

1 Jack F. Fitzmaurice, Esq. (SBN # 061129)
2 FITZMAURICE & DEMERGIAN
3 1061 Tierra Del Rey, Suite 204
4 Chula Vista, California 91910
5 Telephone: 619-591-1000
6 Telecopier: 619-591-1010
7 E-Mail: fitz01@earthlink.net

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

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

12 In Re:
13
14 PREMIER GOLF PROPERTIES, LP,
15 a California limited
16 partnership,
17 Debtor-in-Possession,

Bankruptcy No. 11-07388-PB11
Chapter 11 Proceeding
SECOND AMENDED DISCLOSURE
STATEMENT OF PREMIER GOLF
PROPERTIES, LP

Date: September 26 2011
Time: 2:00 p.m.
Dept. 4
Room: 328
Judge: Hon. Peter Bowie

18 Premier Golf Properties, LP (hereinafter "Premier",
19 "Debtor" or "Cottonwood") submits this First Amended Disclosure
20 Statement and companion proposed First Amended Plan of
21 Reorganization which seeks to address the concerns of the United
22 States Trustee and objecting FENB. Changes and additions are
23 highlighted for the convenience of the reader.

24 **INITIAL STATEMENT**

25 Pursuant to 11 U.S.C. Section 1125 in connection with the
26 above-referenced case filed under Chapter 11 of the United
27 States Bankruptcy Code, this First Amended Disclosure Statement
28 is intended to summarize the First Amended Plan of

1 Reorganization of the estate of Cottonwood, the debtor-in-
2 possession herein, as well as to provide adequate and reasonable
3 information about the financial affairs of the debtor-in-
4 possession to the holders of claims such that each claimant will
5 be able to make an informed judgment about the Plan.

6 I.

7 **PRELIMINARY STATEMENT**

8 Cottonwood, the debtor-in-possession, (hereinafter also
9 "Debtor" or "Premier") submits the following First Amended
10 Disclosure Statement dated July 9, 2011 for consideration by
11 creditors:

12
13 A. **General Information**

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

23 The purpose of this First Amended Disclosure Statement is to
24 provide such information as may be deemed material, important
25 and necessary for the creditors of the debtor-in-possession to
26 make a reasonably informed decision in exercising their right to
27 vote for the acceptance or rejection of the First Amended Plan
28 of Reorganization.

1 NO REPRESENTATION ABOUT THE DEBTOR; PARTICULARLY
2 ABOUT FUTURE PLANS OR THE VALUE OF PROPERTY ARE
3 AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN
4 THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR
5 INDUCEMENTS MADE TO SECURE ACCEPTANCE OF THE PLAN
6 OTHER THAN AS CONTAINED IN THIS FIRST AMENDED
7 DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY ANY
8 CREDITOR OR INTEREST HOLDER. ANY ADDITIONAL
9 REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO
10 COUNSEL FOR THE DEBTOR WHO, IN TURN, SHALL DELIVER THE
11 INFORMATION TO THE BANKRUPTCY COURT OR TAKE OTHER
12 APPROPRIATE ACTION.

13 THE INFORMATION CONTAINED IN THIS FIRST AMENDED
14 DISCLOSURE STATEMENT HAS NOT BEEN SUBJECT TO A
15 CERTIFIED AUDIT. THE RECORDS KEPT BY THE DEBTOR RELY
16 FOR THEIR ACCURACY ON INTERNAL BOOKKEEPING. EVERY
17 REASONABLE EFFORT HAS BEEN MADE TO PRESENT ACCURATE
18 FIGURES. HOWEVER, THE RECORDS KEPT BY THE DEBTOR ARE
19 NOT WARRANTED OR REPRESENTED TO BE FREE OF ANY
20 INACCURACY.

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

22 B. Manner of Voting and Confirmation of the Plan

23 1. Classes Entitled to Vote The Plan divides the claim
24 of creditors into a number of classes. Only classes of
25 creditors and interest holders impaired under the Plan are
26 entitled to vote. Generally, subject to the specific provisions
27 of the Bankruptcy Code, this includes creditors whose claims,
28 under the Plan, will be modified in terms of principal,
interest, length of time for payment, or a combination of the
above.

29 2. Procedures for Voting All creditors should cast
30 their vote by completing, dating, and signing the ballot
31 included with the Plan and mailing it to Jack F. Fitzmaurice
32 Esq. at Fitzmaurice & Demergian, 1061 Tierra del Rey, Suite 204,
33 Chula Vista, California 91910. PLEASE NOTE THAT IF YOU FAIL TO
34 VOTE AGAINST THE PLAN, YOU WILL BE TREATED AS HAVING VOTED IN
35 FAVOR OF THE PLAN. IN ORDER TO HAVE YOUR VOTE COUNTED AGAINST

1 THE PLAN, YOU MUST FILE A BALLOT TO THAT EFFECT WITHIN THE TIME
2 STATED IN THE BALLOT. In order to be counted, the ballot must
3 be received by the date set forth in the ballot. A ballot does
4 not constitute a valid Proof of Claim in the bankruptcy
5 proceedings.

6 ///

7 C. **Confirmation of the Plan**

8 1. **Solicitation of Acceptance** This First Amended
9 Disclosure Statement will be provided to each creditor whose
10 Claim has been scheduled by the Debtors or who has timely filed
11 a Proof of Claim with the Bankruptcy Court. This First Amended
12 Disclosure Statement is intended to assist creditors with their
13 evaluation of the Plan and their decision to reject or accept
14 the Plan. Your acceptance of the Plan may not be solicited
15 unless you receive a copy of this First Amended Disclosure
16 Statement prior to or concurrently with the solicitation of
17 acceptance of the Plan.

18 2. **Determining Acceptance of the Plan** When acceptance
19 of the Plan is determined by the Bankruptcy Court, only the
20 votes from the impaired classes of creditors will be counted.
21 Therefore, votes of claimants will only be counted if submitted
22 by those claimants whose claims or interests are duly scheduled
23 by the Debtors as undisputed, non-contingent and liquidated, or
24 who have timely filed a Proof of Claim with the Bankruptcy Court
25 which as been allowed as provided by 11 U.S.C. Section 502
26 before confirmation of the Plan. There are no unimpaired
27 classes which are deemed to have accepted the Plan. The
28 classification of Claims is described in Article III below. If

1 you are in any way uncertain if your claim has been correctly
2 scheduled, you should review the Debtor's schedules and any
3 amendments to schedules which are on file at the Clerk's Office
4 of the United States Bankruptcy Court, Southern District of
5 California, San Diego, California, during their regular business
6 hours, Monday through Friday, 9:00 a.m. through 4:00 p.m.

