

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re)	Chapter 11 Case
)	Case No. 11-18725 HRT
CLEARWATER DEVELOPMENT, INC.)	
)	
Debtor.)	
)	

ORDER UNDER 11 U.S.C. §§ 105(a), 363, AND 365 AND FED. R. BANKR. P. 2002, 6004, 6006, 9014, AND 9019, (I) APPROVING ASSET PURCHASE AGREEMENT WITH RECONCILE LLC, (II) AUTHORIZING (A) SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS (INCLUDING WITHOUT LIMITATION, THE SALE, ASSIGNMENT AND RELEASE OF CERTAIN CLAIMS) FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, AND (C) ASSUMPTION OF CERTAIN LIABILITIES, AND (III) GRANTING RELATED RELIEF

Upon the motion, dated July 19, 2011, as supplemented by motion dated August 5, 2011(the "Sale Motion"),¹ of the above-captioned debtors and debtors-in-possession (the "Debtor"), seeking, among other things, entry of an order (the "Sale Order") pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code") and rules 2002, 6004, 6006, 9014, and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (A) authorizing and approving the sale (the "Sale") of the Property (as defined in the Agreement (defined below)) by Clearwater Development, Inc. (the "Seller") (including without limitation, the sale, assignment and release of certain claims) free and clear of all liens, claims, interests and encumbrances (other than Permitted Exceptions, Assumed Liabilities, and Assumed Contracts), in accordance with the terms of an Agreement of Purchase and Sale (the "Agreement"), dated as of July 12, 2011 by and among Seller and Reconcile LLC

¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Sale Motion or Agreement (as defined below), as applicable.

(the "Buyer"), a copy of which is annexed to the Sale Motion as Exhibit B; (B) authorizing and approving the assumption and assignment of certain executory contracts pursuant to the Agreement which contracts are referred to in the Agreement as Assumed Contracts (the "Assumed Contracts"); (C) authorizing Buyer's assumption of certain liabilities of Seller (the "Assumed Liabilities"); and (D) granting related relief; and

The Court having entered an order on July 20, 2011 (the "Bidding Procedures Order"), authorizing Seller to solicit and consider offers for the Property and conduct the Auction in accordance with the terms and conditions of the Bidding Procedures and approving, *inter alia*, (i) Seller's Bidding Procedures, and (ii) the form and manner of notice of the Auction and Sale Hearing; and

Hearings on the Sale Motion having been held on August 26, 2011 and September 2, 2011 (the "Sale Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; and the Court having reviewed and considered (i) the Sale Motion and attachments thereto, (ii) all objections, responses, and comments relating to the Sale Motion, the Sale, or the assumption and assignment of the Assumed Contracts, (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that the relief requested in the Sale Motion is in the best interests of Seller, its estate and creditors and other parties in interest; notice of the Sale Hearing being proper, and upon the record of the Sale Hearing and all other pleadings and proceedings in these cases, including the Sale Motion; and after due deliberation thereon; and good cause appearing therefore,

IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT:²

A. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334 and this matter is a core proceeding under 28 U.S.C.

§§ 157(b)(2)(A) and (N). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief requested herein are sections 105(a), 363(b), (f), (m) and (n), and 365 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006 and 9014.

C. As evidenced by the affidavits of service filed with the Court, proper, timely, adequate and sufficient notice of the Sale Motion, the Agreement (without schedules and exhibits), the Bidding Procedures Order, the Bidding Procedures, the Auction, the Sale Hearing and the assumption and assignment of the Assumed Contracts has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9019 and the Bidding Procedures Order. Further, a notice of sale was published in the *Denver Post*, among others, in accordance with Bankruptcy Rules 2002(1) and 9008. Such notice was good, sufficient, and appropriate under the particular circumstances and no other or further notice of the Sale Motion, the Sale Hearing, or entry of this Sale Order is or shall be required.

D. A reasonable opportunity to object or be heard with respect to the Sale and the relief granted by this Sale Order has been afforded to all interested persons and entities, including, without limitation: (i) the official committee of unsecured creditors appointed in Seller's chapter 11 bankruptcy cases (the "Committee"); (ii) all federal, state and local regulatory

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, as applicable, in accordance with Fed. R. Bankr. P. 7052. All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated into this Sale Order to the extent not inconsistent herewith.

or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion, including but not limited to all such taxing authorities or recording offices in the jurisdictions in which Seller has offices or other facilities or in which any of the Property is located; (iii) all parties having expressed within the past six (6) months a bona fide interest in acquiring the Property; (iv) all entities (or counsel therefor) known to have asserted any lien, claim, encumbrance, right of refusal, or other interest in or upon Seller or the Property; (v) the United States Attorney's Office; (vi) the Internal Revenue Service; (vii) the United States Trustee for the District of Colorado; (viii) all counterparties (collectively, the "Counterparties") to the Assumed Contracts, (ix) the lead lender for Debtor's syndicated loan, (x) all parties who have filed notices of appearance and requests for pleadings in this chapter 11 case, and (xi) all other persons with any interest in the Debtor or the Property.

