

1 Richard J. Frick (State Bar No. 50537)
rfrick@fpmlaw.com
2 Ralph Ascher (State Bar No. 132745)
rascher@fpmlaw.com
3 Richard Vergel de Dios (State Bar No. 180470)
rvergelledios@fpmlaw.com
4 FRICK PICKETT & MCDONALD LLP
11022 Acacia Parkway, Suite D
5 Garden Grove, CA 92840
Tel: (714) 638-4300
6 Fax: (714) 638-4311

7 Attorneys for Secured Creditor
Far East National Bank

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA (SAN DIEGO)

10 In re: PREMIER GOLF PROPERTIES, LP,
11 Debtor.

CASE NO. 11-07388-PB11

Chapter 11

SECURED CREDITOR FAR EAST
NATIONAL BANK'S OBJECTION TO
DEBTOR'S SECOND AMENDED
DISCLOSURE STATEMENT

Date: September 26, 2011

Time 2:00 p.m.

Ctrm: Dept. 4

Hon. Peter W. Bowie

19 FAR EAST NATIONAL BANK ("Lender"), Secured Creditor, hereby submits its
20 **OBJECTION OF FAR EAST NATIONAL BANK TO APPROVAL OF SECOND**
21 **AMENDED DISCLOSURE STATEMENT FILED SEPTEMBER 21, 2011**

22 Secured Creditor Far East National Bank ("FENB") hereby objects to the Motion by
23 Debtor for Approval of Disclosure Statement in Chapter 11 Case (Amended) filed on September
24 21, 2011 by Debtor and Debtor in Possession Premier Golf Properties, L.P. ("Debtor").

25 **INTRODUCTION**

26 Debtor's Second Amended Disclosure Statement was not filed on a timely basis. It was
27 filed late on Wednesday, September 21, 2011. The expectation, given the minute order of this
28 Court, was that FENB would be afforded ten days. With the hearing on the Disclosure Statement
set for Monday, September 26, 2011, Secured Creditor Far East National Bank is not afforded an

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 adequate opportunity to review and comment on it. The hearing on the Second Amended
 2 Disclosure Statement should be reset for not less than 10 court days after September 21, 2011.
 3 Nonetheless, Secured Creditor FENB hereby submits its objections to the Second Amended
 4 Disclosure Statement, although admittedly relatively cursory in nature. Because of the
 5 inadequate time afforded Secured Creditor FENB to adequately review and comment on the
 6 Second Amended Disclosure Statement, FENB attaches to this Objection as Exhibit "A" the
 7 Objection it filed to Debtor's original proposed Disclosure Statement. Many of the points
 8 contained in that original Objection remain, notwithstanding that Debtor has had ample
 9 opportunity to address them, including meeting with counsel for FENB and a detailed
 10 memorandum from counsel addressing the deficiencies, most particularly the lack of virtually
 11 any support for most of the assertions of value of Debtor's non-golf course assets.

12 The lack of objective information regarding half of the value Debtor asserts, and the
 13 unwillingness or inability of Debtor to provide objective evidence of claimed value, has led
 14 FENB to file a motion seeking a valuation hearing pursuant to 11 U.S.C. § 506 (all references
 15 hereafter to statutory provisions are references to sections within Title 11 of the United States
 16 Code). No Disclosure Statement should be approved before that hearing is held and completed.
 17 The issue of the value of the non-golf course assets, amounting to some \$14 Million of claimed
 18 value, is so critical to Debtor's proposed Disclosure Statement and its proposed Plan, and the
 19 objective support for such asserted values is so lacking, that Disclosure Statement approval and
 20 plan confirmation absent objective information regarding claimed values would be manifestly
 21 improper.

22 PRINCIPAL FACTUAL OBJECTIONS

23 The principal objections remain the same as they were when FENB objected to Debtor's
 24 original Disclosure Statement. There are additional issues created by this new proposed
 25 Disclosure Statement. In abbreviated summary they are:

26 1. Asset valuation as to the golf course: the Deloitte Report relies upon wholly unfounded
 27 future projections of net income which are 75% over the net income realized by Debtor in the
 28 period 2008-2010, and that is not disclosed anywhere.

2.

1 2. The Monthly Operating Report stated net income is erroneously reported, failing to
2 take into account the proper cost of real estate taxes and the interest rate, however calculated,
3 applicable to FENB.

4 3. Asset valuation as to the ‘excess land’: Debtor now concedes that there will be no
5 residential development at any time in the foreseeable future. However, the claimed value for the
6 ‘excess land’, which is not based on appraisal, and has neither any time frame, identified
7 potential purchasers, identified sources of finance, fails to take into account that since there is no
8 foreseeable point at which there will be a market for the multi-million dollar homes envisioned
9 there is correspondingly no market for the land, thus no value should be attributed to the land.

10 4. Asset value as to the ‘sand extraction operations’: no time frame is specified for
11 obtaining required approvals, no discussion of agencies required, no discussion of what existing
12 market conditions are for a mineral which absent development of subdivisions, roads, and
13 buildings has no evident significant demand, and given what Debtor now acknowledges to be a
14 depressed current economy, absent additional evidence no value can credibly be given to the
15 sand extraction operations.

16 5. Wetlands mitigation credit sales: there is not even a statement of value of this asset
17 from anyone with any stated experience in the entitlement, marketing or sale of wetlands
18 mitigation credits; there is no discussion of required approvals, agencies required, conditions of
19 approval or time frames; there is no discussion of the relationship between demand for wetlands
20 mitigation credits and the demand for new development of subdivisions or commercial facilities
21 and the effect of the current economic conditions and dramatic decreases in state, local and
22 federal expenditures on projects. It is stated that follow on application materials are in
23 preparation; that has been stated since the inception of this case but no time frame or progress
24 details are stated.

25 6. The discussion of cram down is in error, since the plan as proposed would on its face
26 not be fair and equitable to FENB.

27 7. The references to required interest payments to FENB, given that Debtor asserts that
28 FENB is over secured to more than \$16 Million is in error; the reliance on the decision in Entz-

1 White has no application since Debtor does not propose to cure the FENB default by payoff at
2 the time of plan confirmation as would be required to nullify the otherwise applicable default
3 interest rate (*see, e.g. in re Tri Growth 136 B.R. 848 (S. D. Ca. 1992) and in re Lighthouse 2010*
4 *Bankr. LEXIS 3663 (N. D. Cal. 2010).*

5 8. The liquidation analysis assumes that although, as stated by Debtor, the Property is
6 worth \$28 Million in total it would go at foreclosure for no more than \$11.6 Million (the
7 outstanding debt on the FENB loan); this allows Debtor to attempt to ignore any true liquidation
8 analysis which would force it to justify the claimed asset values and is fundamentally
9 misleading.

10 9. It is stated, with no details and no support, that the golf carts will be replaced; there is
11 no basis whatsoever given for this statement.

12 10. With no calculation based on actual achieved historic revenues, nor on actual post-
13 petition results, it is stated that Debtor can service required expenses during the period of the
14 plan because the projected revenues will be sufficient; there is no basis given for the projected
15 revenues other than Debtor's assertion and there is nothing in the history of the company to
16 support the projections.

17 11. It is stated that Debtor has no intent to reduce the number of golf holes at Cottonwood
18 below the current 36. However, the exhibits filed with the proposed Second Amended Disclosure
19 Statement expressly state that the golf course is to be reduced to either 27 holes or 18 holes (see
20 Exhibits B and C). There is no discussion of the effect on golf course revenues if half the holes,
21 or 25% of the holes, are removed. Contrariwise, there is no discussion of the effect on the likely
22 approval of the wetlands mitigation bank, or the sand extraction operations, if the holes are not
23 reduced. There is simply an inconsistency between what the Debtor is telling this Court and
24 parties interested in this case and what it is telling the City of San Diego and other governmental
25 agencies.