7 ///

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

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

28

1 of the Effective Date of the Plan under the provisions of
2 Chapter 7 of the Bankruptcy Code.

3 **5. "Cram Down" Confirmation of the Plan Without Necessary**
4 **Acceptance** In the event that the requisite acceptances are not
5 obtained from all of the impaired classes of creditors, the
6 Bankruptcy Court may, nevertheless, confirm the Plan if the
7 Bankruptcy Court finds that all other requirements of
8 confirmation under Section 1129(a) are met and certain
9 additional conditions are met.

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

18 In order to apply the "cram down" provisions of Section
19 1129(b), the Debtor is required to properly explain the
20 "absolute priority" rule, and the alternatives facing unsecured
21 creditors, including the consequences of denial of confirmation.
22 In re Genesee Cement, Inc., 31 B.R. 442, 444 (Bankr.E.D.Mich.
23 1983).

24 Pursuant to 11 U.S.C. Section 1129 (b) (2) the Court may
25 confirm a plan even if all impaired classes do not vote for the
26 plan in sufficient number and dollar amount so long as one
27 impaired class has accepted the plan and treatment of the
28 respective classes does not violate the "absolute priority"

1 rule. See Northwest Bank Worthington v. Ahlers, 108 S.Ct. 963
2 (1988). The absolute priority rule requires that in order for
3 the plan to be confirmed over the objection of a class of
4 impaired unsecured creditors, the holders of an interest that is
5 junior in priority to the interest of such class, such as the
6 debtor, are prohibited from receiving any money or property
7 unless the class of impaired unsecured creditors is to receive
8 the full amount of the allowed claims, plus post confirmation
9 interest at a rate established by the Court.

10 **6. Acceptance Necessary to Confirm the Plan.** The Court
11 provides certain minimum requirements for confirmation, but the
12 Court may decide that a plan is not fair and equitable and is
13 therefore unconfirmable even if it is in technical compliance
14 with these requirements. In re Sandy Ridge Dev. Corp., 881 F.2d
15 1346 , 1352 (5th Cir. 1989), reh'g denied; In re D&F
16 Construction, Inc. 865 F.2d 673 (5th Cir. 1989); Matter of IPC
17 Atlanta Ltd. Partnership, 142 B.R. 547, 555 (Bankr.N.D.Ga.
18 1992).

19 The "fair and equitable" requirement is satisfied with
20 respect to a secured claim so long as the claimholder: 1)
21 retains the lien; and 2) receives "deferred cash payments
22 totaling at least the allowed amount of such claim, of a value,
23 as of the effective date of the plan, of at least the value of
24 such holder's interest in the estate's interest in such
25 property." In re Bryson Properties, XVIII, 961 F.2d 496, 500
26 (4th Cir. 1992).

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

4 These are complex statutory provisions and this summary is
5 not intended to be a complete statement of the law. It is the
6 hope of the Debtor that the plan will be consensual and resort
7 to the "cram down" provisions will not be necessary. Until
8 creditors vote on the Plan, it is impossible to determine to
9 what extent the "fair and equitable" test will need to be
10 invoked.

11 To the extent that any class does not accept the Plan or is
12 deemed not to have accepted the Plan, the Debtor will request
13 the Bankruptcy Court to confirm the Plan pursuant to Section
14 1129 (b). The Debtor believes that the Plan will meet the "fair
15 and equitable" test and comply with the "absolute priority"
16 rule.

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

20 **II.**

21 **STATEMENT OF FACT**

22 **A. The Debtor:** Premier is a California limited
23 partnership organized and existing under the laws of the State
24 of California and legally qualified to do business in the State
25 of California and in fact does business under the fictitious
26 business name of Cottonwood Golf Club. Premier was formed in
27 2002 with Premier Golf Management, Inc., a California
28 corporation ("Management"), as its general partner. Management's

1 posture as general partner is its only asset and Management
2 exists to manage the limited partnership. In July, 2002 Premier
3 purchased Cottonwood Golf Club, a golf venue located in the
4 Sweetwater River Valley in the Rancho San Diego area of San
5 Diego County for the sum of \$19,500,000.

6 Geographically, the venue occupies approximately 297 acres on
7 the floor of the Sweetwater river valley (ancient floodplain) in
8 an oblong shape generally oriented on an east - west axis.
9 Threading through the entire property from east to west is the
10 bed of the Sweetwater River, a factor of critical import
11 relative to value. Although a "blue line" waterway and thus
12 under the jurisdiction of the United States Corps of Engineers,
13 the river bed is in fact dry except for those rare times when
14 the San Diego region experiences three (3) or four (4) days of
15 continuous rain; in which instance the river bed carries run off
16 down to the Sweetwater reservoir. The flows in no wise impede
17 play on the courses.

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

23 Subsequent to the 2002 acquisition the Debtor commenced a
24 program of visual upgrades and course improvements culminating
25 in the creation of what is now the Lakes Course by way of adding
26 lakes scattered across the playing area, an island tee box and
27 an island green. The Lakes course renovations were completed in
28 2009 and were but a segment of a strategic development plan

1 which, in addition to the Lakes course renovation, included -
 2 and still includes, a new clubhouse and other infrastructure
 3 upgrades; all to have been funded by sand extraction and
 4 wetlands mitigation set asides. Additionally, active adult
 5 citizen residential development was planned. Residential
 6 development is made possible by the fact that the premises
 7 contains 56 +/- developable excess acres; i.e., land not
 8 necessary for golf course operations, sand extraction or
 9 wetlands mitigation set asides. Having so noted, the Debtor no
 10 longer plans any real estate development relative to the
 11 Cottonwood real estate as the state of the economy makes any
 12 such planning too uncertain to be relied upon in connection with
 13 Plan performance.

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

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

22 (a) Secured debt:

23	1. Real Estate Taxes	\$ 859,079.00
24	2. First Trust Deed	
25	(Far East National Bank)	\$11,061,000.00
26	3. Second Trust Deed	
27	(8332 Case St. Inv., Inc.)	<u>\$ 692,157.00</u>
28	Total Secured Debt:	\$12,612,236.00

1

2

(b) Unsecured debt	<u>\$ 1,941,410.00</u>
--------------------	------------------------

3

TOTAL DEBT:	\$14,553,646.00
-------------	-----------------

4

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

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

FENB denies these allegations, contending that the loan documentation extant between FENB and Premier define the

1 obligations of both parties and that Premier is in violation of
2 their terms. In consequence, the Debtor and FENB are locked in
3 the litigation identified above. In that connection Premier made
4 application for a preliminary injunction which was denied. A
5 copy of the court's order in that regard is attached hereto as
6 Exhibit A. Premier has removed the FENB litigation to the
7 Bankruptcy Court and FENB has filed a motion to remand the FENB
8 actions back to their respective state courts. Regardless of
9 which court ultimately determines the outcome, the litigation
10 will continue. Finally, given the Debtor's Plan provision
11 providing for interest payment to FENB during the plan
12 performance period and payment in full at or before the end of
13 the performance period, the outcome of the litigation will not
14 have a negative impact on the Plan..

