

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)	
)	
TRI-G GROUP, LLC, d/b/a QUARRY)	Case No. 16-10441 C-11
HILLS GOLF AND COUNTRY CLUB,)	
)	
Debtor.)	

MOTION FOR ORDER PURSUANT TO SECTIONS 105(a) and 363 OF THE BANKRUPTCY CODE (A) AUTHORIZING THE SALE OF REAL PROPERTY TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER CLAIMS OF INTEREST AND TRANSFERRING SUCH CLAIMS TO THE PROCEEDS OF SALE; (B) APPROVING THE FORM OF THE ASSET PURCHASE AGREEMENT; AND (C) GRANTING RELATED RELIEF INCLUDING, IF NECESSARY, A HEARING UNDER 11 U.S.C. § 506

NOW COMES TRI-G GROUP, LLC, Debtor in Possession (hereinafter “Debtor”), and respectfully requests authorization pursuant to 11 U.S.C. §§ 105, 363, and other applicable sections of the United States Code and pursuant to Rule 6004 of the Federal Rules of Bankruptcy Procedure for the Court to enter Orders (A) Authorizing the Sale of Real Property Free and Clear of All Liens, Claims, Encumbrances and other Claims of Interest and Transferring Such Claims to the Proceeds of Sale; (B) Approving the Form of the Asset Purchase Agreement; and (C) Granting Related Relief including, if necessary, a Hearing Under 11 U.S.C. § 506; and, in support thereof, shows unto the Court the following:

JURISDICTION

1. The Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Bankruptcy Code on May 4, 2016 (the “Petition Date”). The Debtor is currently acting as Debtor-in-Possession.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 105, 361, 363, 506, 1107 and 1108.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (O), and the Court may enter final orders in response to this Application.

BACKGROUND

4. The Debtor is a limited liability company with its remaining principal asset located in Swepsonville, North Carolina. The Debtor was organized to purchase certain property consisting of a golf course and country club amenities commonly referred to as Quarry Hills Golf and Country Club (hereinafter the "Golf Club").

5. The Golf Club was purchased by the Debtor from a Chapter 7 proceeding. See In re William Collicott Mann & Virginia Mathis Mann, Case No. 09-80494 (Middle District of North Carolina - Durham Division) (hereinafter the "Chapter 7 Case"). The current assets of the Golf Club are a 4.69 acre parcel of land previously used as a parking lot ("Sale Property") and nominal cash.

6. First Bank holds a valid first lien by way of a promissory note and Deed of Trust Securing Future Advances dated May 6, 2011.

7. Prior to the purchase of the Golf Club by this Debtor, residents of the Quarry Hills Country Club Subdivision filed litigation in an attempt to ensure that the Golf Club, once sold, would continue to operate as a golf and country club. That matter was resolved and resulted in certain conditional restrictive use covenants being filed of record in the Alamance County Registry, Book 2862, Page 615. The deed transferring the Sale Asset to the Debtor was subject to the Restrictive Use Covenants.

8. The Golf Club was operated by the Debtor after its purchase. A critical component of the Golf Club's successful operation and profitability was that the surrounding residents would either join or renew their respective memberships, utilizing the course, club house facility and restaurant. Additionally, the Debtor contemplated additional revenues from non-members willing to pay green's fees, rental fees and utilization of the Golf Club's other

amenities. The Golf Club however, was unable to operate in a profitable manner. Many members failed to renew their memberships and those residents whom the Debtor believed would join, did not. Additionally, non-member use of the Golf Club was significantly less than anticipated, in part due to the a slow recovering economy. The Debtor was unable to meet its debt service obligations, including those to First Bank. The Debtor ceased operations of the Golf Club on or about December 1, 2014.

9. The Debtor has received an offer from Quandary Lake, LP for the purchase of the Sale Property, conditioned upon said property being sold pursuant to 11 U.S.C. § 363.

10. There remains an outstanding secured obligation owed to First Bank. This secured obligation as of November 30, 2016 equals, with interest and expenses, \$96,437.99. There is approximately \$874.18 owed to Alamance County Tax Department for property taxes for the Sale Property. There are no other known consensual secured liens on said property. There is a judgment creditor, Keith and Gwen Hoyt, in the principal amount of \$150,000.00.

11. As hereinafter set out in more detail, it is the position of the Debtor that the conditional Restrictive Use Covenants are no longer valid for reasons which include the following:

- a. The same would be subject to being terminated as a result of foreclosure by a default, and said default has occurred and, therefore, said property is immediately subject to foreclosure.
- b. Many of the residents have abandoned the Golf Club by not continuing their membership which should act as an abandonment of the Restrictive Use Covenants.
- c. The Restrictive Use Covenants have been waived as a result of the failure of the residents to renew their membership or join the Golf Club.
- d. Under North Carolina law, the doctrines of changed circumstances and/or frustration of purpose have destroyed the essential objective(s) and purpose of the Restrictive Use Covenants.
- e. By Order of this Court dated September 8, 2016, the real property owned by the Debtor, consisting of an 18 hole golf course and club house facility, was

sold pursuant to 11 U.S.C. § 363. The Restrictive Use Covenants have no remaining purpose and are valueless to the Covenantees as they relate to the Sale Asset.

12. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may /use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Additionally, section 105(a) of the Bankruptcy Code allows this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

13. In the case of Daufuskie Island Props., LLC, 431 B.R. 626 (Bankr. D.S.C. 2010), a Chapter 11 trustee moved for authorization to sell substantially all of a bankruptcy debtor's assets which consisted of a golf resort and spa facilities. Id. A creditor objected to the proposed § 363 sale free and clear of certain restrictive use covenants running with the land of the debtor.¹ In an opinion by Judge Waites, the South Carolina Bankruptcy Court held that the sale could proceed pursuant to both subsections 11 U.S.C. § 363(f)(1) and (4), by first noting that “the ultimate goal of any bankruptcy proceeding is to create and maximize value and benefits for creditors of the estate and other parties involved in the case to share, all the while balancing the parties' respective interests.” Id., 431 B.R. at 640.

In this case, because the parties find themselves in the context of a bankruptcy proceeding, as opposed to some other venue, the matters presently before the Court pertaining to MCI's asserted interest in the

¹ 431 B.R. at 641-642 (“This bankruptcy case, since its inception, has been focused on the issue of the rights of MCI regarding the 1996 Property owned by the Debtor. The Court's attention has always been directed in this case to Article 5 of the Transfer Agreement and, in somewhat specific circumstances, the Court has had to address certain narrow questions raised by the parties pertaining to that Agreement. . . . Article 5 placed additional obligations on the purchaser of the 1996 Property, with the principal additional obligation being that the purchaser would undertake substantial improvements to the 1996 Property. Many, if not all, of these substantial improvements were made. The remaining obligation under Article 5 was the obligation of the purchaser to fund any operational deficits[.]”).

1996 Property are not purely property rights issues. The dilemmas involved in this litigation over the Sale have not necessarily been caused by the parties; rather it is a fact of life that there is currently a slow market for sales that has affected revenue generated by the Debtor and, later, by the Trustee. This limitation of revenue and markets affects everyone and is beyond the parties' control. Further, in many bankruptcy cases, assets are ultimately returned to lenders who must effectuate a sale in a piecemeal fashion that detracts from a greater value that could have been obtained had the assets been sold as a whole. Such a result often creates little benefit for those creditors or for the community. This case presents the opportunity for a different result, as there exists the potential for some equity above liens or that would pass to some creditors through agreements. The Court's decision to grant the Trustee's Sale Motion is based on its determination that the Trustee has successfully carried his burden of establishing that the requirements of 11 U.S.C. § 363(f)(1) and § 363(f)(4) have been met with regard to MCI's asserted interest in the Property. However, *the maximization of the benefit to creditors and to the community as a whole were serious considerations in the Court's decision to grant the Trustee's Sale Motion.*

Id., 431 B.R. at 640-41 (emphasis added). “In ruling that the Trustee's Sale may proceed under § 363(f)(1), the Court relie[d] on the doctrine of changed conditions or changed circumstances, recognized under South Carolina law[.]” Id., 431 B.R. at 644 (alterations added). The aspects of South Carolina law recognized in Daufuskie Island, moreover, are consistent with similar doctrines recognized under North Carolina. In Medearis v. Trs. of Meyers Park Baptist Church, 148 N.C. App. 1, 558 S.E.2d 199 (2001), for example, the North Carolina Court of Appeals observed that “[c]ovenants may also be terminated when changes within the covenanted area are “so radical as practically to destroy the essential objects and purposes of the agreement.” Id., 148 N.C. App. at 6, 558 S.E.2d at 203 (alteration added) (citations and quotations omitted). With respect to § 363(f)(4), Daufuskie Island also noted that the issues raised in the Sale Motion were subject to bona fide dispute. Id., 431 B.R. at 646 (“It is the Court's opinion that this case presents a blueprint of litigation issues associated with real

property disputes. There is a history of very significant litigation indicating that there have been and still are significant issues in dispute between the parties[.]” (alteration added)).

14. Recently, in an extensive opinion by Judge Humrickhouse, the bankruptcy court in the Eastern District of North Carolina found the “Daufuskie analysis” to be consistent with the doctrine of changed circumstances under North Carolina law. See, e.g., In re Midsouth Golf, LLC, No. 13-07906-8-SWH, 2016 Bankr. LEXIS 978 at *68 (Bankr. E.D.N.C. Mar. 29, 2016) (“[T]here is nothing unique to South Carolina law such that the doctrine *exists* there, but not here. It is beyond dispute that in North Carolina, restrictive covenants that run with the land ‘may be terminated in several ways. Covenants may be terminated when they provide for their own termination.’” (emphasis in original) (quoting Medearis, 558 S.E.2d at 203)).

15. The Debtor intends to sell the Sale Property to Quandary Lake LP for the sum of \$45,000.00 and believes this to be the fair market value of the property.

16. First Bank is informed and believes that \$45,000.00 is the fair market value of the property and believes that the purchase price is fair and reasonable. Upon information and belief, First Bank will accept \$45,000.00 less any closing costs charged to the seller, real property taxes owed to Alamance County in the approximate amount of \$874.18 and a \$5,000.00 carve out for the benefit of the estate, to release its Deed of Trust encumbering the Sale Asset.

