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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:
HASSAYAMPA GOLF CLUB, INC.,
Debtor.

In Proceedings Under Chapter 11
Case No.: 2:12-bk-06605-RTBP

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER CONFIRMING
THE FIRST AMENDED PLAN OF
REORGANIZATION OF DEBTOR
HASSAYAMPA GOLF CLUB, INC.
DATED APRIL 2, 2012**

(Related Docket Entry No. 15 and 127)

This matter came before the Court for a final confirmation hearing on September 5, 2012 ("Confirmation Hearing") after having conducted an initial combined hearing on confirmation and approval of the Disclosure Statement on April 3, 2012 and then a continued hearing on June 25, 2012 (the "Initial Plan Confirmation Hearing") of the Plan of Reorganization of Debtor Hassayampa Golf Club, Inc. dated April 2, 2012 as Docket Entry No. 15, as amended by the First Amended Plan of Reorganization of Debtor Hassayampa Golf Club, Inc. dated

SO ORDERED.

Dated: September 12, 2012



Redfield T. Baum, Bankruptcy Judge



1 April 2, 2012 as Docket Entry No. 1127 (collectively, the “Plan”)¹, and
2 subsequently on which is proposed for the resolution of all creditors’ claims
3 against The Hassayampa Golf Club, Inc. (the “Debtor”), the debtor and debtor-in-
4 possession in the above-captioned Chapter 11 case. After hearing arguments at
5 the Confirmation Hearing, and based upon the record on this case and the
6 findings and conclusions set forth herein, this Court will approve confirmation of
7 the Plan.

8 **I. BACKGROUND**

9
10 1. The Debtor filed the Plan and the Disclosure Statement for The Plan
11 of Reorganization of Debtor Hassayampa Golf Club, Inc. Dated April 2, 2012 and
12 the Notice of Filing Supplemental Exhibits to the Disclosure Statement for Plan of
13 Reorganization of Debtor Hassayampa Golf Club, Inc. (collectively the “Disclosure
14 Statement”) as Docket Entry Nos. 14 and 81 and provided due and appropriate
15 notice of the hearing on the Disclosure Statement pursuant to United States Code,
16 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and applicable Bankruptcy
17 Rules as Docket Entry Nos. 47 and 88.

18 2. The Debtor also filed a Motion for an Order Conditionally Approving
19 Debtor’s Disclosure Statement and Consolidating Hearing on Approval of
20 Disclosure Statement with Plan Confirmation Hearing (Docket Entry No. 20), and
21 the Motion to Approve Solicitation Procedures (Docket Entry No. 25) (the
22 “Motions”).

23 3. The Court heard the Motions on April 3, 2012 and, thereafter, entered
24

25 ¹ Unless otherwise defined below, capitalized terms used in this Order shall have the meanings given to the in the
26 Plan.

1 an order conditionally approving the Disclosure Statement and setting a combined
2 hearing for the final consideration of the Disclosure Statement and the
3 confirmation of the Plan (the "Solicitation Procedures Order and Confirmation
4 Hearing") in the Order: (A) Conditionally Approving Disclosure Statement; (B)
5 Setting Consolidated Hearing on Final Approval of the Disclosure Statement and
6 Confirmation of the Plan; (C) Approving Solicitation Procedures; (D) Fixing Time
7 for Filing Objections to the Disclosure Statement; (E) Fixing Time for Filing
8 Objections to the Chapter 11 Plan; and (F) Fixing Time for Returning Ballots
9 Accepting or Rejecting the Chapter 11 Plan and Notice Thereof (the "Solicitation
10 Procedures Order and Confirmation Hearing Notice") (Docket Entry No. 82).

11 4. Pursuant to the procedures approved by the Court counsel for the
12 Debtor asserts that it mailed a Solicitation Package to all the creditors and parties
13 listed on the master mailing list containing: (1) the Solicitation Procedures Order
14 and Confirmation Hearing Notice (2) a Ballot with accompanying instructions; (3) a
15 Notice of the Website address, demonstrating the availability of the Plan
16 Disclosure Statement and related documents on the Website and the specific
17 steps to take to access each of the documents; and (4) a Notice of Opt Out form
18 that allowing the recipient to sign and return the form to counsel for the Debtor to
19 opt out from the electronic service and request a printed copy of the Plan and
20 Disclosure Statement.

21 5. The Debtor asserts that it (1) provided copies of the solicitation
22 package, (2) provided proper, timely, adequate and sufficient notice of the
23 confirmation hearing to all the parties required to receive notice under the Federal
24 Rules of Bankruptcy Procedure, and (3) properly solicited votes on the Plan in
25 compliance with the Solicitation Procedures Order and Confirmation Hearing
26 Notice. The Official Creditors Committee for the Class 7 Claimants (the

1 “Committee”) asserted that various members of Class 7 entitled to receive notice
2 had not received the documents referred to above.

3 6. Consequently, pursuant to the Court’s Order at the June 25, 2012
4 hearing, on June 26, 2012, the Debtor filed the Supplement to Disclosure
5 Statement for Plan of Reorganization of Debtor Hassayampa Golf Club, Inc. dated
6 April 2, 2012 as Docket Entry No. 119 (as evidenced by the Certificates of Service
7 filed at Docket Entry Nos. 123, 124 and 129), extended the voting time for
8 members to July, 13, 2012 and provided ballot forms to the members. The Court
9 approved this Disclosure Statement as supplemented.

10 7. Voting on the Plan concluded on July 13, 2012, and pursuant to Local
11 Bankruptcy Rule 3018, on July 24, 2012 the Debtor filed the Second Ballot Report
12 for the Plan of Reorganization of Debtor Hassayampa Golf Club, Inc. dated April 2,
13 2012 (the “Ballot Report”) as Docket Entry No. 106. The Ballot Report indicates
14 that:

15 Class 1: Priority Non-Tax Claims did not vote, as it was not entitled to vote
16 on the Plan, and instead, is deemed to have accepted the Plan.