15 **III.**

16 **SUMMARY OF PLAN AND TREATMENT OF CREDITORS**

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

20
21 **SECURED CLAIMANTS**

22 **CLASS I A:** This class consists of the San Diego County tax
23 assessor as to real property taxes. This obligation is
24 presently \$859,079. The Debtor has had pending for some time a
25 application for reappraisal of valuation for tax purposes of its
26 real property and, since its present appraised value for tax
27 purposes is predicated upon a its original purchase valuation,
28 the Debtor reasonably expects a 25 reduction consequent upon

1 reappraisal. That is so because the significant economic
2 downturn of the past two (2) years has had an impact on golf
3 course fair market value determinations. The present valuation
4 utilized by the County of San Diego is in the \$22,000,000 range
5 given reappraisals in 2006 and 2007. At present, communication
6 with the County and e-mail response from the County in that
7 regard was an e-mail statement; albeit non-binding, that the
8 appraised value will be approximately \$16,000,000. A copy of the
9 referenced e-mail is attached hereto as Exhibit A. In that
10 regard it should be noted that the Debtor had earlier submitted
11 to the County of San Diego a 2010 Cushman & Wakefield appraisal
12 at \$8.9 million dollars which the County rejected out of hand
13 (See Exhibit A referenced above. Therefore as part of the
14 reappraisal process the County of San Diego has provided an
15 indication that the likely adjusted appraised value will be in
16 the \$16,000,000 area, resulting in a revaluation/reduction in
17 excess of 25%. The Debtor has withheld payment and awaits
18 reassessment although it is resuming payment assuming a
19 \$16,000,00 assessed value for that reason. The Debtor in
20 Possession notes that the County does not and cannot impose
21 valuation upon minerals (sand) not yet extracted or wetlands for
22 mitigation not yet designated (and which are already assessed as
23 part of the real property valuation process). The remaining
24 balance will be paid in full upon the financing/re-financing of
25 all or a portion of the Cottonwood venue trust deed debt. In
26 the interim the statutory lien for real property taxes remains
27 in place and the Debtor will make the normal and usual
28 semiannual real estate tax payments post petition and post Plan.

1 The San Diego County tax assessor claim is impaired under the
2 Plan.

3 **CLASS I B:** This class consists of the first trust deed
4 indebtedness due FENB in the present principal amount of
5 \$10,874,610.79 with interest accruing thereon at a rate which
6 the Debtor contends to be approximately \$34,835 per month (the
7 note rate of 3.25 + .5%; i.e., 3.75%) from and after September
8 1, 2010. FENB contends that it is entitled to a "default" rate
9 of \$79,294 per month (note rate + 5%; i.e., 8.75%) until the
10 Effective Date of the Plan when interest payments will resume.
11 See treatment of interest due this Class set out below. The Plan
12 acknowledges the FENB indebtedness, commences interest payments
13 upon the Effective Date of the Plan confirmation and pays FENB
14 in full at or prior to the expiration of the 28 month Plan
15 performance period. As to interest payments under the Plan, the
16 Debtor proposes to pay \$57,147 per month in interest; that
17 monthly sum representing $\frac{1}{2}$ of the difference between the note
18 rate and the default rate. Relative to the interest obligation,
19 the FENB loan documents posit an interest rate of FENB prime
20 (averaging 3.25% over the past year) plus .5%; i.e., 3.75% on
21 average. However, FENB contends that it is entitled to a default
22 rate of interest - which adds 5% to the 3.75% average rate for a
23 default average interest rate of 8.75%. Premier disagrees and
24 treats FENB's interest entitlement in accord with the decision
25 of the Ninth Circuit Court of Appeals in *In re: Entz-White*
26 *Lumber and Supply, Inc, Debtor*, 850 F. 2d 1338 (1988), wherein
27 the court held that default rates of interest cannot be applied

28

1 where the Plan of Reorganization provides for cure of default by
2 way of payment in full in accord with the Plan. FENB disagrees.

3 Further, FENB earlier filed a motion to prohibit the
4 debtor from utilizing what FENB contended was its cash
5 collateral, primarily greens fees and driving range income, in
6 connection with the operation of its business. The debtor
7 opposed the FENB motion and the Court ruled that post petition
8 operating income was not subject to the FENB security interest
9 and therefore not FENB cash collateral. Accordingly, the Debtor
10 may use such monies in its operations. FENB has appealed the
11 Court's decision to the Bankruptcy Appellate Panel. Should
12 FENB's appeal be successful, the Debtor would seek an order of
13 this Court seeking to use cash collateral to fund its
14 operations. Such cash collateral orders are common; especially
15 where, as here, the Debtor's Plan will likely have been
16 confirmed before the appeal is decided.

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

23 **CLASS I D:** This class consists of the claim of Yamaha Motor
24 Corporation USA arising out of the lease of golf carts to the
25 Debtor. The Yamaha relationship is the subject of (1) Premier
26 Golf Properties, LP v. Yamaha Golf Car Company and Yamaha Motor
27 Manufacturing Corporation of America, case number 37-2011-
28 00067450-CU-BT EC pending in the San Diego Superior Court and