E. Seller has demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to section 363(b) of the Bankruptcy Code outside of a chapter 11 plan exist in that, among other things, (a) there is substantial risk of deterioration of the value of the Property if the sale is not consummated quickly; (b) the Agreement constitutes the highest or best offer received for the Property; (c) the Agreement and Closing (as defined in the Agreement) represent the best opportunity to maximize the value of the Property; and (d) unless the sale is concluded expeditiously as provided for in the Sale Motion and pursuant to the Agreement, creditors' recoveries may be diminished.

F. The Court finds that the only alternative to the sale to Buyer is relief from stay and subsequent foreclosure by the mechanics lienholders, which would result in a

piecemeal sale of the Seller's property and would result a lower return to all creditors, perhaps even the mechanics lienholders themselves.

G. The Sale reflects the exercise of Seller's sound business judgment.

Approval of the Agreement and the consummation of the Sale contemplated thereby are in the best interests of Seller, its estate, its creditors, and all other parties in interest.

H. Because of the involvement of insiders in the sale process, the sale to Reconcile is subject to heightened scrutiny and review.

I. Debtor hired a well-qualified real estate broker with specific experience in golf courses and golf course communities which provided maximum exposure to the market. The approved auction process provided an opportunity for competitive bidding. Debtor acted independently through Mr. DeFrancia who is not affiliated with Mr. Hatle or a member of Reconcile. The sale is supported by the majority of creditor constituencies, including the Town of Gypsum, the Property Owner's Association, the Mechanics Lienholders, the syndicated debt for which Kennedy Funding served as agent and the Unsecured Creditors Committee.

J. The Debtors and their professionals (i) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Property, and (ii) afforded interested potential purchasers a full, fair and reasonable opportunity to conduct due diligence and submit offers prior to the Bid Deadline. As of the Bid Deadline, the highest and otherwise best offer received by Seller for the Property was from Buyer.

K. As evidenced by Seller's extensive marketing efforts, the consideration provided by Buyer for the Property pursuant to, and the other terms of, the Agreement (i) are fair

and reasonable, (ii) are the highest or otherwise best offer for the Property, (iii) will provide a greater recovery to Seller's estates than would be provided by any other practical available alternative, and (iv) constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. Subject only to entry of this Sale Order, Seller has (i) full corporate or other appropriate power and authority to execute the Agreement and all other documents contemplated thereby, and the Sale has been duly and validly authorized by all necessary corporate or other appropriate action of Seller, (ii) all of the corporate or other appropriate power and authority necessary to consummate the transactions contemplated by the Agreement, (iii) taken all corporate or other appropriate action necessary to authorize and approve the Agreement and the consummation of the Sale by Seller, and no consents or approvals, other than those expressly provided for in the Agreement, are required for Seller to consummate such transactions.

M. The Purchased Assets are property of Debtor's estate and title thereto is vested in the Debtor's estate.

N. The transfer of the Property by Seller to Buyer is or will be a legal, valid and effective transfer of the Property and vests or will vest Buyer with good title to the Property free and clear of the following (collectively, "Liens, Claims, Interests and Encumbrances"): All mortgages, restrictions, covenants, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens (including, without limitation, mechanics', materialmen's and other consensual and non-consensual liens and statutory liens), judgments,

demands, encumbrances, rights of first refusal, rights of first offer, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, pension, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, of Seller or Seller's predecessors or affiliates, claims (as that term is used in the Bankruptcy Code), reclamation claims, obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, covenants, interests and matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of Seller's chapter 11 case, and whether imposed by agreement, understanding, law, equity or otherwise, including any rights, claims or causes of action based on theories of transferee or successor liability under any law, statute, rule, or regulation of the United States, any state, territory, or possession thereof, or the District of Columbia (other than as expressly provided in the Agreement with respect to Permitted Exceptions, Assumed Liabilities and Assumed Contracts), with such Liens, Claims, Interests, and Encumbrances to attach to the proceeds of the Sale in the same priority as existed prior to Closing. Except as specifically provided in the Agreement or this Sale Order, Buyer shall not assume or become liable for any Liens, Claims, Interests, and Encumbrances relating to the Property being sold by Seller.

O. The transfer of the Property to Buyer free and clear of all Liens, Claims, Interests, and Encumbrances will not result in any undue burden or prejudice to any holders of any Liens, Claims, Interests, and Encumbrances as all such Liens, Claims, Interests, and Encumbrances of any kind or nature whatsoever shall attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Property. All persons having Liens, Claims, Interests, or Encumbrances of any kind or nature whatsoever against, on, or in any Seller or the Property shall be forever barred, estopped and permanently enjoined from pursuing such claims or asserting such liens, interests or encumbrances against Buyer, any of its assets, property, successors or assigns, or the Property, other than with regard to the Permitted Exceptions, Assumed Liabilities, and Assumed Contracts.

P. Buyer would not have entered into the Agreement and would not consummate the Sale contemplated thereby if the sale of the Property, the assignment of the Assumed Contracts to Buyer, and the assumption of the Assumed Liabilities by Buyer, were not free and clear of all Liens, Claims, Interests, and Encumbrances, other than with regard to the Permitted Exceptions, Assumed Liabilities, and Assumed Contracts, or if Buyer would, or in the future could, be liable for any Liens, Claims, Interests, or Encumbrances other than the Permitted Exceptions, Assumed Liabilities, and Assumed Contracts.