17. The general terms of the Asset Purchase Agreement are summarized below. Attached hereto and incorporated herein as Exhibit A is a copy of the Asset Purchase Agreement. The general terms as are follows:

A. Sale Asset: The Sale Asset consists of real property consisting of a 4.69 acre tract of land previously used as a parking lot by the Golf Club.

B. Excluded Assets: The Asset Purchase Agreement describes Excluded Assets and Excluded Assets includes causes of action owned by the Seller under 11 U.S.C. § 541 except those causes of action which may be needed to preserve the title of the Sale Asset and further

excludes any and all avoidance actions as that term is defined in the United States Bankruptcy Code.

C. Purchase Price. The Purchase Price is Forty Five Thousand Dollars (\$45,000.00).

D. Court Approval. The sale contemplated herein is subject to Court approval of the requested terms of the Asset Purchase Agreement.

E. No Financing Contingency. The sale contemplated herein is not subject to the Purchaser obtaining financing.

F. No Due Diligence Contingency. The sale contemplated herein is not subject to completion of due by diligence by Purchaser.

H. No Debt Assumption. No assumption of debt is associated with the sale contemplated herein.

I. No Liens. The Sale Asset shall be transferred to Purchaser free and clear of any liens, claims of lien, encumbrances or other claims or interests, including but not limited to the Restrictive Use Covenants, with all such liens and other claims of interest transferred to the proceeds of sale, pursuant to 11 U.S.C. § 363.

J. No Representations or Warranties except as noted in the Asset Purchase Agreement. The Sale Asset is being sold “as is,” “where is,” and “with all faults,” and **Quandary Lake, LP hereby acknowledges and agrees that, except as otherwise expressly provided in the Asset Purchase Agreement, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Sale Asset. This includes any representation as to the merchantability or fitness of the Sale Asset for any particular purpose. Without in any way limiting the foregoing, Seller hereby disclaims any warranty, expressed or implied, of merchantability or fitness for any particular purpose as**

to any portion of the Sale Asset. The Purchaser acknowledges that said party has conducted an independent inspection and investigation of the physical condition of the Sale Asset and all such matters relating to or affecting the Sale Asset as said party deems necessary or appropriate to the extent they desire the same. The Purchaser will accept the Sale Asset at closing “as is,” “where is,” and “with all faults.”

18. Pursuant to Section 363(f) of the Bankruptcy Code, the Debtor is seeking authority to sell the Sale Assets free and clear of all liens, claims, interests and encumbrances (collectively, the “Encumbrances”), with such Encumbrances to attach to the proceeds of sale. Section 363(f) of the Bankruptcy Code provides as follows:

- (a) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if -
 - (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
 - (2) such entity consents;
 - (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property;
 - (4) such interest is in bona fide dispute; or
 - (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); see also In re WBQ Partnership, 189 B.R. at 105 (noting that § 363(f) is written in the disjunctive and requires only one of the conditions present be met); In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the requirements is met). Further, Bankruptcy Rule 6004(f)(1) specifically

states that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” See Fed. R. Bankr. P. 6004 (f)(1).

17. The Purchase Price provides an amount to which and under terms that First Bank, as the only secured creditor, has consented. As a result of First Bank’s consent, if this sale is held pursuant to the terms and conditions requested, its claim of lien can be transferred to proceeds pursuant to 11 U.S.C. § 363(f)(2).

18. For reasons previously indicated herein, the Sale Asset can be sold free and clear of restrictive use covenants, and any claim that would be associated by a holder of the rights to said restrictive use can be transferred to proceeds of sale pursuant to 11 U.S.C. § 363(f)(1) and (4). See, e.g., Daufuskie Island Props., 431 B.R. at 644-46.

19. To the extent at the time of sale the lien claims are in dispute, then the Court should instruct the Debtor to escrow an appropriate amount of the sale proceeds pending further order of this Court, and the Court shall have the jurisdiction to issue any such orders it deems necessary to further adequately protect the claims of the lien creditors. Otherwise, to the extent there is no bona fide dispute at the time of closing resulting from an objection to the claim of one of the secured creditors and to the extent said party has filed a proof of claim in this proceeding and there is an agreement as to the amount owed, then the Debtor requests that it have authority to pay such secured creditor at the time of closing. If any party is claiming a security interest in the Sale Asset and the Court deems it necessary to determine the secured status and value of the collateral pursuant to 11 U.S.C. § 506, then this Motion shall alternatively be deemed a request by the Debtor to hold an immediate hearing at the time this Motion is being considered for determination of secured status under 11 U.S.C. § 506, and to determine whether liens can be transferred to proceeds of sale for reasons which include 11 U.S.C. § 363(f)(5).

20. It is the Debtor’s position that if any party is claiming a security interest in the Sale Asset and it does not object to the sale, it shall be deemed to have consented to the sale or transfer pursuant to Section 363(f)(2) of the Bankruptcy Code.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order:

1. Authorizing the sale of the Sale Asset described herein free and clear of all liens, claims, and encumbrances or other claims of interest, including the conditional restrictive use covenants with all said claims being transferred to proceeds of sale; and
2. Approving the Asset Purchase Agreement; and
3. Accept this verified motion into evidence in support of the relief requested herein;
and
4. Granting such other and further relief as the Court deems just and proper.