1 (2) Yamaha Motor Corporation v. Premier Golf Properties, LP,
2 case number 30-2010-00411742 pending in the Orange County
3 Superior Court. The litigations center upon allegations of
4 serious defects in golf cart manufacture and the Debtor contends
5 that it owes Yamaha nothing. During the course of this
6 proceeding, Yamaha brought on a motion for relief from stay and
7 the Court ultimately ordered the return of the Yamaha carts as
8 of October 24, 2011. In that connection, the Debtor has paid
9 Yamaha cart rental for September and October and Yamaha has
10 filed a claim for administrative expense (cart rental for May,
11 June, July and August) and the Debtor is objecting thereto. An
12 administrative claim amount, if any, awarded Yamaha will be paid
13 in accord with payment to Class III claimants under the Plan so
14 as to have a reserve to cover any pre-petition unsecured claim,
15 if any, ultimately determined by the Superior Court, which is
16 presently claimed to be \$154,486, this amount is disputed. As
17 noted above, the Court has issued an order lifting the automatic
18 stay so that Yamaha may recover possession of its golf carts as
19 of October 24, 2011. Premier has and will continue to comply
20 with the terms of the order and is in the process of leasing
21 replacement carts at a monthly cost not more than the monthly
22 cost of the Yamaha golf carts. Finally, the Court has also
23 terminated the automatic stay as to the Superior Court
24 litigation is lifted so that the Yamaha litigation may proceed
25 to a final determination. Given that the replacement cart lease
26 will have the same or lesser cost than the Yamaha lease, the
27 Plan will not be affected. Yamaha is impaired under the Plan.
28 ///

1 ///

2 **UNSECURED CREDITORS**

3 This group consists of unsecured claimants owed money by
4 reason of the provision of advances as well as for goods and/or
5 services to the Debtor. The sum due the unsecured creditor body
6 is \$1,941,410 consisting of \$1,722,017 owed to two (2) entities
7 controlled by insiders and \$169,393 owed to non insider
8 unsecured creditors. In addition, the unsecured creditor body
9 includes the \$154,486 disputed claim of Yamaha. Unsecured
10 creditors will consist of two (2) classes:

11 **Class II A:** This class consists of non insider unsecured
12 creditors and totals \$169,393. In addition Yamaha posits an
13 claim of \$154,000+/- which is disputed. The members of this
14 class will be paid (1) in full at the end of the 28 month plan
15 performance period together with interest at the rate of ten
16 percent (10%) per annum calculated from and after the date of
17 filing of the petition herein.. The Debtor will reserve the
18 Yamaha amounts pending the outcome of the Yamaha litigation and
19 will then disburse in accord with the Plan. This class is
20 impaired under the PLAN.

21 **Class II B:** This class consists of the \$1,722,017 owed to the
22 two (2) entities controlled by insiders who have made advances
23 to the Debtor over the past few years since its creation. This
24 class will receive no payments under the Plan until all other
25 classes of creditor are paid in full, but the indebtedness due
26 the members hereof shall remain in existence; albeit
27 subordinated to all other Plan obligations. Once all other Plan
28

1 obligations are paid, the Debtor shall commence repayment of
2 this class. This class is impaired under the Plan.

3 Class II C: this class consists of the disputed claim of Yamaha
4 in the amount of \$154,486 arising out of a golf cart lease. The
5 Debtor, from and after the Effective Date of the Plan, will
6 reserve the sum of \$11,000 per month and abide the outcome of
7 the Superior Court litigation described above. Should the
8 Superior Court find that the Debtor is indebted to Yamaha for
9 pre-petition accruals, the debtor shall pay the same in accord
10 with the treatment of Class II B, subject to whether approach
11 (1) or approach (2) is chosen.

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

15
16 **ADMINISTRATIVE CLAIMS**

17 **Class III:** This class consists of all administrative claims
18 entitled to be approved for payment pursuant to the provisions
19 of 11 U.S.C. § 503 and also specifically includes the quarterly
20 fees of the United States Trustee for the life of the estate and
21 the life of the Plan. All quarterly fees have been and will
22 continue to be paid timely. All other administrative expenses
23 except for legal counsel will be paid in accord with their terms
24 and as incurred.

25 Legal counsel for the Debtor are also members of this
26 class. Legal counsel were engaged pursuant court approval which
27 provided that counsel would be compensated by payment of fees
28 accrued at counsels' ordinary and usual rates and costs

1 incurred; all subject to court approval under Section 330 of the
2 United States Bankruptcy Code, 11 U.S.C. 330. Given the
3 retainers in the hands of legal counsel equaling \$60,000, it is
4 estimated that legal counsel will be paid from Debtor funds in
5 hand as opposed to Debtor income earned during the Chapter 11
6 period of administration. To the extent there is a shortfall the
7 same will be paid from Debtor income during the plan performance
8 period; subject to the proviso that Plan payments are first
9 made. Finally, this class includes a Yamaha administrative claim
10 for equipment rents in the range of \$67,000 claimed by Yamaha
11 (this amount is disputed and the ultimate amount, if any, will
12 be determined by the Court) and which is to be litigated within
13 the ambit of this Chapter 11 proceeding. Upon a determination of
14 an Yamaha administrative claim, if any, the Debtor will pay the
15 amount found by this Court, if any, within 30 days of the
16 Court's determination from funds on hand.

17 **IV.**

18 **EXECUTORY CONTRACTS**

19 To the extent that executory contracts are in existence,
20 have not been previously assumed and have not been rejected by
21 specific order of this court prior to confirmation of the Plan,
22 the same shall be assumed as a consequence of confirmation of
23 the Plan. Only the Yamaha golf cart lease shall be rejected by
24 the Plan.

25 **V.**

26 **MEANS OF IMPLEMENTATION OF THE PLAN**

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

28 Since approximately 2005 the development plan for the

1 Cottonwood Golf Club has had three (3) goals; more properly
2 defined as value components. Those value components are:

3 1. Golf operations component

4 As noted earlier the Cottonwood golfing operation was acquired
5 in 2002 for \$19,500,000. Having done so, Premier, at a level
6 pace, began to improve the golf course infrastructure. Chief
7 among those improvements was the re-design/improvement of what
8 is now the Lakes course as previously described, including the
9 excavation and construction of the lakes themselves and the
10 development of the island green. In late 2007, the golf
11 operations component (land/golf business operation) was valued
12 by Deloitte Financial Advisory Services at \$20,500,000 on an "as
13 is" basis and \$22,800,000 once the Lakes course renovation was
14 completed. Aware, of course, of the impact of the recent
15 difficulties in the national economy, the Debtor has caused
16 Deloitte Financial Advisory Services to appraise the golf
17 courses once again. Deloitte did so and found a current "as is"
18 value at December, 2010 of \$14,000,000. A copy of the Deloitte
19 appraisal is attached hereto as Exhibit B.