Q. Other than with regard to the Permitted Exceptions, Assumed Liabilities, and Assumed Contracts, Seller may sell the Property free and clear of all Liens, Claims, Interests, and Encumbrances because, in each case, one or more of the standards set forth in sections 363(f) and 365(f) of the Bankruptcy Code have been satisfied. Those holders of Liens, Claims, Interests, and Encumbrances and Counterparties to Assumed Contracts who did not object or who withdrew their objections to the Sale, entry of this Sale Order, and/or the

assumption and assignment of any Assumed Contract are deemed to have consented pursuant to sections 105 and 363(f)(2) of the Bankruptcy Code. Those holders of Liens, Claims, Interests, and Encumbrances and Counterparties to Assumed Contracts who did object, but fall within one or more of the other subsections of section 363 or 365 of the Bankruptcy Code, are adequately protected by being paid or by having their claims, if any, attach to the proceeds of the Sale ultimately attributable to the property against or in which they claim Liens, Claims, Interests, or Encumbrances, in the same order of priority that existed prior to the Sale and subject to all objections, counterclaims, recoupments, setoffs, and other defenses of Seller's estate.

R. Seller has demonstrated that it is an exercise of its sound business judgment to assume and assign the Assumed Contracts to Buyer in connection with the consummation of the Sale, and the assumption and assignment of the Assumed Contracts is in the best interest of Seller, its estate, and its creditors. The Assumed Contracts being assigned to, and the liabilities thereunder being assumed by, Buyer are an integral part of the Sale and, accordingly, such assumption and assignment of the Assumed Contracts and the post-Closing liabilities thereunder are reasonable and enhance the value of Seller's estate.

S. Buyer has (i) cured and/or has provided adequate assurance of prompt cure of any default existing prior to Closing under any of the Assumed Contracts within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, (ii) provided compensation or adequate assurance of compensation to any party other than Seller for any actual pecuniary loss to such party resulting from a default prior to Closing under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and (iii) provided adequate assurance of Buyer's future performance of and under the Assumed Contracts following Closing within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

T. The terms and conditions of the Agreement are fair and reasonable and were negotiated in good faith and at arm's-length and without collusion. Buyer is a buyer in good faith of the Property and, thus, is entitled to the protections afforded a good faith Buyer by section 363(m) of the Bankruptcy Code. In the absence of a stay pending appeal, Buyer will be acting in good faith, pursuant to section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the Agreement at any time after the entry of this Sale Order. Neither Seller nor Buyer has engaged in any conduct that would cause or permit the Agreement and the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code.

U. The transactions contemplated under the Agreement do not amount to a consolidation, merger or *de facto* merger of Buyer and Seller and/or Seller's estate. The Sale Motion provided notice that the sale would be free and clear of successor liability claims, and no party pursued a timely objection to that aspect of the sale. Accordingly, the transfer of the Property to Buyer and assumption and assignment to, and assumption by Buyer of, the Assumed Contracts and Assumed Liabilities will not subject Buyer to any liability with respect to the operation of the Property prior to Closing or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of successor or transferee liability.

V. The sale of the Property outside of a chapter 11 plan pursuant to the Agreement neither impermissibly restructures the rights of Seller's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for Seller. The sale does not constitute a *sub rosa* chapter 11 plan.

W. Subject to the limitations set forth in this Order, the sale, assignment and release of the Released Claims (as defined in the Supplement to the Sale Motion, dated August 5, 2011 (ECF Doc. No.260)) is fair and equitable and in the best interests of the estate.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:

General Provisions

1. The Sale Motion is granted in its entirety, as further described herein.
2. All parties in interest have had the opportunity to object to the relief requested in the Sale Motion and to the extent that objections to the Sale Motion or the relief requested therein have not been withdrawn, waived, or settled, such objections and all reservations of rights included therein are overruled on the merits. Those parties who did not object, or who withdrew their objections, to the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

Approval of the Agreement

3. The terms and conditions of the Agreement, including, without limitation, all Exhibits and Schedules thereto, and the Sale of the Property contemplated thereby, are hereby authorized and approved in all respects, pursuant to sections 105(a), 363(b) and 365(f) of the Bankruptcy Code.
4. Pursuant to sections 105(a), 363(b),(f),(m) and (n) and 365(f) of the Bankruptcy Code, and subject to the other provisions of this Sale Order, Debtor, Buyer, and each other person or entity having duties or responsibilities under the Agreement, any agreements

related thereto or this Sale Order, and their respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and empowered, subject to the terms and conditions contained in the Agreement, to carry out all of the provisions of the Agreement and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Agreement, and any related agreements; to take any and all actions contemplated by the Agreement, any related agreements or this Sale Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary or appropriate to implement, effectuate, and consummate, the Agreement, any related agreements, including any transition services agreement and this Sale Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of Debtor shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). Debtor (or, consistent with the Agreement, Buyer) is further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Agreement, any related agreements and this Sale Order. The execution of any such document or

the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

5. Nothing contained in any chapter 11 plan confirmed in these cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the Agreement or this Sale Order, and to the extent of any conflict or derogation between or from this Sale Order or the Agreement and such future plan or order, the terms of this Sale Order and the Agreement shall control to the extent of such conflict or derogation.