17 Class 2: Secured Tax Claims is impaired under the Plan and did not vote on
18 the Plan.

19 Class 3: CFD Secured Claim is impaired under the Plan and voted to reject
20 the Plan. The City of Prescott has reached an agreement with the Buyer as
21 contained herein and changed its vote to accept the Plan, and the Court has
22 approved the change of vote.

23 Class 4: Carryback Loan Claims is impaired under the Plan and
24 conditionally accepted the Plan. The holder of the Carryback Loan Claims has
25 reached an agreement with the Buyer as provided in Section II below and
26

1 changed its vote to accept the Plan.

2 Class 5: HGC Membership Claims is impaired under the Plan and did not
3 vote.

4 Class 6: Jacobs Agreement Claim is impaired under the Plan and voted to
5 accept the Plan.

6 Class 7: Resigned Initial Member Refund Claims is impaired under the Plan
7 and voted to reject the Plan.

8 Class 8: Current Initial Member Refund Claims is impaired under the Plan
9 and voted to accept the Plan.

10 Class 9: Initial Membership Claims is impaired under the Plan and voted to
11 accept the Plan.

12 Class 10: Unsecured Claims Assumed by Buyer is impaired under the Plan
13 and voted to accept the Plan.

14 Class 11: Unsecured Claims – Not Assumed is impaired under the Plan and
15 voted to accept the Plan.

16 Class 12: Debtor Membership Claims is impaired under the Plan and voted
17 to accept the Plan.

18 Class 13: Interests (to the extent any exist) is impaired under the Plan and
19 did not vote on the Plan.

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21
22 8. The Plan will be accomplished either through the sale of the assets of
23 the Debtor to Hassayampa Club Partners, LLLP (“Buyer”) or the tender of a deed
24 in lieu to the holder of the Class 4 Carryback Claim if Buyer fails to timely close
25 under the Sale Agreement. HGC Holdings, LLC (“HGC”) – the holder of the Class
26 4 Carryback Loan Claims – objected to the sale of the Debtor’s real property free

1 and clear of HGC's liens. HGC intended to participate in a contested confirmation
2 hearing and set forth more fully its position in opposition to Debtor's Plan in a joint
3 pretrial statement; however, HGC's objection to confirmation has been resolved as
4 provided in paragraph 15, below. HGC expressly reserves all rights to object to
5 confirmation of the Plan if the modified treatment for the Class 4 Carryback Loan
6 Claims in Section II of this Order is modified in any respect. The consideration
7 paid by Buyer under the Sale Agreement includes assumption of debts by the
8 Buyer of certain creditors selected by Buyer holding Allowed Claims in accordance
9 with the terms of the Plan.

10 9. The City of Prescott filed the City of Prescott's Objection to Debtor's
11 Proposed Plan of Reorganization on June 12, 2012 as Docket Entry No. 101 (the
12 "City's Initial Objection"). Former members Marvin and Barbara Friedman filed
13 their Objection on May 23, 2012 as Docket Entry No. 98 (the "Friedman
14 Objection"). The Office of the U.S. Trustee filed the United States Trustee's
15 Objection to Debtor's Plan of Reorganization and Disclosure Statement on June
16 13, 2012 as Docket Entry No. 104 (the "U.S. Trustee's Objection"). The
17 Committee") filed its Joinder of Official Creditors Committee for Class 7 Claimants
18 to 1) City of Prescott's Objection to Debtor's Proposed Plan of Reorganization and
19 2) United States Trustee's Objection to Debtor's Plan of Reorganization and
20 Disclosure Statement on June 25, 2012 as Docket Entry No. 117 (the
21 "Committee's Joinder"). The Committee then supplemented the Joinder with the
22 Objection to (i) Disclosure Statement and (ii) Plan of Reorganization of Debtor
23 Hassayampa Golf Club, Inc. dated April 2, 2012 on July 25, 2012 as Docket Entry
24 No. 130 (the "Committee's Objection").

25 10. The City's Initial Objection was resolved as provided for in paragraph
26 No. 43 below, having been withdrawn on the record at the hearing held on June

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25, 2012 (Docket Entry No. 118).

11. On July 26, 2012, the City of Prescott's Objection to Debtor's First Amendment to Plan of Reorganization of Debtor, etc. was filed as Docket Entry No. 135. The City of Prescott requests clarification that the City will retain its CFD assessment lien after any proposed sale.

12. The Debtor hereby confirms that the City of Prescott will retain its Class 3 assessment lien after any proposed sale and that the City of Prescott will be afforded "indubitable equivalent" of its claim by retaining such lien for the payment of the assessments. This agreement is evidenced by the signature below of Thomas Lloyd, Chief Assistant City Attorney for the City of Prescott. Based upon this provision, the City of Prescott votes in favor of the Plan on its Class 3 claim.

13. The Committee filed its Withdrawal of Objection to (i) Disclosure Statement and (ii) Plan of Reorganization of Debtor Hassayampa Golf Club, Inc. dated April 2, 2012 on September 4, 2012 as Docket Entry No. 145.

14. The Friedman Objection, along with the U.S. Trustee's Objection, were pending prior to the Confirmation Hearing.

II. MODIFICATION OF TREATMENT OF CLASS 4 CARRYBACK LOAN CLAIMS

15. The Debtor's primary secured creditor, HGC Holdings, LLC, negotiated with the Debtor and Buyer for acceptable treatment of its Claim under Class 4 of the Plan. Accordingly, the existing language in the Plan is hereby removed and replaced in its entirety, and the Claim of HGC Holdings, LLC will be treated as follows:

1 (d) *Class 4: Carryback Loan Claims.* Any of the Debtor's defaults
2 shall be deemed cured as of the Effective Date, and the Carryback
3 Loan Claims will be subject to the following treatment:

4 (1) The Carryback Notes shall be cancelled and the Carryback
5 Deed of Trust shall be released on the Effective Date.