This the 14th day of March, 2017.

s/Charles M. Ivey, III

Charles M. Ivey, III
Attorney for Debtor in Possession
NCSB #8333

s/ Samantha K. Brumbaugh

Samantha K. Brumbaugh
Attorney for Debtor in Possession
NCSB #32379

OF COUNSEL:

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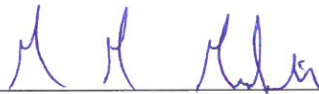
NORTH CAROLINA

GUILFORD COUNTY

VERIFICATION

Guy G. Gulick being first duly sworn, certifies that he a member of the Debtor, that he has read the foregoing Motion and that all matters, statements contained therein are true, except as to those matters and things alleged upon information and belief, and as to those matters and things he believes them to be true.

This the 14 day of March, 2017.



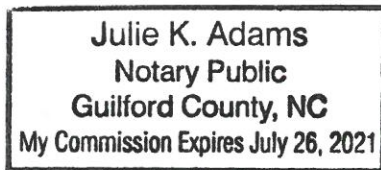
Guy G. Gulick
Member


NORTH CAROLINA

GUILFORD COUNTY

I, Julie K. Adams, a Notary Public in and for said County and State does hereby certify that Guy G. Gulick personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the 14th day of March, 2017.





Notary Public
My commission expires: July 26, 2021

EXHIBIT A

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT entered into this the 10th day of March, 2017 (hereinafter referred to as "Asset Purchase Agreement" or "Agreement") by and between TRI-G GROUP, LLC, a North Carolina limited liability company d/b/a QUARRY HILL COUNTRY CLUB AND GOLF COURSE ("Seller"), and Quandary Lake, LP ("Purchaser").

RECITALS:

- A. Seller was in the business of owning and operating an 18-hole golf course with club house located at 2240 Country Club Trail, Swepsonville, Alamance County, North Carolina;
- B. Seller was unable to operate the golf course and related facilities profitably and, as a result thereof, terminated operations on or about December 1, 2014. Since said time, maintenance and other activities of upkeep have not been carried out as it relates to the golf course and related facilities;
- C. Seller is indebted to First Bank in the amount of \$95,590.30 as of November 30, 2016, exclusive of fees and expenses, as it relates to a secured claim which is attached to a 4.69 acre tract of land used as a parking lot. As a result of the inability to operate the golf course and facilities in a profitable manner, the Seller is in default on the secured loan.
- D. Seller is informed and believes the Purchaser is prepared to purchase the 4.69 acre tract and desires for title to the same to be passed pursuant to, among other things, a court order entered by the appropriate United States Bankruptcy Court for the Middle District of North Carolina and pursuant to Title 18 including, but not limited to, 11 U.S.C. § 363; and
- E. Seller filed a voluntary petition under Chapter 11 of the Bankruptcy Code (the "Bankruptcy") in the United States Bankruptcy Court for the Middle District of North Carolina,

Greensboro Division ("Bankruptcy Court") on May 4, 2016 and was assigned Case Number 16-10441.

NOW, THEREFORE, in consideration of the foregoing and mutual agreements, covenants, representations, warranties and promises set forth herein and, in order to prescribe the terms and conditions of such purchase and sale, intending to be legally bound, the parties agree as follows:

1.1 Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, at the Closing (as defined below in Section 1.9)), Seller agrees to sell, transfer and deliver to Purchaser, and Purchaser agrees to purchase, acquire and accept from Seller, all right, title and interest of Seller in and to the Sale Asset (as defined herein) owned by Seller (except the Excluded Assets (as defined in Section 1.2)). Pursuant to orders of the Bankruptcy Court, the Sale Asset shall be transferred free and clear of all liens, claims, encumbrances and interests to the maximum extent permitted by Section 363 of the Bankruptcy Code and shall include an approximate 4.69 acre parcel used as a parking lot. This sale is intended to be a sale of the real property of the Debtor described as follows and as set forth in the attached Exhibit A:

Being all of LOT NUMBER ONE consisting of 4.69 acres, more or less as shown on that plat by Simmons Engineering & Surveying, Inc., recorded in Plat Book 70, Page 368, Alamance County Registry, as described in Book 2971, page 25, in the Alamance County Registry (the "Sale Asset").

1.2 Excluded Assets. This sale shall not intend to include any of the following assets:

(a) Causes of action owned by the Seller under 11 U.S.C. § 541, except those causes of action which have been preserved necessary to pass title and protect the title of the Sale Asset;

(b) All claims arising under any insurance policies for losses caused or occurring to the Sale Asset between the execution of this Agreement and the Closing Date (as hereinafter defined); and

(c) All tangible personal property of Seller, if any.