26 12. Debtor asserts that the gross receipts for August 2011 were \$342,732.38. FENB has
27 no idea if that is accurate, since Debtor is late on its Monthly Operating Report filing for August
28 and it is not available as of mid afternoon Friday September 23, 2011.

1 13. Debtor fails to accurately describe the financial results of Debtor's post-petition
2 operations. Debtor discusses its gross receipts post petition in order to inaccurately claim that it
3 is performing in accordance with its projections. The relevant projections are net operating
4 income. NOI is the common data used to determine value of commercial properties, and both
5 Cushman and Wakefield, in its October 2010 Appraisal, and Deloitte in its Restricted Report
6 used NOI to determine value. As detailed in the year end financials for 2008 to 2010, Debtor's
7 NOI during those 3 years was respectively \$638,070, \$808,625 and \$553,710 for an average per
8 year of \$660,135 or \$55,011 per month. Debtor has filed three Monthly Operating Reports
9 ("MOR") post petition. Only those for June and July 2011 *purport to disclose* Cottonwood's
10 NOI. For those months they are reported as, respectively, \$60,532 and \$37,609. However,
11 although the statements are on an accrual basis, for June 2011 nothing is reported for real estate
12 taxes; for July 2011 an inaccurately low number is shown for property taxes (\$20, 778 versus
13 actual \$24,390). After adjustment for real estate taxes the actual NOI for June 2011 would be
14 \$36,142 and for July 2011 it would be \$33,997. Even taking the Debtor's inaccurate statement of
15 post petition NOI, those revenues are substantially below the 90 days projections made by
16 Debtor (Debtor projected NOI of \$108,400 for June and \$64,800 for July; thus Debtor fell short
17 by 45% in June and 42% in July). After adjustment for taxes the actual NOI fell short from the
18 90 day projections by 66% for June and by 48% for July.

19 14. Debtor states it will deal with operating deficiencies during the course of plan
20 performance by raising its green fees. It does not say when that will occur. It does not discuss the
21 relationship between raising the fees and demand or use of the golf course. It does not say why it
22 would not have already instituted increases if there were no adverse effect. It assumes 100% of
23 fee increases are collectible (no senior or off day discounts) and with no off setting increases in
24 costs. It assumes a constant 80,000 rounds of golf per year, notwithstanding the effect of the
25 wetlands mitigation and sand extraction operations.

26 15. Debtor falsely states that it paid down the FENB loan by \$500,000 from operating
27 cash flow. In fact, the funds for the pay down (required because of violations of debt service
28 covenant ratios) were provided by loans from equity partners. They are now included in the

1 junior secured loans.

2 16. Debtor falsely claims it is a solvent enterprise. Unless its claimed asset value for non-
3 golf course operations is given credence, which it should not be, Debtor is absolutely insolvent
4 on a balance sheet basis. It is not meeting its current expense obligations, and based on the post
5 petition NOI it will be unable to do so. In 2008 and subsequently its accountant, Leaf & Cole,
6 noted that its financial statements had to be flagged because it was likely that Debtor would not
7 continue as a going concern. None of this is referenced anywhere in the proposed Second
8 Amended Disclosure Statement.

9 17. There are numerous inconsistencies in the Second Amended Disclosure Statement.
10 Throughout page 23 Debtor discusses the pending decision of this Court on the cash collateral
11 issue. Earlier it recognizes this Court issued its ruling on that matter and FENB has filed its
12 notice of appeal. The amount of FENB's outstanding debt is mis-stated.

13 LEGAL ISSUES

14 Absent fundamentally different, detailed and objective support for the values asserted by
15 Debtor for the non-golf course assets, Title 11 United States Code § 1129 (a) (11) would cause
16 the proposed plan as described in the Second Amended Disclosure Statement to be deemed not
17 feasible.

18 11 U.S.C. § 1129 (a) (11) requires that this Court find as a condition of confirmation that
19 confirmation is *not likely* to be followed by liquidation, or the need for further financial
20 reorganization of the Debtor. "The purpose of section 1129 (a) (11) is to prevent confirmation of
21 visionary schemes which promise creditors and equity security holders more under a proposed
22 plan than the debtor can possibly attain after confirmation." *In the Matter of Pizza of Hawaii,*
23 *Inc. v. Shakey's Inc.* 761 F.2d 1374 (9th Cir. 1985), quoting *5 Collier on Bankruptcy, para.*
24 *1129.02 [11] at 1129-34* [15th ed. 1984]. It has been noted that the use of the word likely requires
25 this Court to assess whether the plan offers a reasonable "probability of success, rather than a
26 mere possibility". *In re Kent Terminal Corp.* 166 B.R. 555, 560 (Bankr. SDNY 1994). More than
27 mere hope, promise or unsubstantiated prospect of success is required. *See, e.g. Wiersma v. Bank*
28 *of the West*, 227 Fed Appx 603, 606 (9th Cir. 2007).

1 Examined in light of that standard, and other cases that have addressed the application of
2 § 1129 (a) (11), Debtor's proposed Plan fails the test. There is no date specified and no source
3 identified for the proposed refinancing which is the core of the proposed plan performance. In
4 cases where there was an identified existing asset, the failure to have identified sources of
5 financing or identified sales date caused the courts to determine that the proposed plans failed to
6 meet the requirements of § 1129 (a) (11). "...at the point of confirmation, this source of funding
7 must be shown to be firm as it goes directly to feasibility". *In re Hurricane Memphis LLC*, 405
8 *B.R. 616*, at [insert], quoting *In re Ralph C. Tyler, P.E. P.S., Inc.* 156 *B.R. 995, 997 (Bankr. N.D.*
9 *Ohio 1993)*. "The debtor must offer more than speculation about the source of funding for the
10 plan." *In re Briscoe Enterprises, Ltd.* 138 *Bankr. 795, 807 (N.D. Tex. 1992)* (citing *In re Stuart*
11 *Motel, Inc.* 8 *Bankr. 48, 50 (Bankr. S.D. Fla. 1980)*. Speculative, indefinite plans deprive a court
12 of objective criteria by which to make confirmation judgments. *In re Crestar*, 165 *B.R. 994,*
13 *1003 (E.D. Va. 1994)*.

14 That is especially true where, as here, primary asset value is based not on assets in
15 existence, but on visionary hopes (i.e. the sale of wetlands mitigation credits, or excess land for
16 residential development during a residential depression, or sand extraction operations). A flying
17 car development project was the subject of the proposed plan offered in *In re Trans Max*
18 *Technologies, Inc.* 349 *B.R. 80 (Dist. Nev. 2006)*. In denying confirmation of the proposed plan
19 the court noted: "Feasibility is thus the last, best hope of those who wish to prevent
20 reorganization from becoming a revolving door for frangible firms doomed to fail again and
21 again". As in this case, the debtor suggested there were equity investors eager to fund the plan,
22 but they had not been identified yet. In 2007 Debtor suggested it was on the cusp of locating
23 equity investors to allow it to develop the 'excess land' for residential purposes, its original goal
24 in acquiring Cottonwood. Debtor has continued every year since then to suggest it has equity
25 investors soon to invest. No details are given, no times specified, and currently not even any
26 potential names are identified. Even where a specific potential lender is identified, absent
27 detailed terms courts have been unable to determine that the requirements of § 1129 (a) (11) are
28 satisfied. *See, e.g., In Re Whispering Pines Estate, Inc.* 2008 *BNH 16 (Dist. NH 2008)*; *In re*