Transfer of Property

6. Pursuant to sections 105(a), 363(f) and 365(f) of the Bankruptcy Code, upon the closing of the Agreement, the Property shall be transferred to Buyer free and clear of all Liens, Claims, Interests and Encumbrances, except for the Assumed Liabilities, Permitted Exceptions, and Assumed Contracts, with all such Liens, Claims, Interests and Encumbrances to attach to the proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Property.

7. Except to the extent expressly included in the Permitted Exceptions or Assumed Liabilities, pursuant to sections 105 and 363 of the Bankruptcy Code, all persons and entities, including, but not limited to, Seller, the Debtors, the Committee, all debt security holders, equity security holders, Seller and Debtor's employees or former employees, governmental, tax and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien, Claim, Interest, or Encumbrance of any kind or nature whatsoever against, in or with respect to Seller or the Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or

non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Property, the operation of Seller's business prior to Closing or the transfer of the Property to Buyer, shall be forever barred and estopped from asserting, prosecuting or otherwise pursuing such Lien, Claim, Interest, or Encumbrance, whether by payment, setoff, or otherwise, directly or indirectly, against Buyer or any affiliates, successors or assigns thereof and each of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, affiliates, financial advisors and representatives (each of the foregoing in its individual capacity), or the Property.

8. The transfer of the Property to Buyer shall be a legal, valid, and effective transfer of the Property, authorized pursuant to the Bankruptcy Code, and shall vest Buyer with all right, title, and interest of Seller in and to the Property free and clear of all Liens, Claims, Interests, and Encumbrances (other than the Permitted Exceptions, Assumed Liabilities, and Assumed Contracts). Following Closing, except with respect to the Permitted Exceptions, Assumed Liabilities, and Assumed Contracts, no holder of any Lien, Claim, Interest, or Encumbrance on, in, or against the Property may interfere with Buyer's use and enjoyment of the Property based on or related to such Lien, Claim, Interest, or Encumbrance, or any actions that the Debtor may take in its chapter 11 case and no person may take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the Agreement or this Sale Order.

9. The provisions of this Sale Order authorizing the sale of the Property free and clear of Liens, Claims, Interests, and Encumbrances (other than with respect to Assumed Liabilities and Permitted Exceptions) shall be self-executing, and neither Debtor nor Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other

instruments in order to effectuate, consummate and implement the provisions of this Order. However, the Debtors and the Buyer, and each of their respective officers, employees and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either Debtor or Buyer deem necessary or appropriate to implement and effectuate the terms of the Agreement and this Sale Order. Moreover, effective as of the Closing, Buyer, its successors and assigns, shall be designated and appointed Debtor's true and lawful attorney and attorneys, with full power of substitution, in Debtor's name and stead, on behalf and for the benefit of Buyer, its successors and assigns, to demand and receive any and all of the Property and to give receipts and releases for and in respect of the Property, or any part thereof, and from time to time to institute and prosecute in Debtor's name, for the benefit of Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, which Buyer, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Property, and to do all acts and things with respect to the Property which Buyer, its successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtor.

10. On or before the Closing Date, but only effective upon Closing, Debtor's creditors are authorized and directed to execute such documents and deliver such documents to the escrow agent pending Closing and take all other actions as may be necessary to release at Closing any Liens, Claims, Interests, and Encumbrances (other than with respect to Assumed Liabilities and Permitted Exceptions) of any kind against the Property, as such Liens, Claims, Interests, and Encumbrances may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents evidencing any Liens, Claims, Interests, or Encumbrances (other than with respect to Assumed Liabilities and Permitted

Exceptions) in or against the Property shall not have delivered to the escrow agent prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens, Claims, Interests, or Encumbrances (other than with respect to Assumed Liabilities and Permitted Exceptions) that the person or entity has with respect to the Purchased Assets, Debtor is hereby authorized to execute at the Closing and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Property immediately after the Closing , and Buyer is authorized to file such documents after Closing. Notwithstanding anything to the contrary herein, any such filings shall not affect the attachment of Liens, Claims, Interests, and Encumbrances (other than with respect to Assumed Liabilities and Permitted Exceptions) to the proceeds of the sale of the Property by Debtor to Buyer, which shall be automatic at Closing.

11. Upon the occurrence of Closing, this Sale Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Property acquired by Buyer under the Agreement and/or a bill of sale or assignment transferring indefeasible title and interest in the Property to Buyer.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing Liens, Claims, Interests, or Encumbrances on, in, or against Seller or the Property shall not have delivered to the escrow agent prior to Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens, Claims, Interests, or Encumbrances that the person or entity has with respect to Seller or the Property or otherwise, then with regard to Property purchased by Buyer pursuant to the Agreement and this Sale Order,

(a) Seller is hereby authorized and directed to execute at Closing and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Property and (b) Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens, Claims, Interests, or Encumbrances on, in, or against the Property of any kind or nature whatsoever (other than the Permitted Exceptions, Assumed Liabilities, and Assumed Contracts).