20 2. Mineral extraction (sand) component:

21 The conduct of the Lakes course improvement excavations
22 confirmed the felicitous fact set out in the June, 2006
23 TerraMins, Inc. geologic report and analysis of the Cottonwood
24 venue that the property contained up to nine (9) million tons of
25 PCC (Portland Cement Concrete) grade sand. While it was not the
26 intent of the lake excavations, Cottonwood realized ancillary
27 income in excess of \$1,100,000 from the sale of the sand
28 extracted, net of the cost to create the lakes. Such extraction

1 was done pursuant to permit to create the lakes and, indeed,
2 removal of the sand and its export was necessary to create the
3 lakes. In December, 2010 Premier caused EnviroMine, Inc., an
4 environmental and mine permitting consultation firm, to inspect
5 the site and to conduct an analysis and report so as to appraise
6 the value of the sand presently available for extraction. In so
7 doing EnviroMine, Inc. availed itself of the California
8 Department of Conservation Mineral Land Classification reports
9 as well as other data. The report notes that the San Diego
10 region suffers from a dearth of quality sand for use with
11 concrete and asphalt products. Accordingly, the regional
12 construction aggregates industry imports sand from Baja
13 California and Imperial, Riverside and San Bernardino Counties
14 at significant expense. For a San Diego source that means a
15 stable price and continuous demand. It is EnviroMine, Inc's
16 conclusion that the Cottonwood site would yield a net pretax
17 revenue of \$10.00 to \$11.00 per ton; netting a \$2,500,000 to
18 \$8,250,000 gain. For purposes of valuation within the Debtor's
19 estate, Premier has chosen to value the mineral extraction
20 component at the bottom end of the gain scale, i.e., \$2,500,000.
21 A copy of the EnviroMine, Inc. report is appended hereto as
22 Exhibit "C".

23 3. Wetlands mitigation credits component:

24 As EnviroMine, Inc. also notes, on page 2 of its overview
25 report, that careful conduct of sand extraction activity is
26 estimated to generate approximately 55 to 67 acres of land in
27 the Sweetwater River bed and river plain suitable for
28 wetlands/riparian habitat for use for mitigation purposes (while

1 simultaneously serving as designated hazard and out of bounds
2 areas on the golf courses). This acreage will constitute a
3 mitigation land bank of significant value. Each project of
4 consequence in the County of San Diego, such as highways,
5 bridges, roads, shopping centers and even Walmart facilities
6 requires allocations for open space, wetlands replacement,
7 riparian habitat replacement and the like. Since the land
8 requisite to meet the allocations is seldom available on site,
9 County of San Diego regulations as well those of the State of
10 California mandate the ability to obtain wetlands and riparian
11 land set asides for dedication to meet the allocation
12 requirements of the project. Thus the mitigation bank made up of
13 qualified wetlands/riparian or otherwise qualified acreage for
14 sale/set aside. The purchase/set aside of land in the mitigation
15 bank; which land, of course, remains in place, results in the
16 issuance of mitigation credits which are used by the developer
17 or government agency to meet its project allocation of
18 mitigation responsibility. Finally, since the land is left in
19 its wetlands habitat condition it continues to serve as hazard
20 and out of bounds designated portions of the Cottonwood golf
21 courses. Present research indicates that the current value of
22 wetlands mitigation credits in the Cottonwood portion of the
23 Sweetwater River watershed (there is only one other mitigation
24 bank in the in the whole Sweetwater River watershed) is between
25 \$150,000 and \$500,000 per credit/acre and, given the paucity of
26 mitigation credits extant in the San Diego region, the
27 expectation of value would be toward the upper end of the range.
28 However, taking the most conservative of postures, it posits a

1 valuation of 55 acres at \$150,000 per acre for a mitigation
2 credit/acre valuation of \$8,250,000.

3 4. Raw land/Willow Glen side:

4 Resort to a map demonstrates that the Cottonwood courses form
5 the southerly edge of Willow Glen Dr. for a least one (1) mile.
6 Realty Executives, a Rancho San Diego based real estate
7 consultancy, has identified 21.5 acres (two separate
8 parcels) fronting on Willow Glen Dr. which if sold off as raw,
9 undeveloped parcels, bring in not less than \$150,000 per acre;
10 i.e., \$3,225,000. Debtor notes that the Realty Executives report
11 sets out an estimation of value and is not an appraisal. Realty
12 Executives is a real estate brokerage of long standing in the
13 Rancho San Diego area and is not a real estate appraisal firm.
14 Doing so would not have a significant negative impact upon golf
15 operations. In addition the venue contains 35 +/- acres along
16 its southerly area suitable for residential housing development.
17 In consequence, that land adds significant additional value to
18 the venue. However, for valuation and status purposes the Debtor
19 will refer only to the present valuation of the 21.5 acre
20 paralleling Willow Glen Drive. Attached hereto as Exhibit D is
21 the REALTY EXECUTIVES analysis. While the real estate value
22 component contributes significantly to the value of Cottonwood,
23 the Debtor is not relying upon realization of the value of
24 excess land as a source of funding of its Plan. Moreover, while
25 Premier has in the past posited real estate development as part
26 of its long range plan for the Cottonwood acreage, it no longer
27 does so given the present state of the economy, including the

28

1 foreseeable future state of the economy. Accordingly, real
 2 estate development forms no part of the Plan.

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

4	1. Value qua golf operation:	\$14,000,000
5	2. Sand extraction:	\$2,500,000
6	3. Mitigation credits/acres:	\$8,250,000
7	4. Willow Glen frontage:	\$3,225,000
8	5. Personal property (Schedule B)	<u>\$966,778</u>
9	TOTAL VALUE:	\$28,941,778

10
 11 It is thus apparent that Class IA, Class IB and Class IC
 12 secured creditors are more than adequately protected. Moreover,
 13 the Debtor has already initiated the processes necessary to
 14 obtain the appropriate permits to begin the realization of the
 15 land use processes (sand extraction and wetlands mitigation)
 16 requisite to turn the existing valuation into cash flow
 17 realities. For example, attached hereto as Exhibit E is a copy
 18 of correspondence to the San Diego County Director of Planning
 19 and Land Use requesting a special study area designation, a
 20 designation complementary to forward motion toward the above
 21 described goals. The follow-on application materials are in
 22 preparation. Although the correspondence does make reference to
 23 a real estate development aspect, as noted above, the Debtor has
 24 abandoned that aspect of Cottonwood's future. Finally, the
 25 Debtor has no present or future intention of reducing the number
 26 of golf holes at the Cottonwood courses below the present 36
 27 holes.