1 *Solange D. Chadda, 2007 Bankr. LEXIS 4213 (E.D. Pa. 2007).*

2 The difficulties mount when discretionary governmental approvals are required. Here
3 every element of Debtor’s proposed plan beyond the refinancing of the golf course requires
4 discretionary approvals: re-zoning for the ‘excess land’ residential development; federal and
5 state approvals for the wetlands mitigation approvals; Corp of Army Engineers permits and
6 federal an state approvals for the sand extraction. No where does Debtor specify the required
7 agencies; nowhere does it estimate the time required; no where does it state the standards for the
8 approvals; no where does it create a time line showing the approvals. And all of this is to be
9 accomplished and monetized in a maximum of 28 months. The court in *In re ACHB I, LLC, 2009*
10 *Bankr. LEXIS 636 (N.D. Cal. 2009)* was required to examine a proposed plan to convert a
11 residential condominium project to a residential hotel, which required local governmental
12 approval. The court rejected confirmation of the plan, noting that the likelihood of approval was
13 only 50/50 and the likelihood that upon completion the hotel revenues would be sufficient to
14 fund the plan were only one in five, so the court calculated that the plan had only a 10 per cent
15 chance of success. It should be noted that in that case the condominium project already existed.
16 Only one type of governmental approval was necessary: conversion from condos to hotel, and
17 only one governmental agency, the local city, was required. Here the Debtor proposes 3 types of
18 activities requiring governmental approvals, in each case from several state, local and federal
19 agencies, and Debtor supplies no information whatsoever about existing demand for the resulting
20 business schemes even if approval is obtained.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 ///
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

FENB regrets the cursory review and comments on the Second Amended Disclosure Statement. As noted above, the hearing on this matter should be postponed for not less than 10 days from the date of Debtor’s filing of the Second Amended Disclosure Statement. Equally important, until the fundamental discrepancies in asset values are resolved, no Disclosure Statement should be approved. The values asserted are wholly speculative. The Second Amended Disclosure Statement as submitted should not be approved.

DATED: September 23, 2011

Respectfully submitted.

FRICK PICKETT & MCDONALD LLP

By: /S/ - Ralph Ascher
Richard Frick, Ralph Ascher
Attorneys for Far East National Bank

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

DECLARATION OF RALPH ASCHER

I, Ralph Ascher, certify and declare as follows:

1. I make this declaration on the basis of my personal knowledge and familiarity with the facts to which I am attesting. If called as a witness, I could and would competently testify thereto.

2. I am duly licensed and qualified to appear as an attorney before all courts in the State of California, including the United States District Court in the Central District of California.

3. Attached as Exhibit A is a true and exact copy of the FENB's Objection to Debtor's Disclosure Statement filed 07/05/11.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct.

/s/ Ralph Ascher
Ralph Ascher

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit # A

1 Richard J. Frick (State Bar No. 50537)
rfrick@fpmlaw.com
2 Ralph Ascher (State Bar No. 132745)
rascher@fpmlaw.com
3 Richard Vergel de Dios (State Bar No. 180470)
rvergeldedios@fpmlaw.com
4 FRICK PICKETT & MCDONALD LLP
11022 Acacia Parkway, Suite D
5 Garden Grove, CA 92840
Tel: (714) 638-4300
6 Fax: (714) 638-4311

7 Attorneys for Secured Creditor
Far East National Bank

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA (SAN DIEGO)

10 In re: PREMIER GOLF PROPERTIES, LP,
11 Debtor.

CASE NO. 11-07388-PB11

Chapter 11

SECURED CREDITOR FAR EAST
NATIONAL BANK'S OBJECTION TO
APPROVAL OF DEBTOR'S DISCLOSURE
STATEMENT FILED MAY 31, 2011;
DECLARATION OF GLEN GEORGE

Date: July 28, 2011
Time 10:00 a.m.
Ctrm: Dept. 4
Hon. Peter W. Bowie

12 Secured Creditor FAR EAST NATIONAL BANK ("Lender" OR "FENB" as the context
13 may require), hereby submits its Objection to Approval of Debtor's Disclosure Statement Filed
14 May 31, 2011, and to the Motion by Debtor for Approval of Disclosure Statement in Chapter 11
15 Case (Amended) filed on June 3, 2011 by Debtor and Debtor in Possession Premier Golf
16 Properties, L.P. ("Debtor"). This Objection is supported by the Declaration of Glen George
17 ("George Dec.") submitted herewith, exhibits, and the record in this case.

18 **INTRODUCTION**

19 The Disclosure Statement materially misstates the facts of the financial operations of
20 Debtor and the value of Debtor's assets. It relies upon sources of income which are based solely
21 on Debtor's projections, with no historical or comparative data from qualified third parties, as to
22

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 the golf course operations, and on unproven entirely new proposed activities on Debtor's
 2 properties all of which require wholly discretionary permits and approvals from numerous
 3 undisclosed governmental agencies. These unfounded projections are the sole basis for Debtor's
 4 plan at the end of 24 or 28 months to refinance the property, and thus retire the impaired creditor
 5 claims, including that of FENB, from unstated and unknown sources, in an environment in which
 6 all traditional commercial sources of golf course financing have departed the field. The
 7 Disclosure Statement entirely omits all discussion of time frames and projected costs which
 8 necessarily will be incurred to develop the alleged new sources of revenue. The Disclosure
 9 Statement fails to disclose that the 'wetlands mitigation' plan proposes reducing the Cottonwood
 10 course, Debtor's only proven source of income, from 36 holes to 27 holes. By omission and
 11 misstatement the Disclosure Statement makes it impossible for any interested party to adequately
 12 evaluate Debtor's proposed reorganization plan filed on May 31, 2011 (the "Plan").

13 The Disclosure Statement materially misstates the history leading to the bankruptcy and
 14 at length discusses claims against FENB which by the terms of the Disclosure Statement and
 15 Plan have no relevance to the Plan. Those sections seem solely designed to impugn the actions of
 16 an FENB, and so turn other creditors against FENB. The Disclosure Statement's history of the
 17 case is directly contradicted by the ruling of the San Diego Superior Court in Premier Golf
 18 Properties, L.P. v. Far East National Bank, a National Banking Association, case number 37-
 19 2011-000655553-341-CU-BP-EC (the "State Court Case"). A copy of the State Court's ruling
 20 (the "State Court Ruling") is attached as Exhibit "A" to Glen George's Declaration ("George
 21 Dec.") filed herewith.

22 The Disclosure Statement includes no tax analysis, no liquidation value analysis, no pre
 23 filing, or post confirmation actual or pro-forma balance sheets, and no disclosure of historical
 24 actual operating results of Debtor. It has no discussion of Risk Factors, although the proposed
 25 new operations are inherently risky. It fails to disclose the substantial payments intended to be
 26 made to insiders during the course of the Plan, or how those payments are calculated or compare
 27 with prior payments. It falsely states that Debtor is solvent. The Plan treatment offers the
 28 unsecured interest at 10%, yet is silent as to interest rate for FENB. In short, the Disclosure

1 Statement, styled in rambling, vague and ambiguous form so materially misstates and omits
 2 material facts, that it fails its critical purpose, i.e., ‘adequate information’ permitting an informed
 3 judgment about the Plan. 11 U.S.C. (hereinafter, the “Code”) §1125 (b) and (a) (1). “It is
 4 imperative ... that the Debtor disclose all pertinent information so that such holders can cast an
 5 informed vote accepting or rejecting the plan.” In re Scioto Valley Mortgage Company, 88 BR.
 6 168 (E.D. S.D. Ohio, 1988).