13. To the fullest extent available under applicable law, as now in effect or as may in the future be in effect, Buyer shall be authorized, as of Closing, to operate under any license, permit, registration and governmental authorization or approval of Seller with respect to the Property, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of Closing.

Assumption and Assignment of the Assumed Contracts

14. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, subject to and conditioned upon Closing of the Sale and on the terms set forth in and as limited by the Agreement, the Bidding Procedures Order and herein, Seller's assumption and assignment of the Assumed Contracts to Buyer, and Buyer's assumption of such Assumed Contracts are hereby approved, and the requirements of section 365 of the Bankruptcy Code with respect to the Assumed Contracts are determined to have been satisfied. Accordingly, Seller is hereby authorized and directed in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code and the Agreement to (a) assume and assign to Buyer, effective upon Closing of the Sale,

the Assumed Contracts free and clear of all Liens, Claims, Interests, and Encumbrances, other than the Permitted Exceptions, Assumed Liabilities, and Assumed Contracts, (b) assign to Buyer, effective upon Closing of the Sale, the Assumed Liabilities, which Buyer shall assume subject to all objections, claims, counterclaims, rights of setoff or recoupment, and other defenses of Seller with respect to such Assumed Liabilities, and (c) execute and deliver to Buyer such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts and the Assumed Liabilities to Buyer and such assumptions and assignments shall be deemed to have occurred on Closing without further order of the Court.

15. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of Buyer and the relevant Counterparties to the Assumed Contracts. The Assumed Contracts shall be assigned to Buyer, in accordance with their respective terms, notwithstanding any provision in any Assumed Contract or in any applicable law (including those of the type described in sections 365(b)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions in any way such assignment or transfer, including, without limitation, change of control, payment or liabilities triggered by the sale of the Property or any portion thereof. Each Counterparty to an Assumed Contract shall be forever barred from asserting any claims arising on or before the date of this Sale Order against Seller, Buyer or its affiliates, or property of any of them, with respect to such Assumed Contract, and, absent any defaults by Buyer subsequent to the date hereof, each such Counterparty is hereby directed to perform all of its obligations under the Assumed Contract.

16. As determined by the Bankruptcy Court pursuant to the procedures and limitations established by the Bidding Procedures Order, no cure amounts are required to be paid under section 365 of the Bankruptcy Code.

17. Seller and Buyer are authorized, but not directed, to enter into agreements (each an "Assignment Agreement") with Counterparties with respect to the terms of assignment, including without limitation, adequate assurance of future performance and the appropriate cure amount or payment of other arrearages, applicable to such Counterparties' Assumed Contract, if any, without further Court approval. Notwithstanding anything else in this Sale Order to the contrary, with respect to the Assumed Contracts, the appropriate cure amount or other arrearages and any additional adequate assurance commitment from Buyer set forth in an Assignment Agreement shall be binding. Each Assignment Agreement is incorporated herein by reference.

18. Nothing in this Sale Order, the Sale Motion, or in any notice or any other document is or shall be deemed an admission by Seller that any Assumed Contract is an executory contract or must be assumed and assigned pursuant to the Agreement or in order to consummate the Sale.

19. Each Counterparty to an Assumed Contract hereby is forever barred, estopped, and permanently enjoined from asserting against Seller or Buyer, or the property of any of them, any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing.

20. The failure of Seller or Buyer to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of Seller's and Buyer's rights to enforce every term and condition of such Assumed Contract.

21. Nothing in this Sale Order, the Sale Motion, or in any notice or any other document shall prejudice the rights of Seller and Buyer to file additional motions seeking assumption and assignment of additional contracts or unexpired leases upon appropriate notice to the counterparty to each additional contract placed upon any such supplemental list.

22. Notwithstanding anything to the contrary in this Sale Order, at any time prior to Closing and upon agreement with Buyer, Seller may remove any executory contract from the list of Assumed Contracts irrespective of whether a Counterparty to such executory contract received a notice of Seller's intent to assume and assign (the "Removed Contracts"). Such removals shall be effective upon Seller's filing of the list or lists of Removed Contracts with the Court. Seller shall promptly provide notice of such removal(s) to the Counterparties to such Removed Contracts. The assumption, rejection or assignment of such Removed Contracts shall be the subject of a separate motion and/or further order of the Court.

Additional Provisions

23. Pursuant to Rule 9019(a) and Section 105 of title 11 of the United States Code, and subject to the terms of Paragraphs 55 and 57 of this Order, the sale, assignment and release of any and all claims held by the Seller against the Released Parties (as defined below) is hereby approved as being fair and equitable and in the best interests of the estate.

24. The consideration provided by Buyer for the Property under the Agreement and this Sale Order: (a) is and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia and (b) is fair and reasonable, and neither the consideration nor the Agreement may be avoided or voided under section 363(n) or any other provision of the Bankruptcy Code or applicable non-bankruptcy law.

25. On the date of Closing of the Sale, each of Seller's creditors is authorized and directed to execute such documents and take all other actions as may be reasonably

necessary to release its liens, claims interests or encumbrances on or in the Property, if any, as the same may have been recorded or may otherwise exist.