1 It should be noted that the debtor does not intend that pursuit
2 of the sand extraction and wetlands mitigation strategies
3 provide the source of Plan payments during the course of the 28
4 month Plan performance period. The realization of cash flows
5 from sand extraction and wetlands mitigation enhancements must
6 abide a land use regulation process before sand extraction and
7 permitting and wetlands mitigation designations occur. Indeed,
8 the sand extraction event contributes to the wetlands mitigation
9 creation/designation. In that regard, discussion with County of
10 San Diego officials and private consultants mandates a 19 to 24
11 month period before permitting and designation will issue. That
12 time estimate is based on the past experience of the experts
13 consulted, direct communication by the Debtor with the involved
14 agencies and past experience with the Corps relative to the
15 construction of the lakes on the Lakes course. The permit
16 process is governed by the U. S. Corps of Engineers because the
17 river channel which transits Cottonwood from east to west is
18 what is commonly referred to as a "blue line" over which the
19 Corps has governance. The application, referred to as a 404
20 permit, while technically issued by the Corps, the lead agency
21 is the County of San Diego Planning and Land Use Department
22 which does the analysis, inspections, reviews and presentation
23 to the Corps. During the course of that process, Regional Water
24 Quality Control Agency and the Sweetwater Authority (local water
25 district) conduct reviews and comment. Final review and approval
26 is the responsibility of the Corps. Attached hereto prior to the
27 various Exhibits is a schedule of the agencies and steps
28 involved. Finally, it is of import to note that sand extraction

1 and wetlands mitigation are not discrete events. Rather, they
2 are the consequence of each other. Physically, the process
3 involves removal of topping; i.e., sand, to the ground water
4 table and, as the process moves across the channel area,
5 smoothing and revegetating the disturbed areas - thereby
6 creating the wetlands mitigation areas. In sum, it is one task
7 with two (2) outcomes which occur simultaneously.

8 The Debtor's Plan posits a twenty eight (28) month Plan
9 performance period. The Debtor is presently paying its operating
10 expenses as incurred and has an income stream from operations
11 similar to its pre-petition income. In that regard the gross
12 receipts since filing are:

13	May:	\$288,688.92	(note only 3 weekends)
14	June:	\$296,641.86	
15	July:	\$355,855.84	
16	August:	\$342,732.38	

17 These amounts reflect gross receipts during the summer which, in
18 the Rancho San Diego area typically has daily temperatures in
19 the high 90 degrees and often above 100 degrees. In consequence,
20 the summer months are lesser in income than the more clement
21 months. In that regard it should be noted that the Debtor's
22 projections for 2011 posit gross income of \$4,268,685 (see
23 Exhibit F hereto); i.e., \$355,000 per month. Noting that the
24 initial period after the filing of a bankruptcy petition is soft
25 because of patron reaction, The Debtor's summer 2011 performance
26 has been well within its projections in that July exceeded the
27 projection slightly and August, normally then worst month of the
28 year, was within 4% of projection. In sum, the Debtor is on its

1 projected track. No reasons have presented themselves to
2 indicate that the Debtor's income will decrease in any
3 significant sense going forward and its experience is that the
4 more clement fall, winter and spring weather will see the debtor
5 meeting or exceeding its projections. It is therefore likely to
6 continue to meet its operating expenses going forward as it has
7 in the past. Accordingly, especially given planned minor
8 increase in charges per round (a \$2.00 increase per round phased
9 in over time will result in a \$160,000 increase in annual income
10 - $2 \times 80,000 = 160,000$), the Debtor will be able to fund its
11 administrative expenses and pursuit of its land use regulation
12 goals, including sand excavation and wetlands mitigation, within
13 the twenty eight (28) month period. Finally, the Debtor's pre
14 petition financial history, including servicing of the FENB debt
15 pre litigation - including pay down of \$500,000 in principal in
16 from its own cash flows over two (2) years, demonstrates the
17 Debtor's financial capacity. That history coupled to the
18 increases in income derived from sand extraction and sale of
19 wetlands mitigation credits mandates that the Debtor will
20 accomplish refinance of the FENB debt on or before the end of
21 the twenty eight (28) month Plan performance period. Once
22 refinance is committed, the Debtor will apply to the Court for
23 the approval thereof.

24 FENB disagrees with the Debtor's future expectations,
25 contending that the debtor lost \$2,513,994 over 2008, 2009 and
26 2010. Premier disagrees. In the first instance, FENB includes
27 non-dollar depreciation and non-dollar amortization as dollar
28 losses in its calculations. In fact, depreciation and

1 amortization over the 3 year period totaled \$2,594,508. In
2 truth, then, Cottonwood did not lose money on a cash basis
3 during the referenced period. Rather, it netted \$80,514 and that
4 after paying down the FENB note by approximately \$500,000 from
5 its own cash flow. See 2008-2010 profit and loss statement
6 appended hereto as Exhibit F. In the second instance, commencing
7 in the latter part of 2007 and the early part of 2008 the
8 regional economy, like the national economy, entered a deep
9 recession which obtained for the next 2 years and recovery has
10 been extremely slow, leading to flat growth thereafter. Yet
11 unlike other golf course operations, Premier maintained itself
12 throughout the period in question. In the third instance and as
13 noted above, Cottonwood engaged in a renovation of its Lakes
14 course during 2008 resulting in a significant reduction in
15 income. Premier engaged in a soft opening of the Lakes course in
16 late 2008 but charged but \$20.00 per round because of the
17 continued presence of large equipment on the course as well as
18 continuing work addressing waste bunkers and the like. As of
19 early 2009 Premier engaged in a publicly advertised opening of
20 the Lakes course and slowly rebuilt its Lakes course player
21 base.

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

23 **Class I A.** Real Estate Taxes. From and after the date of
24 filing the petition and semi - annually throughout the 28 month
25 Plan performance period the Debtor will make the normal and
26 usual real estate tax payments. On or before 28 months from and
27 after confirmation of the Plan, the \$859,079 together with any
28 accruals thereon will be paid in full by way of new financing

1 of the premises. The sand extraction permit and the wetlands
2 mitigation designation being in place will greatly simplify the
3 process of obtaining a first trust deed position loan to pay
4 this class in full.

5 **Class I B.** FENB. From and after the confirmation of the Plan,
6 the Debtor will make monthly interest payments to secured
7 creditor FENB for a period of 28 months; at which time FENB
8 will be paid in full by way of new financing of the premises.
9 The amount of this claim is estimated to be \$11,874,610
10 together with interest accrued thereon up to the Plan
11 confirmation (see pp. 15-16 above) and is impaired under the
12 Plan. The sand extraction and wetlands mitigation designation
13 being in place will simplify the process of obtaining a first
14 position trust deed loan to pay FENB in full. As noted earlier,
15 the inability to obtain the long term loan in circumstances
16 where the Debtor had expectations that it would do so had
17 preempted Debtor from pursuing other financing or joint
18 venturers until the sudden recordation of notice of default
19 upon the FENB trust deed; at which point the need for this
20 proceeding approached and pursuit of replacement
21 financing/joint venture partnering was foreclosed until the
22 confirmation of the Plan herein. Having so stated, in the
23 unlikely event that the Debtor is not successful in securing
24 financing to replace the FENB indebtedness by the close of the
25 Twenty eight (28) month Plan performance period, then FENB may
26 foreclose upon the Debtor's real property. If so all other
27 creditors will receive nothing.