7 STATEMENT OF FACTS

8 Acquisition of Cottonwood Golf Course

9 Debtor owns two golf courses, ‘The Lakes’ and ‘Ivanhoe’, collectively known as the
 10 Cottonwood Golf Club (“Cottonwood”). Debtor acquired Cottonwood in 2002 for \$19,500,000,
 11 with secured financing from GE Capital. In 2007, facing maturity of its GE Capital debt, which
 12 the lender was unwilling to extend, Debtor approached California Bank & Trust (“CBT”) for
 13 refinancing. (George Dec. ¶ 3) Debtor obtained an appraisal, prepared for CBT, from Deloitte
 14 Financial Services (“Deloitte”) which proposed a \$20,500,000 ‘as is’ valuation as of August 17,
 15 2007 and a \$22,800,000 ‘prospective’ valuation as of August 17, 2009, following construction
 16 of lakes on a portion of the course (note: the Disclosure Statement, page 19, line 5, falsely states
 17 that the Deloitte was ‘chosen by FENB,’ it wasn’t; George Dec.¶ 8). In connection with the
 18 proposed CBT financing, Debtor sought, in addition to the take out of GE Capital, sufficient
 19 funds to permit Debtor’s long standing hope to construct high end residences adjacent to the golf
 20 course. (George Dec. ¶ 9; Exhibit “F”) Debtor pursued discussions and negotiations with two
 21 proposed joint venture partners: Grosvenor/McKeller and Wermers. Neither developer ever
 22 materialized. CBT elected not to make a loan to Debtor. (George Dec. ¶ 9; Exhibit “G”)

23 FENB Loan; Gamboa Guaranty

24 Next, Debtor approached FENB. Initially Debtor proposed the same concept as failed
 25 with CBT, namely financing sufficient to develop the high end residences. Debtor claimed it had
 26 prospective developers interested in proceeding as partners (just as it had to CBT). Again, the
 27 proposed partners never materialized. (George Dec. ¶ 9) Nonetheless, with the GE Capital loan
 28 past due, FENB made a 2 year loan maturing on December 26, 2009, secured by the golf

1 courses (the “Loan”) and a guaranty (the “Guaranty”) from Henry Gamboa (“Gamboa”),
 2 Debtor’s principal owner and Chairman of Debtor’s general partner, Premier Golf Property
 3 Management, Inc. (“Premier Management”). The Loan was for a fixed two year term, with no
 4 extension options, and did not include any provisions for development or construction of
 5 residential units. Gamboa’s Guaranty was essential to the FENB financing, as it was to CBT, and
 6 as it had been to GE Capital. (George Dec. ¶ 3) At the time the FENB loan closed, December
 7 27, 2007, Mr. Gamboa stated his net worth to be \$26,802,400; in May of 2009 Gamboa stated
 8 his net worth to be \$25,634,400 as of January 31, 2009; five months later, in October 2009, after
 9 FENB began foreclosure, Gamboa stated his net worth to be a negative (\$9,846,423) as of
 10 November 15, 2009. Mr. Gamboa’s 56% ownership interest in Debtor, which he owns through
 11 his ESOP, was valued at a negative (\$2.24 million). (George Dec. ¶ 6; Exhibits “C 1- C 3”

12 **Subordinate Loan; Payments to Gamboa in Violation of Subordination Agreement**

13 The golf courses produced insufficient revenue for a loan able to pay off GE Capital, so
 14 Debtor obtained a hard money loan of \$557,500 from Mala Nani and S&L Financial, hard
 15 money subordinate lenders (22% interest), payable in 6 months (the “Subordinate Loan”) which
 16 was subordinated to the FENB Loan by a Subordination Agreement dated December 21, 2007.
 17 (George Dec. ¶ 3, ¶ 12; Exhibit “J”) Upon maturity of the Subordinate Loan, Gamboa, through
 18 his wholly owned limited liability company, 8332 Case Street Investment, LLC (“Case Street”)
 19 bought the Subordinate Loan subject to the Subordination Agreement. In the year prior to
 20 petition, Debtor paid Gamboa, through Case Street, not less than \$42,000 interest on the
 21 Subordinate Debt. (SFA-23, Attachment 3 to Debtor’s Amended Statement Financial Affairs
 22 filed 5/26/11, Doc. No. 34; George Dec. ¶ 12) Both the payment of those amounts by Debtor
 23 and receipt of the same by Case Street was in direct violation of the Subordination Agreement.
 24 The Subordination Agreement expressly prohibits payment or receipt of any amounts, whether
 25 principal or interest, on the subordinate debt before the FENB loan is fully paid off. Those
 26 payments were made without the knowledge or consent of FENB. (George Dec. ¶ 12)

27 **Loan Defaults**

28 Immediately following Loan closing, Debtor began defaulting under the Loan. First, it

1 failed to obtain flood insurance. Subsequently it was discovered that the Debtor was not paying
 2 its real property taxes and assessments, notwithstanding the requirement under the Loan that it
 3 do so. Indeed, Debtor never paid any real estate taxes during the course of the Loan. (George
 4 Dec. ¶ 3) Contrary to Debtor's claim in the Disclosure Statement that it withheld tax payments
 5 pending reassessment following Debtor learning the greatly declined value of the property,
 6 Debtor failed to pay taxes for 22 months before it ever learned of the October 8, 2009 Cushman
 7 & Wakefield appraisal, the basis of Debtor's application for reassessment. As stated by Daryl
 8 Idler: "...with no impound requirement, Premier availed itself of available cash otherwise
 9 destined for property tax payments, and used the funds to carry during the difficult times of 2008
 10 and 2009." (George Dec. ¶ 10; Exhibit "H") The Loan required current payment of all real estate
 11 taxes. Debtor continuously failed to meet debt coverage requirements of the Loan, and Debtor's
 12 comment in the Disclosure Statement that it paid down the Loan by \$500,000 in principal (page
 13 12, line 19 Disclosure Statement) was the result of violation of the debt covenant ratio
 14 requirements, which were then immediately violated again.

15 **Attempts to Obtain Residential Development Financing; No 'Wetlands or 'Sand' Plan**

16 Immediately following the Loan closing Debtor began to seek, and for the entire period
 17 of the Loan continued to seek, modification, increase and extension of the Loan in order to
 18 build out the high end residences, notwithstanding that it was failing to meet required debt
 19 service coverage ratios and pay the real estate taxes under the existing Loan. At no time did
 20 FENB offer or commit to increase the Loan or provide for residential development. FENB
 21 repeatedly demanded that Debtor pay the real estate taxes, and the Debtor continuously refused
 22 to do so. At no time in 2008 or 2009, notwithstanding Debtor's many efforts to seek a long term
 23 extension or increase in the Loan, did Debtor ever raise 'sand extraction' or 'wetlands
 24 mitigation' operations as a source of income. Nor did it do so at any time in 2010. Rather, the
 25 Debtor's continuously stated purpose was to raise the funds for the high end residential
 26 development on the 'excess' lands. Daryl Idler again described those plans in his detailed memo
 27 to FENB on May 28, 2010 which although seeking an extension and increase in the Loan
 28 nowhere mentions 'sand extraction' or 'wetlands mitigation' as a source of additional credit

1 support, or otherwise. (George Dec. ¶ 3, ¶ 10; Exhibit “H”)

2 **Loan Maturity; FENB Extension Offers; Debtor Claims of 2 Tier Loan and Racism**

3 When the Loan matured, Debtor was given a 3 month extension to March 24, 2010 by
 4 FENB, during which time Debtor committed to supply updated financial statements for itself and
 5 the Guarantor. (George Dec. ¶ 3) Following maturity of the Loan extension, Debtor began a
 6 campaign asserting that FENB had always promised a ‘two tier’ loan, the second being for the
 7 high end residence development and for a further extended 3 or 5 year maturity. Because of its
 8 relationship with Debtor, in April 2010 FENB offered a one year extension of the Loan. Debtor
 9 rejected that extension. (George Dec. ¶ 10) Then Debtor began its attacks on FENB asserting
 10 that the reason FENB was refusing to ‘honor’ its ‘commitment’ to the ‘two tier’ financing was
 11 because FENB, like many banks with heavy concentrations of commercial real estate in its
 12 portfolio, had received a cease and desist order from regulatory agencies. That circumstance and
 13 order did not prevent FENB from offering a one year extension, notwithstanding that the Loan
 14 had been in continuous default from inception. (George Dec. ¶ 3, ¶ 10; Exhibit “H”) Debtor also
 15 accused FENB of racism, namely that it was treating Debtor as “the ‘ugly’ adopted ‘foreign’
 16 child” because Debtor’s principals were of Caucasian and Hispanic origin, not Asian (that
 17 wholly spurious claim, which Debtor asserted was based on conversations with one of its many
 18 ‘silk suit’ lawyers from large local and national law firms, had no basis in anything and was not
 19 included in the State Court action brought by Debtor, but is indicative of the willingness of
 20 Debtor to make any claim to support its desire to realize what it has openly stated was the reason
 21 to acquire the golf courses in the first place, namely the value to be obtained by development of
 22 the high end residences on the ‘excess’ land). (George Dec. ¶ 11; Exhibit “I”)