26. This Sale Order shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Property. Each such person, entity, governmental agency, department, or official is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

27. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Property sold, transferred or conveyed to Buyer on account of the filing or pendency of these chapter 11 cases or the consummation of the transactions contemplated by the Agreement.

28. This Bankruptcy Court shall retain jurisdiction to enforce the terms and provisions of this Order, the Bidding Procedures Order, the Agreement (including any and all amendments thereto, any waivers and consents thereunder), and of each of the agreements, documents and instruments executed in connection therewith, in all respects, and to decide any disputes concerning this Sale Order and the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the

status, nature and extent of the Property and any Assumed Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Property free and clear of all Liens, Claims, Interests, and Encumbrances.

29. In the absence of a stay pending appeal of this Sale Order, if Buyer consummates the Sale Order at any time after entry of this Sale Order, then with respect to the Sale, including any assumption and assignment of any Assumed Contracts that are assumed and assigned pursuant to this Sale Order, Buyer shall be deemed to be acting in "good faith" and shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

30. The failure specifically to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

31. Any agreements authorized by this Sale Order, including the Agreement and any related agreements, documents or other instruments may be entered into, modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement has no material adverse effect on Seller's estate or creditors.

32. The terms and provisions of the Agreement, together with the terms and provisions of this Sale Order, shall be binding in all respects upon Seller, Buyer, and their respective affiliates, successors and assigns, including, without limitation, any trustee, responsible person, estate administrator, representative or similar person appointed for or in connection with Seller's estate or affairs in these cases or in any subsequent case under the

Bankruptcy Code involving Seller, and any affected third parties including, but not limited to, (i) all Counterparties to the Assumed Contracts that are assumed and assigned pursuant to this Sale Order; (ii) all creditors with respect to the Assumed Liabilities to be assumed by Buyer pursuant to the Agreement, and (iii) all persons asserting a claim against or interest in Seller's estate or any of the Property to be sold to Buyer pursuant to the Agreement. Without limiting the generality of the foregoing, any entity providing financing to Buyer shall be entitled to enforce the provisions of this Sale Order with respect to the release of any Liens, Claims, Interests, or Encumbrances against, on, or in the Property.

33. All entities that are presently, or at Closing may be, in possession of some or all of the Property are hereby directed to surrender possession of the Property to Buyer on the date of the Closing.

34. Buyer and Seller are authorized to take all actions and enter into any and all agreements that they deem necessary or appropriate with respect to the Sale as authorized by this Sale Order, provided that such action or agreement is consistent with the relief authorized herein.

35. Except solely to the extent Buyer assumes the Assumed Liabilities pursuant to the Agreement, neither the purchase of the Property by Buyer or its affiliates, nor the subsequent use by Buyer or its affiliates of any of the Property previously operated by Seller, will cause Buyer or any of its affiliates to be deemed a successor in any respect to Seller's businesses within the meaning of any foreign, state or local revenue, pension, ERISA, tax, labor or environment law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations) or under any products liability law or doctrine with respect to Seller's liability under such law, rule or regulation or doctrine.

36. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions authorized herein.

37. The provisions of this Sale Order are nonseverable and mutually dependent without written consent of Buyer.

38. Reconcile has conducted arms-length negotiations and engaged in good faith efforts to address and resolve all outstanding objections to the sale. Accordingly, Reconcile is a good faith purchaser, and is entitled to the protections of 11 U.S.C. § 363(m).

39. Debtor is authorized to pay all necessary, appropriate or customary costs of sale at closing from the proceeds of sale, including but not limited to title insurance premiums, recording fees, copying costs and closing fees.

40. Debtor is authorized to pay real estate commissions in the amount of \$112,950 to Cassidy Turley Fuller Real Estate at closing from the sales proceeds.

41. Debtor is authorized to pay at closing from the sales proceeds the 1% transfer tax to the Town of Gypsum.

ADJUSTMENT OF PURCHASE PRICE

42. The purchase price term of the Agreement is hereby increased to \$6,500,000, plus, to the extent Closing is delayed beyond September 22, 2011, the amount necessary to pay all interest accruing after September 22, 2011 through the Closing on the secured claims defined in the Sale Motion as: (1) the Eagle County Tax Liens; (2) the EFO DIP Loans; (3) the Judgment Mechanics' Liens, as indicated in Paragraph 44 below, plus the pro rata portion of the BPOA homeowners September dues for September 23, 2011 through September 30, 2011; provided that, if and to the extent that actual aggregate amounts paid to the Lenders from the

sales proceeds (for purposes of this paragraph, purchase price and sales proceeds do not include the additional Restricted Consideration as defined below) exceeds the amount identified as “BALANCE PAID TO LENDERS” on the Estimated Settlement Statement, attached hereto as Exhibit A, the Lenders shall refund to Buyer 25% of the difference.