6 (2) On the Effective Date, as a condition to the closing of the sale
7 to Buyer, Buyer shall execute a promissory note in favor of HGC in
8 the amount of \$372,317.27 ("Closing Note"), secured by a deed of
9 trust ("Closing DOT") on the Property. The Closing DOT shall be a
10 first-position deed of trust, junior only to the CFD Secured Claim. The
11 Closing Note shall be payable as follows:

12 (i) \$48,658.64 within thirty (30) days of the Effective Date;

13 (ii) \$73,658.63 within ninety (90) days of the Effective Date;
14 and

15 (iii) the balance of \$250,000 shall be paid as follows:

16 a. The Closing Note will have a 10 year term
17 and will accrue interest at the rate of 5% per
18 annum ("Base Rate Interest"); provided,
19 however, unless a default has occurred under
20 the Closing Note or Closing Deed of Trust, all
21 accrued Base Rate Interest will be forgiven
22 if/when the Closing Note is paid in full.

23 b. The Closing Note will be paid directly from
24 the Golf Club's "Net Cash Flow" (as defined
25 below), which shall be calculated and paid,
26 on a semi-annual basis, 100% to HGC, until
the Closing Note is paid in full, at which time
HGC shall have no right, title or interest in the
Golf Club whatsoever; and then 100% to
Buyer (or an affiliate of Buyer).

c. The term "Net Cash Flow" shall mean all
operating and/or membership revenue
derived from the Golf Club, of any type or
nature, less (only): (i) reasonable and
customary third party operating expenses
including without limitation, all salaries and

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other costs associated with employees or contractors of the Club; (ii) industry standard and prudent operating reserves; and (iii) a management fee payable to Buyer (or an affiliate of Buyer) in an amount of four percent (4%) of gross revenues of the Golf Club. Golf Club revenue shall not be used to pay or cover any direct or indirect payroll, overhead or operating expenses of Buyer (or any affiliate of Buyer) that is not associated with the Golf Club, except as otherwise contemplated by, and included in, the approved management fee.

d. "Net Cash Flow" shall also include any sale or financing proceeds derived directly or indirectly from transactions that forfeit, impair, lien or cloud title to any Golf Club assets, except (and only) to the extent financing proceeds are used by Buyer to acquire and/or replace Golf Club assets.

(3) As an additional condition of the closing of the sale, HGC and Buyer, each in their sole discretion, must reach an agreement on Buyer's ability to recover up to \$500,000 of "initial capitalization costs" from "Net Cash Flow" prior to distributions to HGC.

(4) On the Effective Date, all claims held by the Estate against the holder of the Carryback Loan Claims, including claims relating to easement expenses and lien avoidance, shall be released, and all claims of the holder of the Carryback Loan Claims against the Debtor shall be released.

(5) Notwithstanding any provision contained in this subsection (d), in lieu of HGC's right to credit bid in a sale of Debtor's assets, Debtor shall, on the Effective Date, deposit into escrow a deed in lieu of foreclosure ("DIL") conveying all of Debtor's interest in Debtor's real property to HGC subject only to those liens and encumbrances which would survive a non-judicial foreclosure of the real property pursuant to the Carryback Deed of Trust, and in the event that the Buyer fails to close on the sale as contemplated herein, the Debtor shall immediately cause the DIL to be recorded in the county recorder's office.

1 (6) Nothing in the treatment of Class 4 shall impact the use of
2 Debtor's funds to pay administrative claims.

3 The Class 4 Claim is **impaired** by the Plan.

4 **III. FINDINGS OF FACT AND CONCLUSION OF LAW.**

5 16. The Court has considered the Plan and Disclosure Statement, the
6 Declarations of Larry Stanek filed on July 26, 2012 as Docket Entry Nos. 131 and
7 133, the Declaration of Larry Stanek and Robert Naglieri filed on July 26, 2012 as
8 Docket Entry No. 132, and the Declaration of Larry Stanek and Robert Naglieri
9 filed on September 5, 2012 as Docket Entry No. 147. The Court further
10 considered all arguments and statements made of record by counsel for the
11 Debtor, the Committee, and other parties in interest at the Initial Plan Confirmation
12 Hearing and the Confirmation Hearings.

13 17. Based on the foregoing, and the entire record before the Court, the
14 Court makes the following findings of fact and conclusions law, and issues this
15 Order for the reasons stated in this Order and for any other reasons stated by the
16 Court on the record at the Plan Confirmation Hearing:

17 **A. Jurisdiction and Venue.**

18 18. This is a "core" proceeding within the meaning of 28 U.S.C.
19 § 157(b)(2). This matter arises under the Bankruptcy Code, and jurisdiction is
20 vested in this Court to enter a final order by virtue of 28 U.S.C. § 1334(a) and (b),
21 and 28 U.S.C. §§ 151, 157(a) and (b)(1). Venue in this Court is proper under 28
22 U.S.C. §§ 1408 and 1409. The Court's findings of fact and conclusions of law are
23 being entered under Rules 7052 and 9014 of the Federal Rules of Bankruptcy
24 Procedure (the "Bankruptcy Rules").

25 19. The Court's retention of jurisdiction as set forth in Article VIII of the
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1 Plan comports with 28 U.S.C. § 157.

2 **B. Satisfaction of Relevant Legal Standards.**

3 20. The Plan was proposed in good faith, and not by any means
4 forbidden by law.

