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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In Re: MTS LAND, LLC, a Delaware limited liability company, Debtor. ☒ Affects this Debtor	Proceedings Under Chapter 11 Case Nos. 2:12-bk-16257-EWH 2:12-bk-16259-CGC Jointly Administered Under Case No. 2:12-bk-16257-EWH **OBJECTION TO DISCLOSURE STATEMENT TO ACCOMPANY DEBTORS' THIRD AMENDED PLAN OF REORGANIZATION** Date: March 22, 2013 Time: 10:00 a.m. Location: 230 N. First Ave. 6th Floor, Courtroom 602 Phoenix, AZ 85003 Related DEs: 493
In re MTS GOLF, LLC, a Delaware limited liability company, Debtor. ☒ Affects this Debtor	

U.S. Bank National Association ("U.S. Bank"), a secured creditor in the above-captioned jointly-administered cases, hereby objects to the "Disclosure Statement to Accompany Debtors' Third Amended Joint Plan of Reorganization" (the "Third Disclosure Statement") [DE #493], filed by MTS Land, LLC and MTS Golf, LLC (the "Debtors"). The Third Disclosure Statement cannot be approved because it does not contain adequate information, as required by 11 U.S.C. § 1125. For example, the Third Disclosure Statement (1) does not disclose the present state of the administrative expenses

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of these estates, (2) does not contain drafts of the "restated" loan documents that would purportedly govern U.S. Bank's post-confirmation rights and obligations *vis à vis* the Debtors, (3) describes several development concepts, but not a plan of reorganization, (4) does not disclose the source of the parcel valuations relied on in the disclosure statement,[1] (5) does not appear to describe the treatment of U.S. Bank's claim in the event U.S. Bank makes the Section 1111(b) election, and (6) the description of U.S. Bank's claim is uncertain and inconsistent. Accordingly, U.S. Bank respectfully requests that the Court deny approval of the Third Disclosure Statement.

This Objection is supported by the accompanying Memorandum of Points and Authorities and the prior pleadings and papers in this case, all of which are incorporated herein by this reference. In particular, U.S. Bank incorporates by reference the objections raised in its "Objection to Disclosure Statement to Accompany Debtors' Second Amended Joint Plan of Reorganization" (the "First Disclosure Statement Objection") [DE #477]. In addition, U.S. Bank also joins in the other applicable objections filed by other creditors and parties-in-interest.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE THIRD DISCLOSURE STATEMENT STILL FAILS TO ADEQUATELY DISCLOSE THE PRESENT STATE OF THE ADMINISTRATIVE EXPENSES OF THESE ESTATES

As set forth in the First Disclosure Statement Objection and in U.S. Bank's "Objection to Second Motion for Order Extending the 180 Day Exclusivity Period for Obtaining Acceptances of a Plan of Reorganization" [DE #502], the administrative expenses of these estates far exceed the Debtors' projections. In fact, the "hefty" fee application filed by Debtors' bankruptcy counsel, Gordon Silver, through only October 31, 2012 exceeded the Debtors' total projected legal expenses through the end of March 2013. To date, estate professionals have applied for $786,825.78 in fees and costs

[1] At approximately 5:00 p.m. on Thursday, March 14, 2013, Debtors filed two declarations that appear intended to "support" the Third Disclosure Statement. It is unclear why the Debtors failed to file these declarations by the Court-ordered disclosure statement deadline of March 1, 2013. Debtors apparently intend to continue their pattern of a "rolling" disclosure statement.

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in these cases,[2] and a disclosure statement has yet to even be approved. This amount exceeds the Debtors' budget for these professionals through March 2013 by over 30%, and does not even include the majority of accrued fees for December 2012 through February 2013.[3]

While these numbers are striking, the sheer magnitude of the professional expenses incurred in these cases is not the most troubling issue. For example, the present status of accrued administrative expenses is not disclosed, or even estimated, in the Third Disclosure Statement. In addition, the monthly operating reports attached to the Third Disclosure Statement blatantly misrepresent the amount of the actual fees incurred to date, incorrectly stating that the accrued "Professional Fees" since filing equal only $202,316. *See* Exhibit 7 to the Third Disclosure Statement. Moreover, the budget attached to the Third Disclosure Statement fails to even attempt to estimate Gordon Silver's legal fees for March or April 2013. *See* Exhibit 8 to the Third Disclosure Statement. In other words, a typical investor could not make an informed judgment about the probable financial results of acceptance or rejection of the "Debtors' Third Amended Joint Plan of Reorganization" (the "Third Plan") because the Third Disclosure Statement conceals the magnitude of the administrative insolvency of these estates. *See Huntington Banks of Michigan v. Felcore/Lax Holdings, LP*, 9 Fed. Appx. 669, 670 (9th Cir. 2001) (referring to the adequate information standard as an objective one that asks what the hypothetical reasonable investor would want to know to make an informed judgment about the plan). Therefore, more disclosure is required.