RESOLUTION OF OBJECTIONS BY JUDGMENT MECHANICS LIEN CLAIMANTS

43. Debtor shall pay at closing from the sales proceeds, the allowed secured claims of the following Judgment Mechanics’ Lien Claimants through September 22, 2011 in the amounts set forth below:

JUDGMENT MECHANICS LIEN CLAIMANT	ALLOWED SECURED CLAIM THROUGH SEPTEMBER 22, 2011	PER DIEM INTEREST AFTER SEPTEMBER 22, 2011
Sema Golf, LLC (includes mechanics’ lien claim of La Tierra De Esmeralda Incorporation d/b/a Emerald Sod Farms	\$1,609,188.94	\$467.85
Cook and Solis Construction, Inc.	\$220,000.00	\$49.32
KRC-HLT Corporation d/b/a Formost Construction	\$168,642.00	\$45.89
Robert Trent Jones, II, LLC	\$114,701.53	\$37.71

44. If the Closing occurs after September 22, 2011, Buyer shall pay to the Judgment Mechanics Lien Claimants the respective amounts shown in the column named “Per Diem Interest after September 22, 2011” for each day from September 23 through the actual closing date.

45. The Court must approve any agreement to extend the Closing beyond October 7, 2011 affording any interested party the right to object and be heard on such matter.

46. Based on the foregoing, the objections of the Judgment Mechanics' Lien Claimants are deemed withdrawn.

**RESOLUTION OF OBJECTIONS BY BRIGHT WATER PROPERTY OWNERS
ASSOCIATION**

47. Notwithstanding anything to the contrary contained in the Sale Order or the Agreement, or any other order entered in the Seller's bankruptcy case, the Buyer shall be bound by any existing covenant or easement running with the Property that restricts or affects the use of that portion of the Property comprising the Golf Course (as that term is defined in the Declaration), which is enforceable by Brightwater Club Property Owners Association ("BPOA") under applicable Colorado law in a court of competent jurisdiction.

48. Debtor shall pay at closing from the sales proceeds, \$295,000 to the BPOA in satisfaction of the BPOA's prepetition liens entitled to priority under C.R.S. § 38-33.3-316. The Property shall be sold free and clear of any remaining prepetition liens of the BPOA and the remaining BPOA prepetition liens are valued at \$0.0. The BPOA may assert an unsecured claim for any unpaid prepetition property owners dues. The BPOA Dues assessed or accrued for the months of October, November and/or December of 2011 shall be paid by Buyer at closing.

49. Based upon the foregoing, the objections of the BPOA to the Sale Motion have been withdrawn.

RESOLUTION OF OBJECTION BY THE LANCELOT TRUSTEE

50. Seller withdraws its request to a carve-out for wind-down expenses of the estate. The balance of the sales proceeds available at Closing after payment of the actual amounts due for the items set forth on Exhibit A and (after giving effect to the purchase price

reduction described in Paragraph 43 above, if any) shall be paid at Closing to the Lenders as follows: (a) 47.044% directly to BNP Paribas as directed by BNP Paribas; (b) 43.5254% to the Lancelot Trustee as directed by the Lancelot Trustee; and (c) 9.4306% to Kennedy Funding as directed by Kennedy Funding for pro rata distribution to the remaining Lenders in accordance with their governing loan agreements.

51. If to the extent any property tax refund, rebate or abatement comes into the possession of the Seller at any time after Closing, then 75% of such refund, rebate or abatement shall be promptly turned over to the Lenders in the percentages set forth in paragraph 51 above, and 25% shall be turned over to the Buyer.

52. Based upon the foregoing, the objections of the Lancelot Trustee to the Sale Motion have been withdrawn.

**RESOLUTION OF OBJECTION BY
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

53. The Committee agrees that it will not contest the amount, validity and priority of the Lenders' claims and/or liens.

54. As additional consideration for the purchase of the Property, Buyer will pay Seller One Hundred Twenty Five Thousand Dollars and no/cents (\$125,000.00) at Closing (the "Restricted Consideration"). The Restricted Consideration will be segregated by Seller and will be available solely for distribution to the unsecured creditors, provided, however, any claims held by the Lenders (as defined in the Agreement) and by those Released Persons (as defined below) who execute and deliver a Released Person Waiver (as defined below) shall not share in nor receive any distribution from the Restricted Consideration.

55. The Committee agrees that in the event the fees and costs of its professionals exceed such professional's retainer, the Committee's professionals will not seek to have any such excess fees or costs paid from any of the proceeds received by the Lenders for the sale of the Property to Buyer, nor will the Committee's professionals seek to have any such excess fees or costs paid from the proceeds of the EFO DIP Loans (as defined in the Supplement to the Sale Motion, dated August 5, 2011) (ECF Doc. 260) currently in the possession of the Seller.

56. With respect to the Property purchased by Buyer, the Released Claims shall include only those claims of the Seller against (a) each shareholder of the Seller and each individual or entity set forth on Schedule B-4 to the Agreement, and (b) the individuals or entities set forth on Exhibit B hereto (those listed in (a) and (b) collectively, the "Released Persons" and each an "Released Person") that has executed and delivered to the Seller and Committee a written waiver that expressly provides that such Released Person unconditionally disclaims and waives any and all of such Released Person's claims and interests against the Seller as well as any right to distribution of any funds from the Seller's estate (the "Released Person Waiver"). Buyer agrees that it will use commercially reasonable efforts to obtain all of the Released Person's Waivers. Any and all claims against each Released Person shall remain property of the Seller's estate unless the Seller and the Committee receive the Released Person's Waiver by the date of Closing.

