attempts to unilaterally terminate constituted violation of automatic stay).

20 Furthermore, a debtor’s interest in a building permit has been held to constitute as asset
21 of the bankruptcy estate. *Island Club Marina, Ltd. v. Lee County Florida*, 33 B.R. 331, 335
22 (Bankr. N.D.Ill. 1983). Similarly, in Arizona a landowner may have vested rights in an issued
23 building permit or special use permit. *See Town of Paradise Valley v. Gulf Leisure Corporation*,
24 27 Ariz.App. 600, 608, 557 P.2d 532, 540 (App. 1976). The Development Agreement was
25 entered into by PVT and Debtors’ predecessors in 1992 and provided for the continued use and
26 redevelopment of the Real Property for “Resort Uses”. As a bargained for and enforceable
27 contract with PVT, Debtors have the right to enforce the Development Agreement through these
28 Chapter 11 Cases or receive damages related to a breach of the Development Agreement.

1 With respect to the provision set forth in Section 5.4.2, 5.4.3, and 5.4.4 of the Plan related
2 to Lot 68, Lot 130-A, and Sewer Locations, Debtors believe they have the right to perform the
3 actions set forth therein under existing property zoning, entitlements, other rights, and documents
4 related thereto. To the extent not so provided in the existing property zoning, entitlements, and
5 documents, Debtors will seek to amicably resolve these provisions with interested parties and in
6 the event that a resolution is not reached, Debtors will seek a judicial determination as to
7 Debtors' rights in this regard.

8 With respect to Section 5.4.5 of the Plan related to Camelback Golf Course Leases and
9 Golf Course Leases Assignment, Debtors will present appropriate evidence at the Confirmation
10 Hearing sufficient for the Court to enter the Confirmation Order with findings consistent with the
11 requested provision.

12 However, Debtors do not believe any of these provisions are required to confirm the Plan
13 and develop the Property pursuant to a SUP Approval, R-43 Zoning, or the Development
14 Agreement.

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

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

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

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

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

28 Certain information in this Disclosure Statement is, by nature, forward looking, and

1 contains estimates and assumptions which might ultimately prove to be incorrect, and projections
2 which may differ materially from actual future results. There are uncertainties associated with
3 all assumptions, projections, and estimates, and they should not be considered assurances or
4 guarantees of the amount of Claims in the various Classes that will be allowed. The allowed
5 amount of Claims in each Class, as well as Administrative Claims, could be significantly more
6 than projected, which in turn, could cause the value of Distributions to be reduced or to be
7 tendered over a longer period of time than anticipated.

8 **E. No Assurance of Sale or Capital Infusions.**

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

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

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

20 **G. No Admissions Made.**

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

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

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

1 **I. Bankruptcy Law Risks and Considerations.**

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

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

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

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

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

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

25 No representations concerning or related to Debtors, the Chapter 11 Cases, or the Plan are
26 authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this
27 Disclosure Statement. Any representations or inducements made to secure your acceptance or
28 rejection of the Plan that are other than as contained in, or included with this Disclosure

1 Statement should not be relied upon by you in arriving at your decision.

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

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

9 **J. Risks Related to Debtors' Business Operations.**

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

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

13 If the Chapter 11 Cases continue for a prolonged period of time, the proceedings could
14 adversely affect Debtors business and operations. The longer the Chapter 11 Cases continue, the
15 more likely it is that Debtors' customers, suppliers, and agents as well as prospective purchasers
16 of the Real Property and funding sources could lose confidence in Debtors' ability to
17 successfully reorganize their business and will seek to establish alternative commercial
18 relationships. Consequently, Debtors might lose valuable business in the course of the Chapter
19 11 Cases.