[2] *See* DE #s 250, 269, 285, 288, 407, 413, 442, and 499. With the exception of Forrest Richardson and Associates, no other professional employed in these cases has applied for fees for December 2012, January 2013, or February 2013. Therefore, there are at least three months of accrued fees that are not included in this calculation for the bulk of the professionals employed by these estates.

[3] It is worth noting that Gordon Silver has only applied for its fees through October 31, 2012, so over four months of Gordon Silver's fees remain to be included in this total. Gordon Silver's first fee application in the amount of $486,829.47 covered only three-and-a-half months of fees and costs.

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To remedy this lack of disclosure, U.S. Bank proposes that a chart modeled on the following would be helpful to creditors and to the Court, and should be included in any disclosure statement ultimately approved by the Court:

Professional	**Fees and Costs Applied For**[4]	**Fees and Costs Approved**[5]	**Accrued Fees and Costs Not Yet Applied For (Through 2/28/13)**	**Total Fees and Costs Incurred (Through 2/28/13)**	**Estimated Fees and Costs Through Confirmation**
Gordon Silver	$486,829.47	$464.540.97	???	???	???
Jorden, Bischoff & Hiser P.L.C.	$181,322.92	$86,009.41	???	???	???
Feet Fisher	$49,863.31	$49,863.31	???	???	???
Oz Architects	$61,357.36	$61,357.36	???	???	???
Forrest Richardson	$7,452.72	$2,084.48	???	???	???
Totals	**$786,825.78**	**$663,855.53**	???	???	???

Without these additional disclosures, the Third Disclosure Statement cannot be approved.

II. THE THIRD DISCLOSURE STATEMENT DOES NOT PROVIDE ADEQUATE INFORMATION REGARDING THE REFERENCED "RESTATED" LOAN DOCUMENTS.

The Third Disclosure Statement contains several pages that discuss various amendments and modifications to the U.S. Bank loan documents (the "Loan Documents"). According to the Third Disclosure Statement, the amended and modified Loan Documents will be memorialized in the "Restated USB Loan Documents," which the reorganized debtor will execute and deliver to U.S. Bank on the effective date of the Third Plan. *See* the Third Disclosure Statement at p. 69. The problem, however, is that U.S. Bank has never seen the Restated USB Loan Documents. In fact, it is unclear if ***anyone*** has ever seen the Restated USB Loan Documents, because they are not attached to the Third Disclosure Statement.

[4] As of March 15, 2013.
[5] As of March 15, 2013.

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The Debtors' failure to disclose the Restated USB Loan Documents raises a host of issues. First, the Debtors are asking the Court to order U.S. Bank to be a party to, and to be bound by, the Restated USB Loan Documents, but U.S. Bank cannot evaluate loan documents that it has never seen. Second, there is no requirement in the Third Plan or Disclosure Statement or Plan that the Debtors provide the Restated USB Loan Documents to U.S. Bank at any time prior to confirmation (*i.e.*, U.S. Bank would see the Restated USB Loan Documents for the first time only after the Court has ordered the approval of these unseen documents). Third, because there is no requirement that the Debtors provide the "restated" loan documents to U.S. Bank prior to the Third Plan's effective date, U.S. Bank will effectively be denied discovery on the Restated USB Loan Documents during the confirmation proceedings. Without these fundamental disclosures, the Third Disclosure Statement cannot be approved.

III. THE THIRD DISCLOSURE STATEMENT DESCRIBES NUMEROUS CONCEPTS, BUT NOT A PLAN

The Third Disclosure Statement's description of a "plan" is vague, ambiguous, amorphous, and speculative. While it describes several development ***concepts***, the Third Disclosure Statement does not describe a ***plan***.

Generally speaking, the Debtors' proposal is that the property may eventually be developed (1) by proceeding under an as-yet unapproved Special Use Permit ("SUP") and "Amended and Restated Development Agreement" (the "SUP Concept"), (2) by enforcing the existing Development Agreement (the "Development Agreement Concept"), or (3) by selling the property as 43 residential one-acre parcels to as-yet unidentified buyers (the "R-43 Concept"). Under the latter two concepts, the Debtors vow in the Third Disclosure Statement to "pursue claims for damages against [the Town of Paradise Valley] as a result of [the town] not honoring the Development Agreement." *See* the Third Disclosure Statement at p. 40.

The gaping holes in the Third Disclosure Statement regarding these concepts include:

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- According to the Third Disclosure Statement, the Debtors "reserve the right" to move forward with either the Development Agreement Concept or the R-43 Concept after April 19, 2013, but the Third Disclosure Statement does not disclose when, if ever, a decision will be made as to which concept the Debtors will pursue;[6]
- In fact, although not entirely clear, it appears that the Debtors are under no obligation to ***ever*** decide upon a development concept;
- The Debtors openly admit that they have not formulated detailed development plans in the event they elect to pursue the Development Agreement Concept;[7] and
- In the event the Debtors decide to litigate with the Town of Paradise Valley or the homeowners, the Disclosure Statement does not describe (1) when, where, or how such litigation will take place, (2) what happens to the plan confirmation process while the litigation is pending, or (3) how the litigation would impact the feasibility of the Third Plan. In other words, the Third Disclosure Statement does not adequately disclose the risks associated with possible litigation with the Town or the homeowners.