23 **Foreclosure and Commencement of Chapter 11**

24 Notwithstanding such unwarranted attacks, following maturity of the extended debt,
 25 FENB entered into continuing discussions with Debtor seeking resolution of the situation, while
 26 continuing to ask for needed financial information and continuing to insist that the real estate
 27 taxes be paid. Finally, on September 22, 2010 FENB recorded a notice of default and began a
 28 non-judicial foreclosure. (George Dec. ¶ 3) Even after that, FENB maintained ongoing

1 discussions with Debtor seeking alternatives. As the date of the foreclosure neared, Debtor filed
2 the State Court action, seeking to enjoin FENB from completing the foreclosure. The State Court
3 denied Debtor's requested injunction. (George Dec. Exhibit "A") Debtor then filed its petition
4 and commenced this case.

5 **Summary**

6 In sum, for nine years Debtor has pursued its dream of building high end residences, its
7 original purpose in acquiring Cottonwood. Debtor failed to convince GE Credit of the plan, so
8 GE Credit would not extend and increase its loan. Debtor failed to convince its proposed joint
9 venture development partners, who did not pursue the venture. It failed to convince CBT,
10 which declined the loan. It failed to convince FENB which refused to make the larger, longer,
11 loan originally requested, though FENB did make a 2 year loan, based on the claimed, and now
12 discredited, values advanced by Deloitte, to permit payoff of the matured GE Capital loan. Now
13 Debtor hopes to convince the creditors in this case, principally by obfuscation through advancing
14 the wholly speculative new 'sand extraction' and 'wetlands mitigation' operations. Debtor's
15 hope is that the residential market will turn in 24 to 28 months and some lender will make the
16 loan Debtor has always wanted but no one would ever supply to it. That obfuscation, and that
17 purpose, is at the center of Debtor's Disclosure Statement that fails to disclose.

18 **SPECIFIC OBJECTIONS TO DISCLOSURE STATEMENT**

19 **I. FINANCIAL STATEMENTS AND OMISSIONS**

20 **A. General Financial Statements and Material Matters**

21 1. Debtor should disclose the results of its financial operations as reported to FENB
22 and Debtor's accountant. They show losses as follows: 2004: (-\$110,131.72); 2005: (-
23 \$54,052.93); 2006: (-\$581,612.82); 2007: (-\$633,399.78); 2008: (-\$711,766.22);
24 2009: (-\$695,246.65); 2010: (-\$1,106,982.75) (George Dec. ¶ 5; Exhibits "B1- B7")

25 2. Debtor should disclose that its principal owner, and primary credit support for
26 prior financing, Henry Gamboa, has stated that he is insolvent and has a negative net worth of
27 (-\$9,846,423), and thus cannot offer credit support to the proposed future refinancing which is
28 the key to Debtor's proposed Plan. (George Dec. ¶ 6; Exhibits "C 1 - C 3")

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 3. Debtor should disclose that none of the traditional golf course lenders, including
2 GE Capital, Capmark, First National of America, Textron Financial Corp. or Wells Fargo are
3 currently providing financing for golf courses. Debtor should disclose which commercial
4 lenders are currently providing financing for golf courses, and Debtor should disclose which
5 commercial lender is available to provide commercial financing for a combined golf course,
6 sand extraction and land mitigation project which reduces the golf course from 36 to 27
7 holes. (George Dec. ¶ 3; Exhibit “F” to Appendix to Secured Creditor’s Motion to Prohibit
8 Debtor From Use of Cash Collateral filed 5/16/11 as Doc. No. 25)

9 4. Debtor should disclose that in its first report of operations post petition it failed
10 to meet its income projections (see paragraph 1, Part III below for details).

11 5. Debtor should include in its Disclosure Statement its pre petition balance sheet
12 and its projected pro forma balance sheet upon Plan completion, with sufficient detail to permit
13 evaluation.

14 6. Debtor should disclose, and attach to the Disclosure Statement, its application to
15 the San Diego County Tax assessor for reassessment.

16 **B. Value of Golf Courses and 2010 Deloitte Restricted Use Appraisal**

17 1. Debtors should disclose that the December 15, 2010 Deloitte Restricted Use
18 Appraisal (Disclosure Statement, page 19, at lines 10 and 11; George Dec. Exhibit “D”) is that, a
19 Restricted Use Appraisal which by its terms is intended to be used solely for Debtor’s internal
20 purposes not to be used or quoted for any purpose, and by its terms states that it cannot be
21 understood without additional information included in Deloitte’s work files, none of which are
22 included.

23 2. Debtor should disclose that the December 15, 2010 Deloitte Restricted Use
24 Appraisal contains no historical financial data pertaining to Debtor or its operations.

25 3. Debtor should disclose that the December 15, 2010 Deloitte Restricted Use
26 Appraisal bases its value conclusion on an assumption (derived from Debtor, not Deloitte) of net
27 operating income growth over the first 3 years (a period which includes the entire Plan period) of
28 8.1% for year 1, 7.4% for year 2 and 6.2% for year 3. (George Dec. Exhibit “D”) Debtor should

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 disclose that those revenue projections are based on no factual evidence and are not supported by
2 Debtor's prior operating experience which show 'net ordinary income' (Debtor's term) falling
3 each year in all but 2 of the 7 years preceding Debtor's petition, including the year immediately
4 prior to the petition. (George Dec. ¶ 5; Exhibits "B 1 - B 7")

5 4. Debtor should disclose that the Deloitte Restricted Use Appraisal assumes
6 continued operation of the 36 hole Cottonwood golf course, but that the 'wetlands mitigation'
7 proposed plan call for reduction of the 36 holes to 27 holes. (Attachment 3 to Exhibit "C" to
8 Debtor's Disclosure Statement filed 5/31/11 as Doc. No. 38)

9 5. Debtor should disclose in the Disclosure Statement that its reported net ordinary
10 income fell from a high of \$1,589,953.36 for 2004 to \$553,710.03 for 2010 and that at no time
11 since it opened the Lakes course has its net ordinary income been above \$808,625.92 (reported
12 for 2009) (George Dec. Exhibits "B 1 - B 7) but its 5 year projection for purposes of the Plan not
13 only are never below \$1,109,760 but by year 4 of the Plan are projected to more than double its
14 highest year (2009) in the 3 years prior to the petition. (Exhibit "D" to Disclosure Statement
15 filed 5/31/11 as Doc. No. 38) Debtor should disclose that it has no factual basis for those
16 extraordinary projected revenue increases.

17 6. Debtor should correct the misstatement (Disclosure Plan p. 19, line 5) that FENB
18 selected Deloitte for the 2007 appraisal, and rather disclose that the Deloitte 2007 appraisal was
19 prepared for CBT which turned down Debtor's request for financing (FENB subsequently was
20 forced to use and rely upon the 2007 Deloitte appraisal given the maturity of the GE Capital
21 loan, making an exception to its approved appraisers for that purpose; it should be noted that
22 FENB does not waive the right to object to any use of Deloitte because of its conflict of interest).
23 (George Dec. ¶ 8; Exhibit "E")

24 7. Debtor should disclose that in its request for a reassessment of value by the San
25 Diego County Tax Assessor it submitted the value from the 2009 Cushman & Wakefield
26 Appraisal of \$8.9 million, and that when Debtor submitted that \$8.9 million value to the County
27 tax assessor it did so stating it was Debtor's best estimate of value (it should be noted that the
28 subsequent October 8, 2010 Cushman & Wakefield appraisal submitted by FENB in connection

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 with its motion to halt the use of cash collateral demonstrates a further decline in value to \$8.6
2 million as of October 2010). (Exhibit “D”, Appendix to Secured Creditor’s Motion to Prohibit
3 Debtor From Use of Cash Collateral, filed 5/16/11 as Doc. No. 25) Debtor should disclose that
4 following its receipt of the December 2010 \$14 million Restricted Use Appraisal from Deloitte
5 it has not advised the San Diego Tax Assessor to correct its stated value from \$8.9 million to \$14
6 million.