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

25 **2. Force Majeure.**

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

28 ///

1 **3. Leadership and Management.**

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

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

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

12 **5. Regulatory Approvals.**

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

16 **VIII.**
17 **POST EFFECTIVE DATE OPERATIONS AND PROJECTIONS**

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

19 **1. Vesting of Assets.**

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

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

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

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

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

27 **3. Discharge.**

28 On the Effective Date, unless otherwise expressly provided in the Plan or the

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

13 **4. Injunction.**

14 **From and after the Effective Date, and except as provided in this Plan and the**
15 **Confirmation Order, all Persons that (i) have held, currently hold, or may hold a Claim**
16 **(whether or not for which a proof of Claim was filed) or an Equity Security or other right**
17 **of an Equity Security Holder that is terminated pursuant to the terms of this Plan, or (ii)**
18 **assert rights, entitlements or privileges to the Real Property which are addressed in this**
19 **Plan or the Confirmation Order, are permanently enjoined from taking any of the**
20 **following actions on account of any such Claims or terminated Equity Securities or rights,**
21 **entitlements or privileges related thereto: (i) commencing or continuing in any manner any**
22 **action or other proceeding against Reorganized Debtor or their property, including the**
23 **Real Property; (ii) enforcing, attaching, collecting, or recovering in any manner any**
24 **judgment, award, decree, or order against Reorganized Debtor or their property, including**
25 **the Real Property; (iii) creating, perfecting, or enforcing any Lien or encumbrance against**
26 **Reorganized Debtor or their property, including the Real Property; (iv) asserting a setoff,**
27 **right of subrogation, or recoupment of any kind against any debt, liability, or obligation**
28 **due to Reorganized Debtor or their property, or Real Property; and (v) commencing or**

1 continuing any action, in any manner or any place, that does not comply with or is
2 inconsistent with the provisions of this Plan or the Bankruptcy Code

3 **5. Exculpation.**

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

16 To be clear, this exculpation is limited to any act or omission in connection with, relating
17 to, or arising out of (from the Petition Date forward), the Chapter 11 Cases, Reorganized Debtor,
18 the pursuit of confirmation of the Plan, or the consummation of the Plan. In addition, it is
19 consistent with the indemnification provisions of Debtors' organizational documents. Finally,
20 gross negligence and willful misconduct is excluded. Therefore, the exculpation has a very
21 specific, temporal limitation and is narrow in scope to protect those that assisted with this
22 Bankruptcy Case from liability arising from the actions taken in the Bankruptcy Case. Debtors
23 will demonstrate at the Confirmation Hearing that they can meet the appropriate legal standard
24 for such provisions to be approved. Specifically, similar exculpation provisions are routinely
25 approved to protect those closely involved in proposing a plan. *See In re PWS Holding Corp.*,
26 228 F.3d 224, 246–47 (3rd Cir.2000) (approved exculpation provision releasing debtors,
27 reorganized debtors, committee, and their officers, directors, employees, advisors, professionals
28 or agents from liability except from willful misconduct or gross negligence); *In re Western*

1 *Asbestos Co.*, 313 B.R. 832, 846–47 (Bankr.N.D.Cal.2003) (approved release provision in favor
2 of debtors, committee, futures representative, and their respective agents except for willful
3 misconduct); *In re Firstline Corp.*, 2007 WL 269086 (Bankr.M.D.Ga.2007)(approved
4 exculpation clause for the debtor, trustee, the committee and its members, and their respective
5 advisors, attorneys, consultants or professionals with exception for gross negligence, willful
6 misconduct, or breach of fiduciary duty); *In re Enron Corp.*, 326 B.R. 497
7 (S.D.N.Y.2005)(bankruptcy court approved exculpation provision in favor of debtors, creditors'
8 committee, employee committee, trustees, and their respective officers, employees, attorneys,
9 and agents that excluded gross negligence or willful misconduct).

10 **6. Post-Confirmation Reporting and Quarterly Fees to the UST.**

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

21 **IX.**
22 **CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

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

1 CONSEQUENCES OF THE PLAN.

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

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

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

28 ///

X.
CONFIRMATION OF THE PLAN

A. Confirmation Of The Plan.

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

B. Objections to Confirmation of the Plan.

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

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

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

C. Best Interest of Creditors and Liquidation Analysis.

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

1 Holders in a liquidation under Chapter 7 of the Bankruptcy Code. Debtors believe that the Plan
2 meets the Best Interest Test and provides value which is not less than that which would be
3 recovered by each such holder in a Chapter 7 bankruptcy proceeding.

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

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

26 It is further anticipated that a Chapter 7 liquidation would result in significant delay in the
27 payment, if any, to Creditors. Among other things, Chapter 7 cases could trigger a new bar date
28 for filing Claims that would be more than ninety (90) days following conversion of the Chapter

1 11 Cases to Chapter 7. Hence, a Chapter 7 liquidation would not only delay distribution but
2 raises the prospect of additional Claims that were not asserted in the Chapter 11 Cases.
3 Moreover, Claims that may arise in the Chapter 7 cases or result from the Chapter 11 Cases
4 would be paid in full from the Assets before the balance of the Assets would be made available
5 to pay pre-Chapter 11 Allowed Priority Claims, Allowed General Unsecured Claims, and Equity
6 Securities.

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

12 As set forth in the Liquidation Analysis²¹ and accompanying notes annexed hereto,
13 Debtors have determined that confirmation of the Plan will provide each Holder of a Claim in an
14 Impaired Class²² with no less of a recovery than he/she/it would receive if Debtors were
15 liquidated under Chapter 7. If the Plan is confirmed, Debtors project that all Creditors will be
16 paid 100% of their Allowed Claims.