1.3 No Assumption of Liabilities. Other than liabilities arising from and after the Closing Date under an assumed and assigned contract, Purchaser shall in no event assume, be bound by, or be responsible in any way for any liability or obligation of Seller. Seller shall retain full responsibility for all of its liabilities and obligations, whether known or unknown, liquidated or unliquidated, contingent, fixed, accrued or disclosed (collectively, the "Excluded Liabilities"). Specifically, but without limiting the generality of the foregoing, Purchaser shall not assume or otherwise be liable for Excluded Liabilities, if existing as of the filing of the Bankruptcy, whether now known or later discovered or asserted, with respect to:

(a) Employees or former employees of Seller, including any liability for accrued salaries, wages, commissions, bonuses, payroll taxes, severance pay entitlements, health, medical, retirement, vacation or deferred compensation benefits or any other obligations or expenses arising out of or relating to the employment by Seller of its employees or Seller's termination of such employees;

(b) The Worker Adjustment and Retraining Notification Act, 29 U.S.C. Section 2101, *et seq.*;

(c) The Consolidated Omnibus Budget Reconciliation Act, as amended ("COBRA") (including liabilities for violations thereof) for all "qualifying events" (as defined in COBRA), including qualifying events that occur as a result of the sale of the Sale Asset;

- (d) Contingent liabilities of Seller of any kind arising or existing prior to Closing; and
- (e) Any claim for personal injury (including worker's compensation or otherwise), property damage, product recall, product liability or strict liability; and
- (f) Any and all contingent liabilities that may arise out of this property being sold free and clear of certain additional Restrictive Use Covenants pursuant to a litigation settlement as is hereinafter more specifically explained in this Asset Purchase Agreement, and without limitation, paragraph 2.7, 7 and 11. It is the specific intent of this sale that said Restrictive Covenants, if any and if enforceable, shall not apply to the title, rights and interests purchased herein by Purchaser in the Sale Asset.

1.4 Non-Excluded Liabilities. This sale does not intend to have any Non-Excluded Liabilities.

1.5 No Liens. As hereinafter explained, this title will be free and clear of the Restrictive Use Covenants as described in paragraph 11 below and as a condition to closing.

1.6 Purchase Price.

(a) In consideration for the sale, transfer and delivery of the Sale Asset, at Closing (as defined below), Purchaser shall deliver to Seller the sum of forty five thousand dollars (\$45,000.00).

(b) The Purchase Price for the Sale Asset shall be payable in cash at Closing via wire transfer to the trust account of Ivey, McClellan, Gatton & Siegmund, LLP, attorneys for Seller, less the amount of the Good Faith Deposit as hereinafter defined.

1.7 Allocation of Sale Proceeds ("Carve Out"). Of the sale proceeds, \$5,000 (the "Carve Out") shall be set aside for the purpose of paying reasonable and necessary cost and expenses for disposing of the Sale Asset. The Carve Out shall not be deemed secured and therefore shall come into the bankruptcy estate free and clear of any claims of lien or other encumbrances.

1.8 Good Faith Deposit. Simultaneously with the execution of this Agreement, Purchase shall deliver to Seller's attorneys, Ivey, McClellan, Gatton & Siegmund, L.L.P., to be held in trust, the sum of two thousand two hundred fifty dollars (\$2,250.00) (the "Good Faith Deposit").

1.9 Closing. The closing (the "Closing") of the purchase and sale of the Sale Asset shall take place in the office of Ivey, McClellan, Gatton & Siegmund, L.L.P., Greensboro, North Carolina or such other place as the Seller and Purchase may otherwise agree within 10 business days after the entry of the Sale Approval Order (the actual date of Closing being hereinafter referred to as "Closing Date"), and must occur on or before March 31st, 2017. Time is of the essence for the Seller, the Purchaser and First Bank. The Closing may be accomplished remotely through the delivery of signatures by facsimile transmission or electronic mail, with original signatures to follow by overnight courier.

1.10 Delivery by Seller. At Closing, Seller will deliver to Purchaser (unless delivered previously) the following:

- (a) A special Warranty Deed with respect to the real estate representing the Sale Asset;
- (b) All other documents, instruments and writings reasonably requested by Purchaser to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement.

1.11 Deliveries by Purchaser. At Closing, Purchaser will deliver to Seller (unless previously delivered) the following:

- (a) The Purchase Price less the Good Faith Deposit; and
- (b) All other documents, instruments and writing reasonably requested by Seller to be delivered by Purchaser at or prior to Closing pursuant to this Agreement.

2. Representations and Warranties of Seller. Seller, to the best of its knowledge, represents and warrants to Purchaser as of the date hereof as follows:

2.1 Organization. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina.

2.2 Corporate Authorization. The execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated herein are within Seller's corporate powers and have been duly authorized by all necessary action on the part of Seller. Subject to entry by the Bankruptcy Court of the Sale Approval Order (as hereinafter defined in paragraph 7), this Agreement constitutes a valid and binding agreement of Seller that is enforceable in accordance with its terms.

2.3 Governmental Authorization. The execution, delivery and performance by Seller of this Agreement requires no action by, or filing with, any governmental body, agency or official, other than approvals or authorizations by the Bankruptcy Court.

2.4 Required Consents. Except for consents, approvals or authorizations of, or declarations or filings with the Bankruptcy Court, there is no agreement or other instrument binding upon Seller requiring any consent, approval or action by any person as a result of the execution, delivery and performance of this Agreement. As hereinafter set forth, it is the Seller's

position that the conditional Restrictive Use Covenants are no longer effective as a result of the conditions present at this time, but to the extent said rights might be asserted, it is Seller's opinion they can be transferred to proceeds of sale pursuant to 11 U.S.C. § 363(f)(1) and (4). It is understood by all parties that the ultimate determination of the applicability of 11 U.S.C. § 363(f) will be determined by the United States Bankruptcy Court.