7 8. Debtor should disclose that Gamboa, the principal owner and Chairman of
8 Debtor’s general partner, used the \$8.9 million value of Cottonwood from the 2009 Cushman
9 and Wakefield appraisal in calculating his net worth. (George Dec. ¶ 6; Exhibit “C - 3”, Note 1)

10 **C. Raw Land / Willow Glen Side / Realty Associates Unsupported Opinion of**
11 **Value**

12 1. Debtor should delete all references in the Disclosure Statement to the asserted
13 value of the ‘excess’ acres (Disclosure Statement page 9, line 27; Disclosure Statement page 21
14 (lines 21 to 28 and page 21 lines 1 to 10; Disclosure Statement ‘Summary of Valuation
15 Components, page 22, line 15)) inasmuch as, with the exception of an undated opinion of value
16 from a real estate broker (“Realty Executives”) with no supporting appraisal, Debtor offers no
17 competent basis for its statement of value of the ‘excess’ land. (Exhibit “B” Disclosure
18 Statement filed 5/31/11 as Doc. No. 38)

19 2. Alternately, if Debtor is permitted to make reference to Realty Executives and its
20 opinion of value, Debtor should disclose that Realty Executives is not an appraiser, did not use
21 either an income stream capitalization or market comparable analysis to derive its opinion of
22 value, and indeed supplies no factual basis for its opinion of value, no time frame within which
23 any of the land could be sold or developed, nor any discussion of any available financing to
24 acquire or develop the land.

25 3. The Disclosure Statement should specify the time and cost (and source of funding)
26 to obtain the required necessary discretionary approvals required for the residential development,
27 describing at a minimum the matters outlined in 3 pages in Daryl Idler’s May 28, 2010 memo
28 to FENB including the required MUP modification, hydrological and environmental impact

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 studies, the 10 land use disciplines required to be involved and the 10 specified professionals
2 required to be engaged, all as detailed by Mr. Idler. (George Dec. ¶ 10; Exhibit “H”)

3 **D. Sand Extraction Operations / Enviromine Unscheduled Opinion of Value**

4 1. Debtor should disclose what permits and approvals, from what specific
5 governmental agencies, are required for its proposed sand extraction operations including a
6 detailed description of the estimated time required to obtain, and standards of review applicable
7 to obtaining, the Reclamation Plan and Major Use Permit which Enviromine, the sole source for
8 value of this component offered by Debtor, says is essential to proceeding with the plan.

9 2. Debtor should disclose the estimated time frame, and basis for the estimate, to
10 obtain the necessary permits and approvals to proceed with its sand extraction operations and
11 coupled with Enviromine’s estimate of a 1 to 3 year period to extract the sand, Debtor should
12 show a specific time estimate when proceeds from this operation would be available to the
13 Debtor in connection with the proposed Plan including for purposes of showing revenues to a
14 lender to accomplish Debtor’s planned refinancing in 24 to 28 months.

15 3. Debtor should disclose the costs associated, including professional fees, in
16 connection with obtaining the necessary permits and approvals to proceed with its sand
17 extraction operations, all capital and other costs associated with production of the projected
18 income and the source of funds for such costs. Debtor should include a specific mineral
19 depletion schedule with an estimated probability of success.

20 4. Debtor should disclose that neither it nor Gamboa ever stated any value to sand
21 extraction operations in any financial statements or current, projected or proposed operating
22 plans submitted to FENB and never raised either topic prior to its January 2011 State Court
23 action against FENB. (George Dec. ¶ 3, ¶ 9; Exhibit “F”, Exhibit “H”)

24 **E. Wetlands Mitigation / No Support for Debtor’s Value Assertion**

25 1. Debtor should eliminate all discussion of the value of the wetlands mitigation
26 credits (Disclosure Statement part A 2, pages 20 and 21, Summary of Valuation Components,
27 page 22, line 14, and elsewhere throughout the Disclosure Statement) because Debtor supplies
28 no basis whatsoever for its assertion of value.

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

- 1 2. Alternately, if the Disclosure Statement is permitted to describe the wetlands
2 mitigation credits as a component of value, Debtor should disclose:
- 3 a. That Debtor has stated no basis at all for its assertion of value for the mitigation
4 credits, and that there is no existing recognized market for mitigation credits;
- 5 b. That Debtor’s April 10, 2011 letter to the Director of the San Diego County
6 Department of Planning (Exhibit “C” to Disclosure Statement filed 5/31/11 as
7 Doc. No. 38)) (the “April 10, 2011 Letter”) is not an application for mitigation
8 bank approval, but rather is solely a request that the golf course properties be
9 included in a Special Study Area;
- 10 c. That in Attachment 3 to the April 10, 2011 letter Debtor has proposed reducing
11 the golf course from 36 holes to 27 holes and Debtor should disclose the revenue
12 decrease resulting from that modification and the period of time between that
13 revenue decrease and when the sale of mitigation credits will offset that revenue
14 decrease;
- 15 d. The period of time estimated, and basis for the estimate, requirements, and
16 required governmental agency approvals, identifying which agencies, would be
17 necessary to obtain approval of any portion of Debtor’s properties as a recognized
18 mitigation land bank;
- 19 e. The cost of relocation of the Sweetwater River on the Cottonwood site as
20 proposed in Attachment 3 to the April 10, 2011 letter, and the effect of that
21 relocation on disruption of income from the golf courses;
- 22 e. The costs associated, including professional fees, in connection with obtaining
23 land mitigation bank approval, and the source of funds for such costs;
- 24 3. In addition, if the wetlands mitigation credits are permitted to be included as a
25 component of value in the Disclosure Statement, the Disclosure statement should expressly:
26 disclose that Debtor did not advise the County of San Diego in its letter requesting consideration
27 of inclusion in the Special Study Area that it was concurrently planning to excavate large
28 quantities of sand, over several years, on the properties adjacent to the Sweetwater river system,

1 and that such operations may be inconsistent with, and directly in conflict with, preservation of
2 wetlands.

3 4. Debtor should disclose that neither it nor Gamboa ever attributed any value to any
4 wetlands mitigation bank in any financial statements submitted to FENB nor did it raise
5 ‘wetlands mitigation’ as a proposed operation, source of revenues or otherwise at any time prior
6 to filing the State Court action against FENB. (George Dec. ¶ 3, ¶ 9; Exhibit “F”, Exhibit “H”)

7 **II. OBJECTIONS TO DEBTOR’S ‘STATEMENT OF FACT’**

8 1. Debtor should delete all descriptions of FENB’s financial condition and
9 regulatory actions with respect to its financial condition. Nothing in Debtor’s proposed Plan
10 relates to the State Court action. The State Court in its ruling (George Dec. Exhibit “A”)
11 reviewed the allegations in depth and determined it was not probable that Debtor would prevail
12 in its action.

13 2. Debtor should attach a copy of the State Court ruling to the Disclosure Statement
14 if Debtor makes any assertion in the Disclosure Statement that FENB had promised a ‘two tier’
15 funding, extension beyond the original 2 years of the Loan, or any funding for residential
16 development.