28

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

7 **Class I D.** Yamaha. It is the intention of the Debtor to
8 complete its litigation with Yamaha and believes that it is
9 likely to prevail. The debtor will seek recovery of losses and
10 costs incurred by reason of the collapse/replacement of
11 defective charging equipment, charging plugs as well as braking
12 and other parts failed by reason of defective materials in the
13 manufacturing process. The debtor has financed the Yamaha
14 litigation on a timely basis pre-petition and sees no reason
15 why it cannot do so on the same basis during the Plan
16 performance period. In the interim the Debtor will, during the
17 course of the Plan performance period, reserve the monthly
18 payments otherwise due Yamaha. Having so noted, the Debtor
19 remains open to a reasonable compromise with Yamaha. The Debtor
20 expects that litigation of the actions will consume another
21 eight (8) months - which will place the outcome well into the
22 Plan performance period. To the extent that the Debtor may lose
23 all or a portion of the actions, the lease payments reserved
24 will be available to make payment. In addition, the Debtor
25 serviced the lease up to the commencement of golf cart collapse
26 and can resume those payments to cover loss if necessary.

27 **Class II A.** (Alternative 1) This class consists of \$169,393 in
28 unsecured non insider debt plus the disputed Yamaha claim. This

1 class will be paid in full with interest thereon at 10% per
2 annum at the completion of the 28 month Plan performance
3 period. The source of funds will be the Debtor's operating
4 income, the refinancing of the Cottonwood real property and
5 sand extraction income.

6
7 **Class II B.** This class consists of unsecured debt owed to
8 insider controlled entities in the amount of \$1,722,017. This
9 class will take nothing during the course of the 28 month Plan
10 performance period. However, the Debtor acknowledges the
11 indebtedness and must commence monthly payment thereon at the
12 end of the Plan performance period.

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

18 **D. Means of performance of the Plan:**

19
20 As noted above this proceeding has been triggered by the
21 existential threat presented by the initiation of foreclosure
22 proceedings by FENB. Cottonwood is in fact a solvent enterprise.
23 Attached hereto as Exhibit D is Cottonwood's five (5) year
24 projection of profit and loss (statement of cash flows) set out
25 on an non - EBITDA basis. Perusal of the projections, which
26 include interest only debt service to FENB and real estate tax
27 payments, demonstrates that the debtor can and will fund the
28 Plan from operating income inasmuch as the projections reflect a

1 net operating income of \$1,109,760 and a non operating income;
2 i.e., after debt service to FENB, of \$462,047.

3 A. Cash Collateral Issue.

4 The FENB loan documents include provisions granting FENB a
5 security interest in certain cash receipts of the Debtor. In
6 that regard the debtor has created a cash collateral account to
7 accumulate monies subject to such FENB cash collateral claims
8 and such account has reached in excess of \$40,000. However, it
9 is the position of the Debtor that such FENB cash collateral
10 entitlements do not reach post petition income from greens fees,
11 driving range income and other service related sources. FENB
12 disagrees and has petitioned the Bankruptcy Court for an order
13 mandating that such services income be turned over to it.
14 Hearing on the issue was had on June 3, 2011, the Court took the
15 question under submission and a decision is pending. Should the
16 Court decide in favor of the Debtor, then no impact upon the
17 Debtor's operations will result. Should the Court determine that
18 services income is in fact cash collateral subject to FENB, then
19 the Debtor will forthwith apply to the Court for an order
20 permitting use of cash collateral in operations which, based on
21 past experience and this Debtor's continued compliance with the
22 strictures of the Code, will most likely result in an order
23 permitting use of cash collateral. Should the Court order that
24 some portion of services cash income be remitted to FENB, the
25 net effect will be similar to commencement of Plan performance a
26 couple of months sooner than contemplated; i.e., an amount
27 similar to the monthly payments of interest presently mandated
28 in the Plan. In that event the impact upon the Debtor will be,

1 in effect, to commence Plan payments to FENB at this time rather
 2 than post Plan confirmation. As the five (5) year projections
 3 appended hereto as well as the Debtor's pre FENB litigation
 4 payment performance demonstrates, the Debtor is capable of doing
 5 so. The projections demonstrate beyond cavil that the Debtor can
 6 and would meet any reasonable cash collateral and Plan payment
 7 obligations. Thus, calculated on a per annum basis:

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

15
 16 Given the \$1,109,760 net operating income; i.e., after
 17 payment of all current operating responsibilities, there will be
 18 sufficient income to meet all of the Debtor's obligations going
 19 forward.

20 B. Payments to Insiders.

21 The management of the Debtor is in the hands of the general
 22 partner of the Debtor limited partnership, Premier Golf
 23 Management, Inc. That entity is entitled to management
 24 compensation equal to three percent (3%) of gross receipts,
 25 typically in the \$8,500/mo.range. Application to the Court has
 26 been made for the same and then matter is under consideration.
 27 No other insiders are contemplated to receive any monies from
 28 the Debtor until the Plan is performed.

VI.

E. Liquidation analysis:

This bankruptcy estate is an anomaly in that the Debtor is solvent. The Cottonwood golf venue presently generates 100% of the Debtor's income as a golf course operation and has the value and the capacity to generate enough income to pay all non insider unsecured creditors in full with appropriate interest given the income generating capacity demonstrated by golf operations. Once sand extraction and creation of the mitigation land bank are on line new financing will resolve the real estate tax and FENB liabilities. The problem and consequent risk to the junior secured creditors and the unsecured creditor body arises from the fact that, except for golf operations, the value is not presently capable of realization. In consequence, the failure of the Plan and consequent Chapter 7 liquidation proceeding will result in relief from automatic stay; resulting in foreclosure upon the golf courses by the first trust deed holder. Foreclosure destroys any capacity to generate funds to pay the remainder of the creditor body unless a buyer or buyers at foreclosure bid an amount or amounts in excess of the then secured debt; in which instance any overage proceeds would be distributed pro rata among the remaining creditor - all unsecured - of the Debtor. It is, however, clear that such an event would result in but pennies on the dollar. In such circumstances the junior secured creditor and the unsecured creditor body would receive little or nothing.