2.5 Litigation. Seller is not aware of any action, suit, investigation or proceeding pending against or, to the knowledge of Seller, threatened against the Sale Asset before any court or arbitrator or any governmental body, agency or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated by this Agreement. As hereinafter described, there is the issue relative to the conditional use which resulted from the settlement of prior litigation.

2.6 Compliance with Laws and Restrictions. Except for the matters described herein as to the conditional use issue, the activities previously carried on by Seller at the golf course and facilities related thereto were not in violation of or in conflict with any building or use restrictions or any variance, or any applicable zoning, subdivision, or health law regulation or ordinance, any variance, or any other similar law or ordinance or regulation which would affect the real estate from which the operations are carried out. There is no pending, threatened, proposed proceeding or governmental action to modify the zoning classification, to condemn or take by power of eminent domain (or to purchase in lieu thereof), to classify the same as a landmark, to impose special assessment on, or otherwise take or restrict in any way the right to use, develop or alter, all or any part of the real estate contemplated to be sold as a Sale Asset herein.

2.7 Sufficiency of and Title to the Sale Asset. Pursuant to the Sale Approval Order and upon Closing, Purchaser shall acquire good and marketable title in and to the Sale Asset, free and clear of all Liens (other than any liens arising from Purchaser's ownership of such Sale Asset).

2.8 Certain Fees. Seller has not employed any broker, finder, investment banker, or other intermediary or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees, finders' fees or other similar fees in connection with this Agreement or the transactions this Agreement contemplates.

2.9 Access to and Accuracy of Information. Given that the Sale Asset is not contemplated as an operating entity, the parties agree that the Purchaser did not need access to the Seller's books, accounts, records and documents relating to the previous operation of the Sale Asset. Due to the fact that the Purchaser does not intend at this time to operate a golf course from said location, said records are not relevant to this sale.

2.10 Environmental.

(a) Seller is in compliance in all material respects with all environmental, health or safety requirements of law applicable to the Sale Asset and all activities and conduct of business relating thereto including, without limitation, the treatment, remediation, transport, storage and/or disposal of any contaminant;

(b) Except as stated in paragraph (a) above, Seller has not disposed (as such term is defined in the Federal Resource Conservation and Recovery Act ("RCRA")) of any hazardous waste (as such term is defined in RCRA) at the above referenced property in a manner that is not in material compliance with the applicable environmental, health and safety requirements of law.

2.11 Notices of Certain Events. Seller shall promptly notify Purchaser of:

(a) Any notice or other written communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the transactions contemplated by this Agreement; and

(b) Any material written communication from any governmental or regulatory agency or authority in connection with or relating to the transactions contemplated by this Agreement.

2.12 No Other Representations or Warranties. The Sale Asset is being sold “as is,” “where is,” and “with all faults,” and Purchaser hereby acknowledges and agrees that, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Sale Asset. This includes any representation as to the merchantability or fitness of the Sale Asset for any particular purpose. Without in any way limiting the foregoing, Seller hereby disclaims any warranty, expressed or implied, of merchantability or fitness for any particular purpose as to any portion of the Sale Asset. The Purchaser further acknowledges that said party has conducted an independent inspection and investigation of the physical condition of the Sale Asset and all such matters relating to or affecting the Sale Asset as said party deems necessary or appropriate to the extent they desire the same. Purchaser will accept the Sale Asset at closing “as is,” “where is,” and “with all faults.”

3. **Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller as follows:

3.1 **Organization.** Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina.

3.2 Corporate Authorization. The execution, delivery and performance by Purchaser of this Agreement and the consummation of the transactions contemplated herein are within the corporate powers of Purchaser and have been duly authorized by all necessary action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and, subject to entry by the Bankruptcy Court of the Sale Approval Order in the Bankruptcy, this Agreement constitutes a valid and binding agreement of Purchaser that is enforceable in accordance with its terms.

3.3 No Conflicts. The execution, delivery and performance of this Agreement by Purchaser will not (i) violate any provision of any existing law, statute, rule, regulation or ordinance, or (ii) conflict with, result in a breach of, or constitute a default under (A) any certificate or articles of incorporation or by-laws of Purchaser, (B) any order, judgment, award or decree of any court, governmental authority, bureau or agency, or (C) any mortgage, indenture, lease, contract or other agreement or undertaking to which Purchaser is a party or by which Purchaser or any of its properties or assets may be bound.

3.4 Governmental Authorization. The execution, delivery and performance by Purchaser of this Agreement require no action by, or filing with, any governmental body, agency or official other than approvals or authorizations by the Bankruptcy Court.

3.5 Litigation. As of the date hereof, there is no action, suit, investigation or proceeding pending against or, to the knowledge of Purchaser, threatened against or affecting Purchaser before any court or arbitrator or any governmental body, agency or official, which in any manner challenges or seeks to prevent, enjoin, alter or materially delay any transactions contemplated by this Agreement.

3.6 Certain Fees. Purchaser has not employed any broker, finder, investment banker, or other intermediary or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees, finders' fees, or other similar fees in connection with this Agreement or any transactions contemplated by this Agreement.

3.7 No Financing Contingency. Purchaser represents that the transactions contemplated in this Agreement are not contingent upon Purchaser obtaining financing, and Purchaser is prepared to pay the Purchase Price in a timely manner.