17 3. Debtor should disclose that upon maturity of the Loan FENB extended the
18 maturity of the Loan for 3 months to permit the parties to reach resolution.

19 4. Debtor should disclose that upon maturity of the extended loan FENB offered a
20 one year extension of the Loan to Debtor and that Debtor rejected that offer. (George Dec. ¶ 10)

21 5. Debtor should correct the misstatement of the date the Lakes course renovations
22 were completed. The Disclosure Statement states they were completed in 2009. In fact according
23 to Debtor the Lakes course was opened on October 1, 2008. Debtor should disclose that its
24 reported net ordinary income for 2010 after all work had been completed on Cottonwood and the
25 lakes were completed was less than half of its reported net ordinary income for the last year
26 before work began on the lakes (\$553,710.03 for 2010 versus \$1,302,099.13 for 2007). (George
27 Dec. ¶ 3, ¶ 5; Exhibits “B 1- B 7”)

28 6. Debtor should disclose that at no time prior to filing the State Court action in

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 2011 did it propose that its intended improvements were “all to have been funded by sand
2 extraction and wetlands mitigation set asides” (Disclosure Statement page 9, lines 23 and 24),
3 including during the periods beginning in 2009 when it was seeking approval of loan extension
4 and modification. Debtor should disclose that its first description or even reference of the
5 proposed ‘sand extraction’ and ‘wetlands mitigation’ components of value were not made until
6 2011, after it commenced litigation with FENB. (George Dec. ¶ 9; Exhibit “F”)

7 7. Debtor should disclose the specific material allegations in connection with its
8 action against Yamaha Motor Corporation pertaining to the golf carts. Debtor should disclose the
9 specific basis for its allegation (Disclosure Plan page 15, line 26) that it owes Yamaha nothing,
10 and the basis for its statement that it will prevail in the litigation. Debtor should disclose its
11 counsel in the action and whether counsel has expressed an opinion which states that Debtor will
12 prevail in the action. Debtor should disclose the status of the litigation. Debtor should disclose
13 the estimated cost of the litigation, the period expected for the litigation, and its source of
14 funding for the litigation. Debtor should disclose what it is using for alternative golf carts since
15 Debtor has asserted that the golf carts have ‘serious defects’ (Disclosure Plan page 15, line 25)
16 and what the cost and source of funds are for those alternative golf carts.

17 8. Debtor should correct the misstatement (Disclosure Statement page 13, lines 11 to
18 13) that from the loan maturity date it was only invoiced by FENB for payment of the regular
19 monthly payment. Following maturity of the Loan in December 2009, and maturity of the
20 extended Loan in March 2010, FENB made demand for payment in full of the Loan and
21 continuously in 2008, 2009 and 2010 demanded payment of the delinquent real property taxes
22 and resolution of the defaulted debt covenant maintenance ratios through pay down of the Loan.

23 9. Debtor should correct the misstatement of fact (Disclosure Statement page 12,
24 lines 2 to 4) that it brought “...well recognized developers to FENB with strong interest in
25 [Debtor’s] long term development plans.” Debtor instead should disclose that the only proposed
26 developers or joint venture partners it raised with FENB , Grosvenor/McKellar and Wermers,
27 failed to materialize for either the CBT proposed loan or the FENB loan, well before the FENB
28 Loan was made. (George Dec. ¶ 3)

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 10. Debtor’s Statement of Fact should be tightened down and restricted to the
2 material financial facts of the case to make it comprehensible to the creditors. Currently the
3 Disclosure Statement includes such irrelevant materials as a description of a golfer’s frustration
4 at losing balls in water features and retiring to the clubhouse to drown his sorrows (Disclosure
5 Statement page 18, lines 12 to 28 and page 19, lines 1 to 2). A succinct statement of material
6 narrative fact would be:
7 “Debtor acquired the 36 hole Cottonwood golf course in 2002 for \$19,500,000, with a secured
8 loan from GE Capital. Upon maturity of the GE Capital loan in 2007, GE Capital did not extend
9 or renew its loan. In December of 2007 FENB extended a two year loan (the “Loan”) to Debtor,
10 which included funds necessary to improve one of the courses, the Lakes, with lakes and
11 associated water features. Upon maturity of the Loan in December 2009, FENB granted Debtor
12 a 3 month extension. Upon maturity of the extended Loan FENB and Debtor entered into
13 extended discussions and negotiations regarding the Loan, the details of which FENB and
14 Debtor dispute. In September 2010 FENB filed a notice of default and commenced non-judicial
15 foreclosure. FENB and Debtor continued discussions but were unable to reach agreement. In
16 January 2011 Debtor filed the State Court action claiming that FENB had committed not to a two
17 year loan, but to a ‘two tier’ loan, of which the two year loan was only the first tier, and sought
18 to enjoin FENB from completing the foreclosure. FENB denied and continues to deny that it had
19 any obligation to Debtor other than the 2 year loan it made. The State Court after lengthy
20 hearings and briefings denied the requested injunction, ruling that it was not probable that
21 Debtor would prevail in its claims against FENB. Immediately following the State Court ruling
22 Debtor filed its Chapter 11 proceeding.”

III. OBJECTION TO STATEMENT OF MEANS OF PERFORMANCE OF PLAN

23
24 1. Debtor’s five year cash flow projections assume total income for 2011 of
25 \$4,268,685. That is the basis for the stated operating income before debt service of \$1,109,760,
26 and post debt service available cash flow of \$462,047. For its first month of operations post
27 petition Debtor’s total reported income was \$210,673.14 (of which \$40,000 was one time
28 extraordinary sales, not identified). (Debtor’s Monthly Operating Statement for May 2011, filed

1 6/23/11 as Doc No. 62) On an annualized basis that would result in total gross receipts of
2 \$2,528,076, some 40% below the 2011 projections. Debtor's reported actual total income for
3 2010 was \$3,393,062.26, which was more than 21% below its projected 2011 total income.
4 (George Dec. ¶ 5; Exhibit "B 1") Debtor's Disclosure Statement should disclose these
5 discrepancies and explain the factual basis, as opposed to mere hopes, that this robust income
6 growth will materialize in the current economy.

7 2. Debtor's application of projected available cash flow (Disclosure Statement page
8 25, lines 22 to 28) fails to mention payment of continuing interest and penalties on past due real
9 estate taxes. Debtor's statement of outstanding Cottonwood Debt (Disclosure Statement page
10 10, lines 9 to 28) does not take the continuing increase of the real estate tax penalties and interest
11 into account, so the reader of the Disclosure Statement is erroneously left with the impression
12 that the \$441,625 payment of real estate taxes on page 25 satisfies all obligations for real estate
13 taxes other than the \$859,079 shown on page 10.

14 3. Of the \$462,047 of available cash flow projected by Debtor (which based on 2010
15 actual results could be closer to \$369,673), Debtor allocates nothing for: the cost of fees,
16 including professional fees, associated with preparation and processing, including time spent
17 with agency staff and in hearings, to develop the 'sand extraction' component of value or the
18 'wetlands mitigation' component of value. Each of those tasks could easily cost hundreds of
19 thousands of dollars in fees. Nor are any fees allocated for pursuing the State Court action
20 against FENB nor the action against Yamaha. Nor for the professional fees incurred in this case.
21 The remaining cash flow will at best be minimal, although information given by the Disclosure
22 Statement to creditors omits projected professional fees and so no one can quantify the result,
23 and will leave no room for substantial repairs which the Debtor has experienced several times in
24 the recent past, or the resulting loss of revenues when portions of the golf course are forced to
25 shut down for the 'sand extraction' and permanently be reduced by a full 9 holes for the
26 'wetlands mitigation' plan.