5 21. In accordance with Bankruptcy Code § 1123(a), the Plan:
6 (a) designates classes of Claims and Equity Interests, other than claims of a kind
7 specified in Bankruptcy Code §§ 507(a)(1), 507(a)(2) and 507(a)(8)(excluding
8 Secured Tax Claims), and the classification complies with Bankruptcy Code
9 Section 1122; (b) specifies Classes of Claims and Interests that are impaired
10 under the Plan; (c) specifies the treatment of Classes of Claims and Interests that
11 are impaired under the Plan; (d) provides the same treatment for each Claim or
12 Interest of a particular Class, unless the holder of a particular Claim or Interest
13 agrees to less favorable treatment of the particular Claim or Interest; (e) provides
14 for adequate means for the Plan's implementation and (f) contains only provisions
15 that are consistent with the interests of creditors and equity security holders and
16 with public policy.

17 22. As permitted by Bankruptcy Code Section 1123(b), the Plan:
18 (a) impairs or leaves unimpaired Classes of Claims and Interests; (b) provides for
19 the assumption, rejection, or assumption and assignment of the Debtor's
20 executory contracts and unexpired leases; and (c) includes other appropriate
21 provisions not inconsistent with the applicable provisions of the Bankruptcy Code.

22 23. In accordance with Bankruptcy Rule 2002, the Court finds and
23 concludes that adequate notice of the time for filing objections to confirmation of
24 the Plan and adequate notice of the Plan Confirmation Hearing were provided to
25 parties in interest. No additional notice of the Plan Confirmation Hearing or the
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1 opportunity to be heard with respect to confirmation of the Plan is required or
2 appropriate under applicable Bankruptcy Rules. The Debtor and its counsel
3 solicited votes to accept or reject the Plan in good faith and in compliance with the
4 applicable provisions of the Bankruptcy Code.

5 24. Any payments made, or to be made, under the Plan, for serviced or
6 for costs and expenses incurred in connection with the Debtor's bankruptcy or the
7 Plan, or incident to either, have been approved by, or are subject to the approval
8 of the Court as reasonable.

9 25. The Debtor has disclosed the identity and affiliations of any
10 individuals proposed to serve, after confirmation of the Plan, as a director, officer
11 or voting trustee of the Debtor and their entry upon or continuation in those duties
12 is consistent with the interests of creditors and public policy.

13 26. The Debtor has disclosed the identity of any insider that will be
14 employed or retained by the reorganized Debtor, and the nature of the
15 compensation any such insider is to receive.

16 27. No governmental regulatory commission has jurisdiction over the
17 rates charged by the Debtor, and therefore the requirements of 11 U.S.C.
18 §1129(a)(6) are not applicable to the Plan.

19 28. Each holder of a claim or interest included in a class that is impaired
20 under the Plan has either accepted the Plan, or will receive or retain under the
21 Plan, an account of such claim or interest, property of a value, as of the effective
22 date of the Plan, that is not less than the amount that such holder would so
23 receive or retain if the Debtor's estate was liquidated under Chapter 7 of the
24 Bankruptcy Code.

25 29. Although not all impaired classes voted to accept the Plan, as set
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1 forth below, the Plan complies with the provisions of 11 U.S.C. §1129(b) with
2 respect to each such class.

3 30. Except to the extent that they agree to an alternative treatment, under
4 the Plan, the holders of all claims entitled to priority pursuant to 11 U.S.C. §507
5 will be paid in full on the effective date, or as soon thereafter as such claims are
6 allowed by the Court, with the exception of holders of claims entitled to priority
7 pursuant to 11 U.S.C. §507(a)(8), which, at the Debtor's option, may be paid, on
8 account of such claims, deferred cash payments over a period ending not later
9 than five (5) years after the date of the order for relief and in a manner that is not
10 less favorable than the most favored non-priority unsecured claim provided for by
11 the Plan.

12 31. Without consideration of any acceptance of the Plan by an insider, at
13 least one class of claims that is impaired under the Plan voted to accept the Plan,
14 thereby satisfying the requirements of 11 U.S.C. §1129(a)(10).

15 32. The Plan is feasible, in that confirmation of the Plan is not likely to be
16 followed by further liquidation or the need for additional financial reorganization of
17 the Debtor.

18 33. All fees payable under 28 U.S.C. §1930 have been paid, or, pursuant
19 to the Plan, will be paid on the effective date of the Plan.

20 34. The provisions of 11 U.S.C. §1129(a)(13), concerning the continued
21 provision of retiree benefits, do not apply to the Debtor or the Plan.

22 35. The provisions of 11 U.S.C. §1129(a)(14), concerning domestic
23 support obligations, do not apply to the Debtor or the Plan.

24 36. The Debtor is not an individual, and as such, the provisions of 11
25 U.S.C §1129(a)(15) do not apply to the Plan.
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1 37. The Debtor is not a moneyed business or commercial corporation,
2 and pursuant to the provisions of 11 U.S.C. §1129(a)(16), the Debtor has
3 established that it has satisfied applicable State Law requirements for the sale of
4 the Debtor's property.

5 38. The Plan does not discriminate unfairly and is fair and equitable with
6 respect to each class of claims or interests that is impaired under, and has not
7 accepted, the Plan.

8 39. In particular, with respect to each class of secured claims that did not
9 vote to accept the Plan, the Plan provides that the holders of such claims shall
10 retain the liens securing their claims to the extent of the allowed amount of such
11 claims, and shall receive on account of such claims deferred cash payments
12 totaling at least the allowed amount of such claims, of a value, as of the effective
13 date of the Plan, of at least the value of such holder's interest in the estate's
14 interest in such property.

15 40. The designation of classes made in the plan is based upon the
16 substantial similarity of the claims contained therein. The classification of claims
17 in the Plan is reasonable, was done in good faith, and was not used for the
18 purpose of affecting the vote of any class, or for any other improper purpose.

19 41. The solicitation of ballots accepting the Plan was carried out in good
20 faith and in compliance with the provisions of the Bankruptcy Court.