OBJECTION BY BRIGHTWATER PRESERVATION CORPORATION

57. The Court hereby finds:

a. The Brightwater Preservation Corporation ("BPC") is a newly formed Colorado non-profit corporation having approximately 67 members/shareholders.

The BPC has filed an objection to the Sale Motion asserting such sale might impinge upon or violate various unspecified implied restrictive easements, covenants or agreements created by the Brightwater Club Membership Agreement, Brightwater Club Membership Plan and related documents constituting BPC's Exhibit I and purportedly running in favor of members of The Club at Brightwater, LLC (the "Club").

b. The BPC is not a present or former member of the Club, is not a creditor of the Seller, and does not own any interest in real or personal property which could be the dominant estate entitled to the benefit of the purported implied restrictive easements, covenants or agreements.

c. The BPC does not hold any proxy or power of attorney from any present or former member of the Club. The Court has serious concerns as to whether the BPC is the real party in interest with respect to its objection to the proposed sale.

d. In its objection, the BPC asserts that the Property cannot be sold free and clear of the claims and interests of the Members. The unrefuted evidence provided at the sale hearing indicated that (See BPC Exhibit I at I-050):

Membership in the Club is not an investment in the Company, its affiliates, or the Club Facilities and does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club does not provide a member with any equity or ownership interest or any other property interest in the Company, its affiliates, or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan, Rules and Regulations, and the Membership Agreement, as the same may be amended from time to time.

e. No actual or present member of the Club has objected to the Sale Motion and the actual members of the Club are deemed to have consented to the Sale

Motion pursuant to sections 105 and 363(f)(2) of the Bankruptcy Code and paragraph 2 of this Order.

f. To the extent that in filing its objection, the BPC relies on declarations, covenants, easements, or other documents of record, the Court finds that those are included within the permitted exceptions to the sale and the sale will not be free and clear of those obligations.

g. To the extent that the BPC relies on covenants that run with the land and restrict or affect the use of the Property, the Court finds that the negotiated language protecting the rights of the BPOA will also protect the rights of the BPC members.

h. To the extent that the BPC wishes to pursue rights other than those set forth in (f) or (g) of this section, the Court holds that BPC has failed to meet its burden of proof under 11 U.S.C. § 363(p)(2) to show the validity, priority or extent of the BPC's interest in the Property, or that the BPC's purported rights amount to anything more than a revocable license to use certain facilities, and no adequate protection is necessary under 11 U.S.C. § 363(e).

58. IT IS THEREFORE ORDERED that the BPC's objection is OVERRULED for the reasons stated herein and for the reasons stated on the record.

OBJECTION OF COLORADO SPORTING CLUB, INC.

59. The Court finds with respect to the objection filed Colorado Sporting Club, Inc. (“CSC”) objection, that the Seller has met its burden under 11 U.S.C. § 363(f) of showing that any interest asserted by CSC is in bona fide dispute.

60. The Court further finds that the CSC has not established that it holds a property interest in the Debtor’s assets, much less a property interest entitled to adequate protection under § 363(e). At best the CSC is a beneficiary of a contract or equity participation agreement which may or may not have become effective under the terms of the agreement itself. If the agreement has become effective, the Court finds that it is by its terms subordinate to all other levels of debt.

62. The Court further finds that CSC failed to meet its burden under 11 U.S.C. § 363(p)(2) of showing that CSC holds an interest in any of the property to be sold to Buyer and no adequate protection is necessary under 11 U.S.C. § 363(e).

61. IT IS THEREFORE ORDERED that CSC’s objection is OVERRULED for the reasons stated herein and for the reasons stated on the record and Debtor may sell the Property free and clear of any interest asserted by CSC in the Property.

OBJECTION BY BENJAMIN, BAIN & HOWARD, LLC

62. The Court finds with respect to the objection filed by Benjamin Bain & Howard, LLC, (“BBH”) that the Seller has met its burden under 11 U.S.C. § 363(f) of showing that any interest asserted by BBH in the property to be sold to Buyer is in bona fide dispute.

63. The Court further finds that BBH failed to meet its burden under 11 U.S.C. § 363(p)(2) of showing that BBH holds an interest in any property to be sold to Buyer

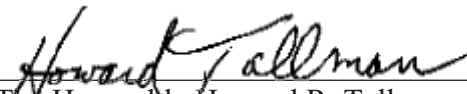
and no adequate protection is necessary under 11 U.S.C. § 363(e).⁶⁵. The Court further finds that any property in which BBH purports to have an interest is of little value and is easily replaced.

64. IT IS THEREFORE ORDERED that BBH's objection is denied for the reasons stated herein and for the reasons stated on the record and Debtor may sell the Property free and clear of any interest asserted by BBH in the Property.

This Order resolves all claims, rights and liabilities of all parties with respect to the Sale Motion and the sale of the Property and, there being no just reason for delay, constitutes the final judgment of this Court within the meaning of Federal Rule of Civil Procedure 54(a) and (b), made applicable to this proceeding by Federal Rules of Bankruptcy Procedure 9014 and 7054.

DATED: September 14, 2011.

BY THE COURT:



The Honorable Howard R. Tallman
United States Bankruptcy Court Chief Judge