1 VII.

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

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

9
10 VIII.

11 **OPERATIVE PROVISIONS**

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

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

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

1 **D. Retention of Automatic Stay.** So long as the Debtor is
2 in compliance with the terms of the Plan, the automatic stay
3 imposed by Section 362 of the Bankruptcy Code shall remain in
4 effect for the life of the Plan. Subsequent thereto FENB and any
5 junior secured creditor may initiate the foreclosure process
6 should it not be paid in full by the maturity of the Plan
7 performance period.

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

23 **F. Retention of Jurisdiction.** Pursuant to 28 U.S.C.
24 Section 1471(b), and as agreed between the Debtor and its
25 creditors, the jurisdiction of the Court shall continue after
26 the Effective Date of the Plan until the Plan is fully performed
27 with respect to any matter arising or related to the case
28 herein. So long as no material default has been determined by

1 the Court to exist under this Plan, no act shall be taken nor
2 shall any action or proceeding estate to enforce or collect,
3 directly or indirectly, any claim covered by the Plan.

4 ///

5 **G. Post Confirmation Default.** In the event of an alleged
6 default or breach in the terms of the Plan or in the proposed
7 treatment of any claim, any creditor, other party in interest
8 and/or the United States Trustee may file a motion or commence
9 other proceedings with the Bankruptcy Court seeking such relief
10 as such party deems appropriate. The Debtor and any other party
11 in interest shall be entitled to object to such requested
12 relief. Should the Debtor default in connection with his Plan
13 obligations, then the Debtor would have but two choices: These
14 are:

15 (a) To make application and to seek approval of the
16 Court, creditors and any other parties in interest, including
17 the United States Trustee and the creditors to modify the Plan;
18 or

19 (b) To move to convert the proceeding to a Chapter 7
20 liquidation proceeding. Should conversion occur, no Plan would
21 be presented, modified or otherwise. Any creditor, other party
22 in interest and/or the United States Trustee may, upon Plan
23 default, move the court for modification of the Plan or
24 conversion of the proceeding to a Chapter 7 liquidation
25 proceeding.

26 **H. Discharge.** The confirmation of the Plan will result
27 in the discharge of pre petition debt per Section 1141(d)(1) of
28 the Code and the Debtor will be bound by the Plan.

1 **I. Definitions.** The following are the definitions
2 applicable to the Plan and shall have the meanings specified
3 below:

4 1.1 "Administrative Expense": Those expenses allowed
5 within the definition of Section 503 of the Code.

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

19 1.3 "Ballot": Means the written form labeled as such and
20 mailed by the Debtor to the Creditors and by which a creditor
21 votes to accept or reject the Plan. A sample ballot is attached
22 hereto as Exhibit "E".

23 1.4 "Bar Date": Means the last date set by the Court for
24 filing proofs of claim.

25 1.5 "Case": Means this proceeding for the reorganization
26 of the Debtor under Chapter 11 of the Code now pending in the
27 Court and having Case No. 08-36585-D11.

28 1.6 "Claim": Means any right to payment or right to

1 an equitable remedy for breach of performance if such breach
2 gives rise to a right of payment, against the Debtor, in
3 existence on or as of April 29, 2011, whether or not such right
4 is liquidated, unliquidated, fixed, contingent, matured,
5 unmatured, disputed, undisputed, legal, equitable secured,
6 unsecured, known or unknown.

7 1.7 "Class": Means any class into which allowed claims
8 are classified pursuant to Article III of the Plan.

9 1.8 "Code": Means Title 11, United States Code, Section
10 101, et seq., commonly referred to as the Bankruptcy Code.

11 1.9 "Confirmation Date": Means the date on which the order
12 of confirmation is entered by the Court.

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

18 1.11 "Debtor": Premier Golf Properties, LP, the Debtor-in-
19 possession in the above-captioned case.

20 "Default": Means the failure of the Debtor to make payment
21 or to perform any other act required herein on or before the
22 date of payment performance.

23 1.12 "Disbursing Agent": Means the Debtor.

24 1.13 "Distribution Account": Means a segregated bank
25 account established by the Debtor for the purpose of
26 distributing payments under the Plan.

27

28

1 1.14 "Effective Date of the Plan": Means a date 30 days
2 after the date on which the order of confirmation becomes final
3 and binding.

4 1.15 "Impaired by the Plan": Refers to the concept of
5 impairment as set forth in Code Section 1124.

6 1.16 "Insider": Means any person who would be an "insider"
7 as defined in Section 101(28) of the Code.

8 1.17 "Order of Confirmation": Means the order entered by
9 the Court confirming the Plan in accordance with Chapter 11 of
10 the Code.

11 1.18 "Plan": Means the Plan of Reorganization.

12 1.19 "Priority Claim": Means a claim entitled to priority
13 under Code Section 507(a).

14 1.20 "Proof of Claim": Means the written statement
15 prescribed by Code Section 501 and Bankruptcy Rule 3001 setting
16 forth a creditor's claim.

17 1.21 "Reorganized Debtor": Means the Post-Confirmation
18 Debtor.

19 1.22 "Secured Claim": Means any claim secured by a lien on
20 property in which the Debtor has an interest and any claim as
21 defined in Section 506 of the Code.

22 1.23 "Time": Means the time within which or the date upon
23 which any payment or other act required of the Debtor under the
24 Plan shall be calculated and determined in the manner prescribed
25 by the Bankruptcy Rule 9006(a).

26 1.24 "Unsecured Claim": means any claim against the Debtor
27 which is not a secured claim or a priority claim, including
28 deficient claims of any under secured claim holder.

1 THE FOREGOING IS A BRIEF SUMMARY OF THE PLAN AND SHOULD NOT BE
2 RELIED UPON FOR VOTING PURPOSES. CREDITORS ARE URGED TO READ
3 THE PLAN IN FULL. CREDITORS ARE FURTHER URGED TO CONSULT WITH
4 COUNSEL, OR WITH EACH OTHER, IN ORDER TO FULLY UNDERSTAND THE
5 PLAN. THE PLAN IS COMPLEX, AND AN INTELLIGENT JUDGEMENT
6 CONCERNING SUCH PLAN CANNOT BE MADE WITHOUT UNDERSTANDING IT.

7 Dated: September 21, 2011

8

FITZMAURICE & DEMERGIAN

9

10

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

11

12

13

Premier Golf Properties, LP

14

/s/ Daryl C. Idler
Daryl, C. Idler, president of
General Partner

15

16

17

18

19

20

21

22

23

24

25

26

27

28