21 42. The Ballot Report filed by the Debtor, in accordance with Local Rule
22 3018-1, properly classified and counted the acceptances and rejections of the
23 Plan. By virtue of the Ballot Report as filed with the Court, each impaired Class
24 under the Plan has either accepted the Plan or approved this Order, except Class
25 7, Resigned Initial Member Refund Claims, who are deemed not to have accepted
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1 the Plan under 11 U.S.C. § 1126(g).

2 43. The City's Objection to the Plan treatment of its Class 10 Claim has
3 been resolved pursuant to the Amendment to Amended Effluent Agreement
4 executed by the City of Prescott and the Buyer on June 26, 2012, incorporated
5 herein by reference and attached hereto as Exhibit A. The City of Prescott's
6 approval of this Order is evidenced by its signature below, and the City of Prescott
7 hereby withdraws its objection and changes its Class 10 vote to accept the
8 Debtor's proposed Plan.

9 44. HGC Holdings, LLC's opposition to the Plan has been resolved as
10 provided in paragraph 15, above.

11 45. The remaining objections are hereby overruled.

12 46. No provision in the Plan or this Order modifies or discharges any
13 liability of any party other than the Debtor.

14 47. All administrative claims shall be paid in full from Debtor's funds prior
15 to the close of escrow for the sale to Buyer, unless otherwise agreed to by the
16 holder of such claim.

17 Based on the foregoing and the record,

18 **IT IS HEREBY ORDERED AS FOLLOWS:**

- 19
- 20 1. The Plan, as modified by this Order, is hereby confirmed.
 - 21 2. The Sale contemplated under the Plan to Buyer is approved, and in
22 the event a closing does not occur on such sale, delivery of the deed-
23 in-lieu is authorized.
 - 24 3. All applications for approval and payment of Administrative Claims
25 shall be filed and served on the Reorganized Debtor as set forth in
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Section 3.3 of the Plan. Any such Claim that is not served and filed within this time period shall be discharged and forever barred. Objections to any application for allowance of an Administrative Claim must be filed within 21 days after the filing thereof.

4. All Claims arising from the rejection of any executory contract or unexpired lease after the Claim Bar Date must be filed with the Court no later than 30 days after the Effective Date of the Plan. Any such Claim not filed within that time is forever barred.
5. The Reorganized Debtor and all other necessary parties are authorized and empowered, without further Court order, to execute and deliver any document, and to perform any act, that is necessary, desirable or required for the consummation of the Plan, including but not limited to executing deeds and other closing documents related to the sale of Debtor's assets to Buyer pursuant to the Sale Agreement.
6. This Court shall retain jurisdiction in accordance with the terms of Article VIII of the Plan and to adjudicate any unresolved issues described and reserved in this Order. Such retention of jurisdiction shall not, and does not, affect the finality of this Order. The Court expressly determines that there is no just reason for delay and expressly directs the entry of this Order as a final order.
7. To the extent that this Order is inconsistent with the terms of the Plan, this Order shall control.
8. All objections to confirmation of the Plan which have not been withdrawn are hereby overruled.
9. The Debtor is authorized and empowered to do all acts and execute

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all documents necessary to implement the Plan.

10. The modifications to the Plan set forth in this Order are not materially adverse to any party in interest that has not expressly consented to them, do not require noticing a new disclosure statement or new balloting, and are expressly approved by the Court and fully made a part of the Plan.
11. In the event the Buyer purchases the Debtor's assets as set forth in the Sale Agreement, the sale is free of all liens and encumbrances except the CFD Secured Claim, property taxes and the Closing Deed of Trust. Upon such closing, a copy of this Order shall be filed with the Yavapai County Recorder's Office, and that certain Deed of Trust and Assignment of Rents recorded in the official records of Yavapai County, Book No. 4580, Page No. 113 shall be released.
12. In the event the Buyer purchases the Debtor's assets as set forth in the Sale Agreement, Buyer agrees as follows: the Class 7 Resigned Initial Member Refund Claim holders will be entitled to enter into a Buyer Membership Agreement, at such holder's election, prior to the date thirty (30) days after the Effective Date. If such holder: (1) timely enters into a Buyer Membership Agreement; and (2) pays all obligations under that Buyer Membership Agreement for a period of thirty (30) years from the date of their resignation from the Hassayampa Golf Club ("Resignation Date") and otherwise does not default under the terms of such holder's Buyer Membership Agreement, then upon the date thirty (30) years after the applicable Resignation Date, such holder shall be entitled to receive from Buyer an amount equal to: (a) such holder's Deposit (as defined in the

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Initial Membership Plan) minus (b) an amount equal to the amount of Dues that would have been payable under the initial Membership Plan and, as of Debtor's purchase of the Golf Course, under the Bylaws of the Debtor, from the applicable Resignation Date through the date that such holder enters into a Buyer Membership Agreement. No interest shall accrue or be paid on such refund amount. All other obligations to provide a refund of a Deposit (as defined in the initial Membership Plan) to a holder of a Resigned Initial Member Refund Claim shall be completely and fully extinguished on the Effective Date.

13. In summary, upon the Effective Date, all membership refund and/or other membership claims and interest of any kind (whether pursuant to the Initial Membership Plan, the Debtor Membership Plan, the Articles of Incorporation, the Bylaws or otherwise) shall be extinguished. No present or former member shall have any claims against the Buyer or any rights, claims or interest in the assets and rights acquired by Buyer under the Sale Agreement except as expressly set forth in the Plan as modified by this Order.
14. The City of Prescott's change of vote and modified Plan terms are hereby approved.

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15. Promptly upon its entry, the Debtor shall serve notice of the entry of this Order upon all creditors, equity holders and parties in interest.

DATED, SIGNED AND ORDERED ABOVE.