4. Covenants of Purchaser and Seller. Purchaser and Seller agree that:

4.1 Efforts; Further Assurances. Purchaser and Seller will use commercially reasonable efforts to take any and all actions and to do all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated in this Agreement. Seller and Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to vest in Purchaser marketable title to the Sale Asset.

4.2 Notices. If (i) Purchaser becomes aware of any material breach by Seller of any representation, warranty, covenant or agreement contained herein and such breach is capable of being cured by Seller, or (ii) Seller becomes aware of any material breach by Purchaser of any representation, warranty, covenant or agreement contained herein and such breach is capable of being cured by Purchaser, the party becoming aware of such breach shall promptly notify the other party in writing, in accordance with paragraph 10.1 of this Agreement. Upon such notice of breach, the breaching party shall have ten (10) days to cure such breach prior to the exercise of any remedies in connection therewith.

5. Tax Matters.

Property Taxes. All property taxes for a tax period which includes (but does not end on) the Closing Date shall be apportioned between Seller and Purchaser based on the number of days of such tax period included in the pre-closing tax period and the number of days of such tax period after the Closing Date. Seller shall be liable for the proportionate amount of such property taxes that is attributable to the pre-closing tax period, and Purchaser shall be liable for the proportionate amount of such property taxes that is attributable to the post-closing tax period, and any tax obligations that accrue thereafter. Such property taxes shall be paid at Closing and the Sale Approval Order shall provide for such payment.

6. Employee Matters. Purchaser is not obligated to hire any employee of Seller but may accept applications from and interview all active and full-time employees of Seller. Purchaser may hire such employees (whether former employees of Seller or otherwise) as Purchaser may choose in its sole and absolute discretion and may set its own initial terms and conditions of employment for such employees, including work rules, benefits, salary, and wage structure, as permitted by applicable law. As a result of the termination of operations, it is fully understood by Purchaser that there are no current employees who were involved with the actual day-to-day operations of the Sale Asset and the only parties acting as employees are the officers of Seller.

7. Closing Conditions.

7.1 Conditions to Obligations of Purchaser and Seller. The obligations of Purchaser and Seller to consummate the transactions contemplated in this Agreement are subject to the satisfaction of the following conditions:

(a) The Bankruptcy Court shall have entered a Sale Approval Order in the Bankruptcy, authorizing the transactions contemplated in this Agreement and approving this Agreement pursuant to Section 363 of the Bankruptcy Code and, as of the Closing Date, shall have entered an order authorizing and directing Seller to assume and assign to Purchaser the Executory Contracts, and the Sale Approval Order shall be in full force and effect and shall not have been stayed, vacated or reversed. The Sale Approval Order shall be in form and substance reasonably acceptable to Seller and Purchaser and shall:

(i) Provide that Purchaser is a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code and none of the grounds set forth in Section 363(n) exist with respect to the sale;

(ii) Waive any stay that would otherwise be applicable pursuant to Bankruptcy Rules 6004(h) or 6006(d);

(iii) Provide that the sale of the Sale Asset shall be free and clear of all Liens, with Liens transferred to proceeds of the sale and free and clear of the conditional Use Restrictions relating to the Sale Asset;

(iv) Provide that the transactions contemplated in this Agreement are approved and that Seller's execution, delivery and performance of the documents related to the same are approved; and

(v) Provide that Purchaser is not a successor to Seller.

(b) No injunction, stay or similar order or decree issued by any court, tribunal or governmental entity, shall be in effect that restrains, enjoins, stays or prohibits the consummation of the transactions contemplated by this Agreement.

7.2 Conditions to Obligations of Purchaser. The obligation of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by Purchaser) of the following further conditions:

(a) Seller shall have performed in all material respects all of its obligations hereunder required to be performed by Seller on, or prior to, the Closing Date; and

(b) The representations and warranties of Seller contained in this Agreement shall be true and correct at, and as of, the Closing Date, as if made at, and as of, the Closing Date.

7.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by Seller) of the following further conditions:

(a) Purchaser shall have performed in all material respects all of its obligations hereunder required to be performed by it at, or prior to, the Closing Date; and

(b) The representations and warranties of Purchaser contained in this Agreement shall be true and correct at, and as of, the Closing Date as if made at, and as of, the Closing Date.

8. Termination.

8.1 Grounds for Termination. This Agreement may be terminated at any time prior to Closing by:

- (a) Mutual written agreement of Seller and Purchaser;
- (b) Purchaser, if any material condition set forth in this Agreement has not been satisfied, and such condition is incapable of being satisfied, unless Purchaser elects to waive such satisfaction;
- (c) Seller, if any material condition set forth in this Agreement has not been satisfied, and such condition is incapable of being satisfied, unless Seller shall waive such satisfaction;
- (d) Purchaser, if (i) the Bankruptcy is converted to a Chapter 7 proceeding, (ii) Seller files a plan of reorganization that does not provide for the consummation of the transactions contemplated by this Agreement with Purchaser under the terms of this Agreement, (iii) the Bankruptcy is dismissed, (iv) any event or omission shall have occurred after the execution of this Agreement which, either directly or indirectly, results in a material adverse effect on the condition of the Sale Asset which has not been caused by Purchaser; or (v) the sale does not close by March 31, 2017 (unless such failure to close is due to Purchaser's default). However, if the sale is conducted without a confirmed Plan and pursuant to 11 U.S.C. § 363, then the sale must close on or before March 31, 2017.