27 **IV. OBJECTION TO LIQUIDATION ANALYSIS**

28 Debtor includes no quantified liquidation analysis. It supplies no financial data of the

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 present value of its properties. That liquidation analysis would demonstrate that on a balance
2 sheet basis Debtor is insolvent. Debtor should disclose that its accountant, Leaf & Cole, in its
3 Review Report of Debtor for year end 2008 stated (Note 7) that Debtor may not be able to
4 continue as a going concern. (George Dec. Exhibit " B 3") Debtor should disclose whether its
5 accountant made the same qualification for years 2009 and 2010. The Disclosure Statement
6 should provide current asset values, not based on projected very optimistic continuously
7 increasing revenues (see Deloitte Restricted Use Appraisal discussed above) based on nothing
8 other than Debtor's hopes. Absent such current data creditors are not able to make informed
9 decisions regarding the Plan and their best means of maximizing recovery of their invested
10 capital.

11 **V. OBJECTION TO STATEMENT'S OMISSION OF TAX ANALYSIS**

12 The plan has no discussion of the tax effect of the plan. Absent such discussion creditors
13 cannot determine the net effect of the Plan on their position.

14 **VI. OBJECTION TO CLAIMS, FRAUDULENT CONVEYANCES AND PREFERENCES**

15 The Disclosure Statement fails to address the payments made by Debtor to Gamboa for
16 the Subordinated Debt, in violation of the Subordination Agreement signed by Debtor, Gamboa
17 (through his predecessor) and FENB. (George Dec. ¶ 12)

18 **VII. OBJECTION TO OMISSION OF MANAGEMENT CONTRACT**

19 The Disclosure Statement fails to disclose that Messrs. Idler and Gamboa, insiders, and
20 perhaps other insiders, are direct beneficiaries of an oral executory management contract.
21 Assumption or rejection of that contract, and the terms of the contract, should be disclosed. The
22 projected payments under the contract should be compared with historic payments and the
23 reasons for the differences should be detailed.

24 **VIII. OBJECTION TO OMISSION OF RISK FACTORS.**

25 The Disclosure Statement includes no description or discussion of Risk Factors,
26 notwithstanding that: (a) in 5 of the 7 years prior to the petition Debtor's stated net ordinary
27 income decreased; (b) Debtor's projected net operating income during the first 3 years post
28 petition ranges from 37% to 86% in excess of its highest reported net income during the 3 years

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 prior to the petition, and from 200% to 275% greater than the last year reported by Debtor prior
2 to filing its petition; (compare George Dec. Exhibit "B 1" to Exhibit "D" to Disclosure Statement
3 filed 5/31/10 as Doc. No. 38) © two of Debtor's primary proposed sources of revenue, 'sand
4 extraction' and 'wetlands mitigation' rely upon wholly discretionary permits and multiple
5 governmental approvals and on their face are conflicting uses of the property; and (d) the
6 'wetlands mitigation' proposal requires reducing the only proven source of income, the golf
7 course operations, from 36 holes to 27 holes while there is no established market for sale of the
8 wetlands mitigation credits, which depend on new development to have a market demand, in an
9 environment in which residential and commercial real estate development are projected to
10 continue to languish if not further decrease during the proposed period of the Plan.

11 **CONCLUSION**

12 Debtor's Disclosure Statement is internally inconsistent (e.g., 27 holes or 36 holes)
13 confusing (e.g., when are revenues from the new operations going to be produced, at what cost),
14 contains large sections wholly irrelevant to Debtor's Plan, affirmatively misstates the cause of
15 the financial difficulty, omits the existence of the State Court ruling contradicting Debtor's
16 account of the history leading up to the filing of the petition, and materially misstates, by
17 omission and inaccuracy, the material financial facts relevant to any interested party, including
18 any information about costs, timing or sources of funding required for the proposed new
19 operations. It entirely omits all historical results. It obfuscates the omission of essential facts,
20 including that net income fell in 5 of the 7 years, including the last year, prior to Debtor's
21 petition, by introduction of entirely new, wholly speculative, new business operations, and fails
22 to give interested parties the required information necessary to evaluate those proposals. No
23 requisite time frames for required cash flow are given. No source of refinancing, the sine qua
24 non of the Plan, is identified or even suggested. The Plan has major defects which would prevent
25 its confirmation, and its feasibility is highly questionable.

26 ///

27 ///

28

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

1 For all of these reasons, the Disclosure Statement should not be approved and the Motion
2 should be denied.

3 DATED: July 5, 2011

Respectfully submitted.

4 FRICK PICKETT & MCDONALD LLP

5 By: /s/ - Ralph Ascher
6 Richard Frick
7 Ralph Ascher
8 Attorneys for Far East National Bank
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

In re: PREMIER GOLF PROPERTIES, LP, Debtor(s).	Chapter 11 Case No. 11-07388-PB11
---	--------------------------------------

NOTE: When using this form to indicate service of a proposed order, DO NOT list any person or entity in Category I. Proposed orders do not generate a NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 11022 Acacia Parkway, Suite D, Garden Grove, California 92840.

The foregoing document described as SECURED CREDITOR FAR EAST NATIONAL BANK'S OBJECTION TO APPROVAL OF DEBTOR'S DISCLOSURE STATEMENT FILED MAY 31, 2011; DECLARATION OF GLEN GEORGE will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); (b) and in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On July 5, 2011, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice list to receive NEF transmission at the email address(es) indicated below.

Jack F. Fitzmaurice on behalf of the Debtor almaraz@law.zzn.com
United States Trustee ustp.region15@usdoj.gov

Service information continued on attached page.

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served:

On July 5, 2011, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail and/or with an overnight mail service addressed as follows:

Honorable Peter W. Bowie
United States Bankruptcy Court
Department 4, Room 328
325 West F Street
San Diego, CA 92101

XXX Service information continued on attached page

III. SERVED BY FACSIMILE TRANSMISSION OR EMAIL (indicated method for each person or entity served: Pursuant to Fed.R.Civ.Proc. 5 and/or controlling LBR, on _____, 2011, I served the following person(s) or entity(ies), who consented in writing to such service method, by facsimile transmission and/or email as follows:

Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

July 5, 2011
Date

Ralph Ascher
Type Name

/s/ Ralph Ascher
Signature

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311

In re: PREMIER GOLF PROPERTIES, LP	Chapter 11 Debtor(s). Case No. 11-07388-PB11
------------------------------------	---

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate a NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 11022 Acacia Parkway, Suite D, Garden Grove, California 92840.

The foregoing document described as **SECURED CREDITOR FAR EAST NATIONAL BANK'S OBJECTION TO DEBTOR'S SECOND AMENDED DISCLOSURE STATEMENT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); (b) and in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”) - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be served by the court via NEF and hyperlink to the document. On September 23, 2011, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice list to receive NEF transmission at the email address(es) indicated below.

- Ralph Ascher Ralphascher@aol.com
- Darvy Mack Cohan dmc@cohanlaw.com
- Jack Fitzmaurice almaraz@law.zzn.com
- Christopher V. Hawkins hawkins@sullivanhill.com; vidovich@sullivanhill.com; hill@sullivanhill.com; Iriarte@sullivanhill.com; stein@sullivanhill.com; cruz@sullivanhill.com
- United States Trustee ustp.region15@usdoj.gov

Service information continued on attached page.

II. SERVED BY U.S. MAIL OR HAND DELIVERY (indicate method for each person or entity served: On September ____, 2011, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail and/or with an overnight mail service addressed as follows:

Service information continued on attached page

III. SERVED BY FACSIMILE TRANSMISSION OR EMAIL (indicated method for each person or entity served: Pursuant to Fed.R.Civ.Proc. 5 and/or controlling LBR, on _____, 2011, I served the following person(s) or entity(ies), who consented in writing to such service method, by facsimile transmission and/or email as follows:

Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

September 23, 2011 Ralph Ascher /s/ Ralph Ascher
Date Type Name Signature

FRICK, PICKETT & MCDONALD, LLP
11022 Acacia Parkway, Suite D
Garden Grove, California 92840
Tel: (714) 638-4300 • Fax: (714) 638-4311