APPROVED BY:
City of Prescott

/s/ Matthew Podracky (State Bar No. 019254) for

By: Thomas Lloyd
Chief Assistant City Attorney
Attorney for the City of Prescott

HGC Holdings, LLC, an Arizona limited liability company

/s/ Todd M. Adkins

By: Todd M. Adkins
Chester & Schein, P.C.
Attorneys for HGC Holdings, LLC

Hassayampa Club Partners, LLLP, a Texas limited liability limited partnership

/s/ Timothy J. Martens

By: Timothy J. Martens
Gammage & Burnham
Attorneys for Hassayampa Club Partners, LLLP

EXHIBIT A

Amendment to Amended Effluent Agreement

WHEREAS, the City of Prescott (hereinafter referred to as "City") and Hassayampa Golf Club, Inc. (HGC), are parties to a certain contract between the parties, known as the Amended Effluent Sales Agreement, Contract #97-162A originally dated June 13, 2000 ("Agreement" herein); and

WHEREAS, the City owns and is the permittee of a facility known as the Hassayampa Village Water Reclamation Plant ("Plant" herein), which is operated by HGC pursuant to the Agreement;

WHEREAS, Hassayampa Club Partners, LLLP ("HCP" herein) intends to assume the Agreement referenced above as part of the Plan of Reorganization filed by Hassayampa Golf Club, Inc. in Case No. 2:12-bk-06605-RTBP; and

WHEREAS, the City of Prescott ("City" herein) and HCP as assignee and successor in interest to Hassayampa Golf Club, Inc. to the Agreement desire to amend such Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. **EFFECTIVE DATE** – The effective date of this Amendment to the Agreement shall be the date thirty days after the date of an order of confirmation of the Debtors Plan of Reorganization (the "Bankruptcy Plan") in the bankruptcy case styled as Hassayampa Golf Club., Inc, Case No. 2:12-bk-06605-RTBP. This Amendment shall be void if an order of confirmation is not entered in such bankruptcy by June 25, 2013, or if at any time prior to confirmation, HGC elects not to continue with the Bankruptcy Plan and does not become the owner of the Hassayampa Golf Club.
2. **INITIAL DEPOSIT OF \$25,000** – Within fifteen (15) days after the effective date of this Amendment, HCP shall deposit into an FDIC insured financial institution, which is also registered with the Arizona Corporation Commission as a domestic entity, the sum of \$25,000 into a separate identifiable account for repairs, maintenance and improvements to the Plant, which funds shall be used as further described herein.
 - a. Within sixty (60) days of the effective date of this Amendment, HCP shall develop jointly with the City a written list of repairs, maintenance, or improvements to be made by HCP to the Plant, including the date when the parties anticipate such work is to be/shall be completed and the order of priority in which HCP is to perform such work.
 - b. Within 30 days after development of the list of repairs, maintenance, or improvements to be made to the Plant as referenced in paragraph 2 herein, HCP shall commence such work in the order of priority as set forth therein.
 - c. Subject to Section 2.g below, HCP shall complete such repairs, maintenance, or improvements to be made to the Plant, within one-year.
 - d. Within 30 days of the completion of any work performed pursuant to paragraph 2 herein, HCP shall provide to the City with complete documentation, which shall include detailed invoices showing complete vendor information, the specific work completed, specific equipment installed, etc., to enable the City to determine the full nature of the work and whether any such work is identical to or the equivalent of the work that has been agreed to by the parties for all expenditures made from the \$25,000 deposited in the account referenced herein.
 - e. Nothing shall prevent HCP from making other such repairs, maintenance or improvements to the Plant but such other work that is not identical to the work agreed to by the parties or the equivalent thereof shall not be paid out of the \$25,000 to be deposited by HCP pursuant to this paragraph 2, unless such work represents a more immediate need, as agreed by the parties, in which case the costs may be paid out of the \$25,000.

- f. Any funds remaining after HCP has completed the repair, maintenance or improvements on the initial list shall be deposited into the sinking fund referenced in paragraph 3 of this Amendment.
 - g. Any repairs, maintenance or improvements to the Plant from the list referenced in this paragraph 2 that are not completed with the \$25,000 initial deposit, and except as set forth herein after in this paragraph, in the following sentence, all other capital improvements, purchases, repairs or replacements required pursuant to this Agreement as described in 3.e below, shall be satisfied solely from sinking fund monies referenced in paragraph 3. Notwithstanding the preceeding sentence, if there are insufficient funds in the sinking fund account to pay for capital improvements, purchases, repairs or replacements that are required to maintain compliance with the aquifer protection permit for the Plant (which is one component of the City's overall wastewater treatment system for which the City is obligated), HGC will use its best efforts to cause such capital improvements, purchases, repairs or replacements, as applicable, to be made within a reasonable time period after receiving written notice of such item.
 - h. Within 30 days of the end of each month, HCP shall supply to the City Public Works Department, monthly statements for the account referenced herein into which the \$25,000 is to be deposited.
3. **“SINKING FUND” REPLENISHMENT AND USE** – The parties agree that Section 4.c of the Agreement shall be deleted and replaced with the following:
- a. Within fifteen (15) days after the effective date of this Amendment, HCP shall establish a sinking fund at an FDIC insured financial institution that is also registered with the Arizona Corporation Commission as a domestic entity (or otherwise authorized to transact business in Arizona), by initially depositing \$4,600 into such account. HCP will additionally deliver to City a copy of the deed transferring the Hassayampa Golf Club to HCP.
 - b. HCP shall deposit an additional amount of \$4,600 each and every month after the initial deposit referenced in paragraph 3.a, until such sinking fund account reaches a balance of \$100,000, after any expenditures have been made from such fund.
 - c. If the balance of the sinking fund falls below \$100,000, HCP shall replenish such fund and make additional deposits of \$4,600 per month until such fund again reaches a balance of \$100,000, after any expenditures from such fund.
 - d. The sinking fund amounts shall be used only for capital asset purchases, improvements, replacements and/or repairs and shall not be used to fund routine operation and maintenance of the Hassayampa Wastewater Treatment Plant, including routine operation and maintenance of the wastewater conveyance system from the point of delivery at Mile High Middle School as described by the Amended Effluent Sales Agreement. The sinking fund may also be used for costs to close or discontinue operation of the Plant in the event that HCP or its successors or assigns no longer operates a golf course on its property. "Operation and maintenance" are defined in Paragraph 4.b. of that Agreement.
 - e. Capital asset purchases, improvements, replacements and/or repairs for purposes of this Amendment shall mean and include land, improvements to land, easements, buildings, building improvements, vehicles, machinery, equipment, infrastructure, including repairs (provided it meets the definition herein of a "capital" repair) and/or replacements of the foregoing, and all other tangible or intangible assets that are used in operations and that have initial useful lives extending beyond a single reporting period of a year. (Government Accounting Standards Board, Statement 34, par. 19.)
 - f. If the City requests in writing that HCP supply such documents, within 30 days of the date of such request HCP shall provide to the City copies of specific invoices which shall include detailed invoices showing complete vendor information, the specific work completed, specific equipment