The party desiring to terminate this Agreement pursuant to this Section 9.1 shall give notice of such termination to the other party in accordance with paragraph 10.1.

8.2 Effect of Termination. If this Agreement is terminated as permitted by Section 8.1, such termination shall be without liability of any party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party to this Agreement; and the Good Faith Deposit will be returned to Purchaser.

8.3 Expenses. All costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense, and neither party shall seek reimbursement or repayment of any such cost or expense.

9. Assumption of Executory Contracts of the Seller.

9.1 Executory Contracts. As specifically set out herein, the Purchaser is not obligated to assume any Executory Contracts of the Seller as that term is understood to be defined pursuant to 11 U.S.C. § 365. There are not any known Executory Contracts.

9.2 Assumed Contracts. Seller agrees it will in conjunction with the filing of the necessary Bankruptcy motion seeking authorization of the sale and file the necessary pleadings seeking authorization for it to assume and assign those Executory Contracts identified in Exhibit D. It is contemplated that the hearing on assumption will be scheduled at the same time the Final Hearing to confirm the approval of this sale. Purchaser shall notify Seller in writing within five (5) days from the execution of this Agreement which Executory Contracts on Exhibit B it desires to assume.

9.3 No Going Concern of Operations. The Purchaser understands that the previous golf course operation and operations of related facilities have ceased and it is not contemplated that such operations will be restarted at any time during the Chapter 11 proceeding or prior to the anticipated Closing on this Asset Sale.

10. Miscellaneous.

10.1 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to Purchaser, to: Quandary Lake, LP
1086 Tender Drive
Apex, NC 27502

with a copy to: Paul A. Sheridan
Hannah Sheridan Loughridge & Cochran, LLP
5400 Glenwood Ave, Suite 410
Raleigh, NC 27612
Facsimile: 919-859-6840
E-mail: psheridan@hslc-law.com

if to Seller, to: Samantha K. Brumbaugh Esq.
Ivey, McClellan, Gatton & Siegmund, L.L.P.
100 S. Elm Street, Suite 500
P.O. Box 3324
Greensboro, NC 27402 -3324
Facsimile: 336-274-4540
E-mail: skb@iveymcclellan.com

Also copy to: Katie Trotter
First Bank
4201 Congress Street, Ste. 100
Charlotte, NC 27210
ktrotter@localfirstbank.com

All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding business day in the place of receipt.

10.2 Waivers. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

10.3 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Seller acknowledges that Purchaser may assign its rights under this Agreement to an entity to be formed, however, such assignment shall not release Purchaser from its obligations hereunder.

10.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and any applicable provisions of the Bankruptcy Code, without regard to the principles of conflicts of law that would provide for application of another law.

10.5 Entire Agreement; Amendments; Counterparts. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may be amended only by in writing, executed by Purchaser and Seller. This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto.


10.6 Captions; Headings; Interpretation. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any provisions of this Agreement.

10.7 Retention of Jurisdiction.

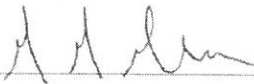
ANY AND ALL DISPUTES, DISAGREEMENTS, INTERPRETATIONS OR OTHER MATTERS CONCERNING THE FINAL CONSUMMATION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE AND REMAIN IN THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, AS A RESULT THEREOF, ANY PLEADINGS, CAUSES OF ACTION OR OTHER REQUESTS FOR RELIEF MUST BE BROUGHT BEFORE SAID COURT BY THE PARTY SEEKING SUCH RELIEF.

11. Attached hereto and incorporated herein by reference as Exhibit C are the Conditional Use Restriction which has been filed in the records of the Alamance County Register of Deeds, described as Amended and Restated Declaration of Restrictions, dated October 29, 2009, recorded in Book 2862, page 615, Alamance County Registry, which includes but are not limited to the Seller's position that the Restrictions are void (or voidable) as a result of the conditions placed thereon relating to the financial viability—in addition to other statutory or common law doctrines such as abandonment, waiver, laches, failure of consideration, radical change, impossibility, and impracticality/frustration of purpose—that the Restrictions as filed are either no longer effective or can be transferred to proceeds of sale pursuant to 11 U.S.C. § 363(f)(1), (4). As previously indicated, a condition precedent to this Closing is for the Purchaser to purchase the Sale Asset free and clear of the restrictions described herein, to the extent they apply to the Sale Asset.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.



TRI-G GROUP, LLC (Seller)

By: 
Name: Guy G Gulick
Title: MEMBER / MANAGER

Quandary Lake, LP (Purchaser)

By: _____
Name: _____
Title: _____


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

TRI-G GROUP, LLC (Seller)

By: _____

Name: _____

Title: _____



Quandary Lake, LP (Purchaser)

By: WEH Associates, Inc, its general partner

Name: Eric Rifkin

Title: Assistant Vice President

EXHIBIT A
SALE ASSET

The real property being all of LOT NUMBER ONE consisting of 4.69 acres, more or less, as shown on that plat by Simmons Engineering & Surveying, Inc., recorded in Plat Book 70, Page 368, Alamance County Registry, as described in Book 2971, page 25, in the Alamance County Register of Deeds.

EXHIBIT B

ASSUMED CONTRACTS

None