These fundamental disclosures are the type of information a typical investor needs in order to make an informed decision regarding the Third Plan. Because they are absent from the Third Disclosure Statement, it cannot be approved.

IV. THE THIRD DISCLOSURE STATEMENT DOES NOT DISCLOSE THE SOURCE OF THE VALUATIONS RELIED ON IN THE DEBTORS' PROJECTIONS

Under the R-43 Concept discussed in the Third Disclosure Statement, the reorganized debtor would sell 43 residential lots to as-yet unidentified purchasers. According to the Debtors, 28 of these lots would be sold in bulk, while the remaining 15 would be sold individually. Exhibit 6 to the Third Disclosure Statement includes

[6] *See* the Third Disclosure Statement at pp. 46:26-47:1.
[7] *Id.* at p. 47:1-5.

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projections under this concept. In particular, the Debtors are apparently projecting that each of the lots, whether sold in bulk or individually, has a value in excess of $1.1 million. The Third Disclosure Statement does not explain the source of these estimated values. If these are simply the Debtors' hopes and dreams for the property, that needs to be disclosed. Similarly, if the Debtors have commissioned an appraisal of the property for sale as 43 residential lots, that also needs to be disclosed. Without this information, it is impossible to evaluate the "R-43 Parcel Sale" concept.

Moreover, when compared with Schedule 1.1.106 of the Third Plan, Exhibit 6 appears to be misleading as to the value of the lots. For example, according to Exhibit 6, the "R43 Lots Bulk 1" has an "Avg. Value (static)" of $1,176,151, for a "Total Value (static)" of $10,585,255. By contrast, according to Schedule 1.1.106, these same lots have an average value of $1,568,201, and a total value of $14,113,806. In other words, in Schedule 1.1.106, the Debtors represent that the exact same lots are valued at $3,538,551 ***more*** than the values attributed to them in Exhibit 6 to the Third Disclosure Statement. At a minimum, this requires explanation.

V. THE THIRD AMENDED PLAN DOES NOT APPEAR TO DESCRIBE A THE TREATMENT OF U.S. BANK'S CLAIM IN THE EVENT U.S. BANK MAKES THE SECTION 1111(b) ELECTION.

Although the Third Disclosure Statement references the Section 1111(b) election in various places, it does not appear that the Debtors have actually proposed a treatment for U.S. Bank's claim in the event it elects to have its claim treated pursuant to Section 1111(b). For example, in Article III.B.1, the Third Amended Plan discusses how the "Secured Portion of the outstanding balance of the Restated USB Note" will be treated. The term "Secured Portion" does not appear to be defined anywhere in the Third Plan or Disclosure Statement. As a result, it is unclear if the proposed treatment described in Article III.B.1 applies in the event U.S. Bank makes the Section 1111(b) election.

The discussion of the treatment of general unsecured claims in Article III.B.8 of the Third Disclosure Statement is equally, if not more, vague and uncertain. Specifically, on page 25 of the Third Disclosure Statement it appears that the Debtors started to explain

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some type of treatment in the event U.S. Bank elects to have its claim treated pursuant to Section 1111(b). However, the explanation on lines 7 through 12 is incomprehensible. Likewise, it appears that the Third Disclosure Statement would permit U.S. Bank to make a contingent election under Section 1111(b) in the event a determination is made in the confirmation process that the value of the property is less than what is owed to U.S. Bank. Before a disclosure statement in these cases can be approved, these issues must be clarified, and the Debtors must articulate a coherent proposal regarding U.S. Bank's claim in the event U.S. Bank elects to have its claim treated pursuant to Section 1111(b).

VI. THE DESCRIPTION OF U.S. BANK'S CLAIM IS UNCLEAR AND INCONSISTENT

Although not entirely clear, it appears from the Third Disclosure Statement that the Debtors intend to strip all default interest off of U.S. Bank's claim. *See* the Third Disclosure Statement at p. 15, ll. 7-14. However, the Third Disclosure Statement provides no legal basis for doing so, and U.S. Bank objects to such treatment. Moreover, the Third Disclosure Statement's description of U.S. Bank's claim is inconsistent with the description of the claim in the Third Plan. Specifically, the Third Plan's definition of the "USB Loan Claims" at least includes pre-petition default interest. The Third Disclosure Statement cannot be approved until these vagaries and inconsistencies are remedied.

VII. CONCLUSION

Because the Third Disclosure Statement does not contain "adequate information," as required by 11 U.S.C. § 1125, it cannot be approved.

RESPECTFULLY SUBMITTED this 15th day of March, 2013.

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