installed, etc., to enable the City to determine and verify whether the purchase or expenditures have been for capital asset purchases, improvements, replacements and/or repairs.

- g. HCP shall supply the City with monthly statements of the separately established sinking fund account to allow the City to monitor expenditures and deposits of the account.
4. **NOTICE** - Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage or certified mail, at the following addresses:

City of Prescott
Public Works Director
433 North Virginia Street
Prescott, AZ 86301

Hassayampa Club Partners LLLP
c/o Century Golf Partners
5080 Spectrum Drive, Suite 1100 E
Addison, TX 75001
Attention: Doug Howe

Copy to:
City Manager
221 S. Cortez Street
Prescott, AZ 86302

Copy to:
Addison Law Firm
14901 Quorum Drive, Suite 650
Dallas, TX 75254
Attention: Dallas Addison

If mailed, delivery of such notice shall be complete upon placing such notice in the U.S. mail, postage prepaid, addressed to the other party at the address provided herein.

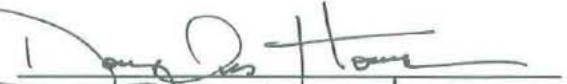
5. **APPLICABLE LAWS** - This Agreement shall be construed under the laws of the State of Arizona.
6. **COMPLIANCE WITH LAWS** - The City and Hassayampa Club Partners, LLLP shall fully comply with all federal, state and local statutes, regulations, permits, approvals and restrictions, any legal entitlement and any other rule, regulation, requirement, guideline, permit, action, determination or order of any governmental body having jurisdiction, that is/are applicable to the collection, handling, transport, processing, storage or disposal of sewage and related byproducts including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, building codes, non-discrimination and the payment of minimum wages. The City has not received any notices of and is not currently aware of any violations of any of the items set forth in the prior sentence.
7. **ESTOPPEL** - City agrees that HGC is responsible for all liabilities and obligations under the Agreement for the period prior to the assignment of the Agreement to HCP, and HCP shall be responsible for all liabilities and obligations under the Agreement for the period after the assignment of the Agreement to HCP. To the best of the City's reasonable knowledge, except for the "Exceptions" noted below, item (c) of which is being addressed pursuant to the Bankruptcy Plan and items (a) and (b) of which are addressed in this Amendment, (i) the Agreement is not currently in default, and (ii) the City is not aware of any facts or circumstances which, with the giving of notice or passage of time or both, would constitute a default under the Agreement. "Exceptions" to the above estoppel are as follows:
- a. Items noted on document "Hassayampa Deficiencies" dated 6/15/12 (attached as Exhibit A);
 - b. Items noted on document "Repairs to Meet State Regulations, and Maintenance to Be Done to Produce Water 2012", initialed "10/10/11 TAL" (attached as Exhibit B);
 - c. Current default in the Amended Effluent Agreement payment in the amount of \$20,623.52, since August 2011.
8. **NO OTHER CHANGES** - Except as set forth in this Amendment, all other terms of the Agreement remain unchanged and the Agreement remains in full force and effect.

DATED this 26 day of JUNE, 2012.

CITY OF PRESCOTT

Hassayampa Club Partners, LLLP


Marlin Kuykendall, Mayor


By: Douglas Howe
Title: Authorized Agent

ATTEST:


Elizabeth Burke, City Clerk

APPROVED AS TO FORM:

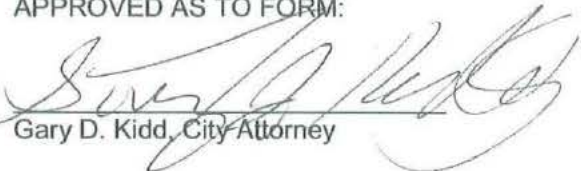

Gary D. Kidd, City Attorney

EXHIBIT A
SEE ATTACHED

Hassayampa Deficiencies

Number	Item	Comments
Sam Hill Lift Station		
1	Electrical panel and conduit are under stress due to settling of the concrete base.	R18-9-A313(A)(2), R-18-9-A313(B)(9) pertains to wastewater treatment facilities. Failure at this lift station will limit the capability to deliver sewage to Mile High Lift Station.
Mile High Lift Station		
2	Davit crane cable is frayed and edge of spool is broken.	Safety concern. Inability to repair pumps if crane is inoperable.
3	Safety latch on crane hook is broken.	Safety concern. Inability to repair pumps if crane is inoperable.
4	Davit crane needs annual inspection.	Safety concern.
5	All four pumps need to be serviced according to operations.	
6	One vertical dry pit centrifugal pump is out of service and needs to be rebuilt according to operations.	Failure at this lift station will limit the capability to deliver sewage to HGC resulting is less effluent to water the golf course.
7	The paint on the block wall around the lift station is failing.	
8	The interior of the compound is cluttered with debris, old conduit, buckets and old pipe.	Safety concern.
9	Electrical panels are located in a damp location in the dry pit pump vault and are left open.	R18-9-A313(A)(4) pertains to wastewater treatment facilities. Safety Concern. Failure at this lift station will limit the capability to deliver sewage to HGC resulting is less effluent to water the golf course.
10	Safety netting is not being used to cover the vault opening.	Safety concern.
Conifer Ridge Lift Station		
11	Excess piping from old scrubber should be removed and replaced with a vent stack for the new odor control air intake.	Efficient piping will result in improved odor control. Litigation concerns elevated with odor issues.
12	One 30 hp pump is out of service and needs to be rebuilt according to operations.	
13	Two submersible pumps need to be serviced according to operations.	
14	Safety netting is not being used to cover the vault opening.	Safety concern.
15	Electrical wire from the old scrubber is exposed and should be removed or used to supply power to the new scrubber.	Safety concern.
16	An electrical cord runs directly out of the MCC and on the ground to the new scrubber.	Safety concern.
17	An electrical cord is lying on the ground for the outdoor sump pump pit.	Safety concern.
18	The sump pump discharges into a drainage channel. If an overflow occurred within the lift station compound raw sewage would be pumped directly to the drainage channel. Raw sewage should be contained within the compound to prevent an environmental impact.	
19	Debris is visible inside the lift station compound.	
20	Grounding cables are exposed around MCC building and need to be buried per code.	Safety concern.
21	The one inch conduit that feeds the ultra sonic device is not sealed on the end.	Loss of signal due to compromise in conduit will limit the capability to deliver sewage to Hassayampa Treatment Facility. Loss of signal could also cause overflow and/or premature pump failure.
22	One submersible pump was sitting on top of the lift station vault awaiting repair work.	Failure at this lift station will limit the capability to deliver sewage to Hassayampa Treatment Facility.
23	There is a 120 volt receptacle cover missing inside MCC building near the entry door.	Safety concern.
24	Between the vault hatches there are studs for the davit crane mounts protruding from the concrete that create a tripping hazard.	Safety concern.

Number	Item	Comments
Water Reclamation Plant		
25	The Supervisory Control and Data Acquisition System (SCADA) is not functioning properly.	
26	The Mile High LS is not shutting down as it should when triggered by a high level alarm at the reclamation plant. The Mile High LS does shut down when Conifer Ridge LS goes into high level status.	
27	The sand filters have not been serviced in four years according to Matt Sandberg.	
28	The stand-by generator has not been serviced in several years and currently does not run due to battery failure.	
29	The head works odor control system does not work.	
30	The paint on the operations building is failing.	
31	There is no influent meter to monitor flow to the facility.	
32	The chart recorders to monitor effluent flow to the golf course storage ponds and City collection system are out of service.	
33	The cover to the UV System module was left open and exposed to dust and debris.	May reduce capability to disinfect effluent.
34	Metal ties on EQ basin trusses are decayed and ready to fail into the basin.	
35	Wires are exposed on conduit J box in the EQ basin.	
36	There are no spare parts for critical repairs on plant equipment.	
37	There is no flow control on the waste sludge discharge out of the plant into the City collection system.	

EXHIBIT B

REPAIRS TO MEET STATE REGULATIONS AND MAINTENANCE TO BE DONE TO PRODUCE WATER 2012

Mile High Lift Station:

- | | |
|---|-------------|
| 1. 47hp. Pump needs rebuilt. | \$14,000.00 |
| 2. Electric connections in the dry well need to be moved above ground. (quote from '08) | \$6,000.00 |
| 3. Service all 4 pumps. | \$4,000.00 |

Sam Hill Lift Station:

- | | |
|---------------------|------------|
| 1. Service 2 pumps. | \$2,000.00 |
|---------------------|------------|

Conifer Ridge Lift Station:

- | | |
|------------------------------|-------------|
| 1. 30hp. Pump needs rebuilt. | \$14,000.00 |
| 2. Service all 4 pumps. | \$4,000.00 |

Plant:

- | | |
|--|------------|
| 1. SCADA system needs updated, reworked | NA |
| 2. Dig up and fix 6" pipe by the RAS pit, inspect, check for possible leaks. | NA |
| 3. 2 new check valves in the Effluent Well. | \$1,000.00 |
| 4. 6 new gate valves for the aeration basins. | \$3,000.00 |
| 5. The generator needs new batteries, drain the old fuel, and replenish. | NA |
| 6. 25 gal. Of oil for changing in the aeration basins. | NA |
| 7. Sand filters suck out and change the sand. | \$1,400.00 |
| 8. Remove grit from the EQ. basin, and the aeration basins. | \$2,400.00 |
| 9. Requested by the City, an influent meter. | \$4,500.00 |
| 10. PSI needs to come fix the OZONE odor control. | NA |
| 11. Replace backwash valves on the sand filters. | \$2,400.00 |
| 12. 3 new check valves at the RAS pit. | \$1,500.00 |

Major Concerns:

- | | |
|---|------------|
| 1. All the metal supports are rusting in the EQ. Because of an ozone injection in '05'. | |
| 2. Our 1 ton crane is old. | \$6,000.00 |
| 3. Rebuild piping at Conifer Ridge lift Station. | NA |
| 4. Third person. | NA |

Wish List:

- | | |
|--|----|
| 1. Restock shelves. Parts and pieces for the Influent screen, electrical, ect. | NA |
|--|----|

Note: list Initialed by TAL 10/10/11