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

22 In Chapter 7 cases, the Chapter 7 trustee must liquidate Debtors’ Assets and distribute the
23 proceeds thereof to Holders of Allowed Claims. However, the change in management would
24 hinder the Chapter 7 trustee’s ability to maximize the sales price of the Real Property. If a sale

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

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

1 could not be quickly effectuated at a price greater than the Allowed Secured Claims, the Holders
2 of Allowed Secured claims would presumably seek relief from the automatic stay to foreclose on
3 the Real Property or the Chapter 7 trustee would abandon the collateral.

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

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

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

27 **D. Feasibility.**

28 The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court

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

6 As demonstrated by the previous discussion of Debtors' financial condition, Debtors'
7 operations and Exit Loans generate sufficient cash flow to meet its payment obligations under
8 the Plan until the Real Property can be developed or refinanced and Parcels sold. Further, as
9 demonstrated by the Martori Appraisal and the Martori Appraisal Supplement, the value of
10 Debtors' Assets exceeds the Secured Claims, thereby enabling Debtor to sell the Real Property
11 or to obtain refinancing prior to repay in full the all Allowed Claims consistent with the
12 provisions of the Plan. Furthermore, as demonstrated by the Projections included as **Exhibit "6"**
13 to the Appendix, Debtors will be able to satisfy their obligations under the Plan. Provided the
14 foregoing, Debtors are confident that they can establish, and the Bankruptcy Court will find, that
15 the Plan is feasible within the meaning of Section 1129(a)(11) of the Plan.

16 **E. Accepting Impaired Class.**

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

20 **F. Acceptance of Plan.**

21 For an impaired Class of Claims to accept the Plan, those representing at least two-thirds
22 (2/3) in amount and a majority in number of the Allowed Claims voted in that Class must be cast
23 for acceptance of the Plan.

24 **G. Confirmation Over a Dissenting Class ("Cram Down").**

25 If there is less than unanimous acceptance of the Plan by Impaired Classes of Claims, the
26 Bankruptcy Court nevertheless may confirm the Plan at Debtors' request. Section 1129(b)
27 provides that if all other requirements of Section 1129(a) of the Plan are satisfied and if the
28 Bankruptcy Court finds that: (i) the Plan does not discriminate unfairly; and (ii) the Plan is fair

1 and equitable with respect to the rejecting Class(es) of Claims or Equity Securities impaired
2 under the Plan, the Bankruptcy Court may confirm the Plan despite the rejection of the Plan by
3 dissenting impaired Class of Claims or Equity Securities.

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

11 **H. Allowed Claims.**

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

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

1 **I. Impaired Claims and Equity Securities.**

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

9 **J. Voting procedures.**

10 **1. Submission of Ballots.**

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

15 GORDON SILVER
16 Attn: Robert C. Warnicke
17 One East Washington Suite 400
18 Phoenix, Arizona 85004

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

21 **2. Incomplete Ballots.**

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

25 **3. Withdrawal of Ballots.**

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

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1 debtor for distribution to their creditors and holders of equity security in accordance with the
2 priorities established by the Bankruptcy Code.

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

13 **XII.**
14 **AVOIDANCE ACTIONS**

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

24 A bankruptcy trustee (or the entity as debtor-in-possession) may avoid as a fraudulent
25 transfer a transfer of property made by a debtor within two (2) years (and under applicable
26 Nevada law, four (4) years) before the date the Chapter 11 Cases were commenced if: (i) debtor
27 received less than a reasonably equivalent value in exchange for such transfer; and (ii) was
28 insolvent on the date of such transfer or became insolvent as a result of such transfer, such

1 transfer left debtor with an unreasonably small capital, or debtor intended to incur debts that
2 would be beyond debtor's ability to pay as such debts matured. In addition, this reachback may
3 be extended further to within one (1) year of reasonable discovery of the facts underlying the
4 transfer and its actual fraudulent nature.

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

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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 1st day of March, 2013.

MTS LAND LLC,
a Delaware limited liability company


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

MTS GOLF LLC,
a Delaware limited liability company

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

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APPENDIX

EXHIBIT "1"	DEBTORS' JOINT PLAN OF REORGANIZATION
EXHIBIT "2"	DEPOSITION OF JOHN POPE PAUL
EXHIBIT "3"	LOT 68 VISUAL AID
EXHIBIT "4"	PLAT MAP FOR R-43 ZONING
EXHIBIT "5"	LIQUIDATION ANALYSIS
EXHIBIT "6"	FINANCIAL PROJECTIONS
EXHIBIT "7"	JANUARY, 2013 MONTHLY OPERATING REPORTS
EXHIBIT "8"	13 WEEK BUDGET 1/10/2013-04/21/2013