

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: June 17, 2020

SUBJECT: Request by Greater Asheville Regional Airport Authority (“GARAA”) to acquire Henderson County land

PRESENTER: Lew Bleiweis, Executive Director, GARAA

ATTACHMENT(S): Motion for approval of sale of land in bankruptcy; Map

SUMMARY OF REQUEST:

GARAA seeks permission to acquire the Broadmoor Golf Course -- +/- 193.31 acres from the Warrior Golf Management, LLC (“Warrior”). Warrior declared Chapter 11 Bankruptcy March 4, 2019, in the Southern District of Texas. The land is located as shown on the attached map.

GARAA has reached agreement with the owners of the property to acquire this land, subject to your approval and approval (at a bankruptcy court hearing scheduled for June 15, 2020). A copy of the motion seeking bankruptcy court approval is attached. A map of the affected land is also included.

GARAA staff will be available to present further information on this matter.

BOARD ACTION REQUESTED:

Consideration of GARAA request.

If the Board is so inclined, the following motion is suggested:

I move that the Board grant its approval to the acquisition by Greater Asheville Regional Airport Authority of the land described in the documents attached to this agenda item.

From: Lew Bleiweis <lbleiweis@flyavl.com>
Sent: Thursday, May 28, 2020 12:09 PM
To: Russ Burrell <rburrell@hendersoncountync.gov>
Cc: Steve Wyatt <SWyatt@Hendersoncountync.gov>
Subject: Henderson County Property Purchase
Importance: High

Russ

The Airport Authority is in the process of purchasing some property in Henderson County and is seeking commission approval. Below is the justification and explanation along with an attached photo. We would like to get this on an agenda for June.

We appreciate your assistance. If you have any questions, please let me know

Lew

Summary:

The Broadmoor Golf Course is owned by Warrior Golf Management LLC, , that filed relief under Chapter 11 of the United States Bankruptcy Code on March 4, 2019, in the Southern District of Texas. This property is located at the interchange of Interstate 26 and Airport Road, at the southern end of the Airport runway. A portion of the golf course is located in the runway protection zone (owned by the Airport). The Airport owns the entrance area into this property off of Bolyston Highway. The property is approximately 193.31 acres (within Henderson County) and the majority of the property is located within the floodway and portions of the property that are not in the floodway are in the flood plain.

A map is attached which shows the area adjacent to the airport property. It is in the best interest of the Authority to acquire this property.

Photo attached.



Lew Bleiweis, A.A.E., Executive Director
GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY
61 Terminal Drive, Suite 1
Fletcher, NC 28732
828-654-3243 (OFFICE)
828-243-0762 (MOBILE)
888-263-8524 (FAX)
[HTTP://WWW.FLYAVL.COM](http://www.flyavl.com)

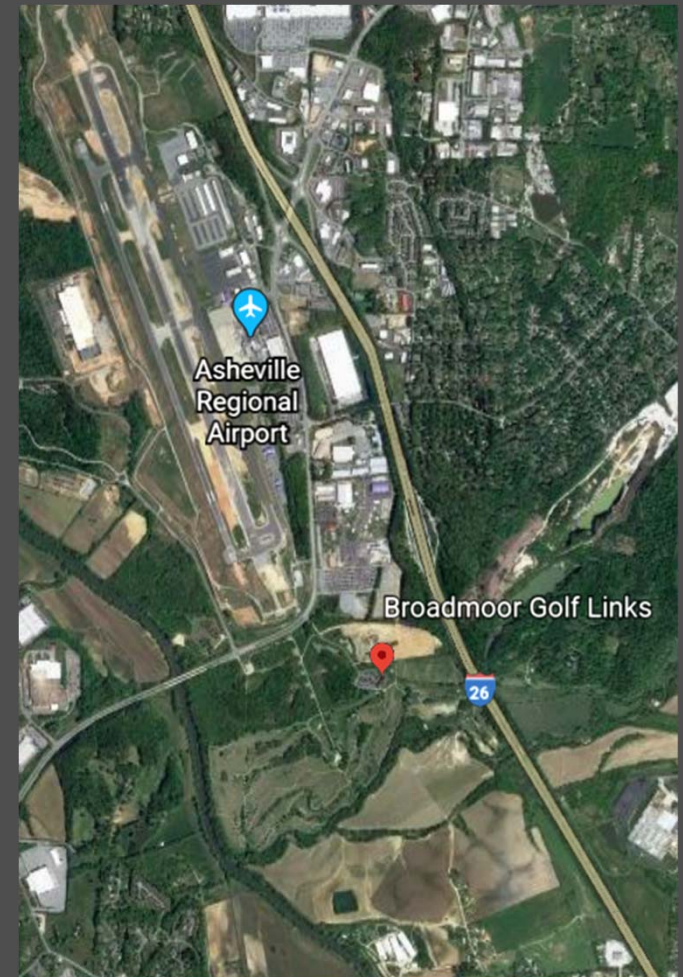
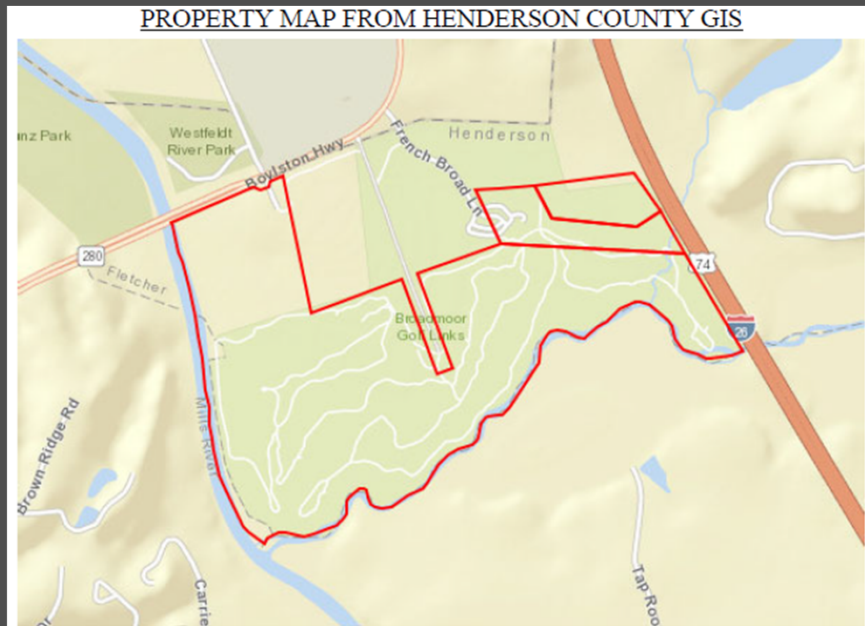
WARNING: E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law "NCGS.Ch.132" and may be disclosed to third parties by an authorized state official. All e-mail sent to or from The Greater Asheville Regional Airport Authority (AVL) business e-mail system is subject to archiving, monitoring and/or review by AVL personnel. This message is intended exclusively for the individual or entity to which it is addressed. If you are not the named addressee, you are not authorized to read, print, retain copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (828-684-2226) or reply to this e-mail and delete all copies of this message.

Broadmoor Golf Course

Owner: Warrior Golf Management LLC.

Filed Chapter 11 Bankruptcy March 4, 2019

Henderson County - Approximately 193 acres



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	Chapter 11
WESTWIND MANOR RESORT ASSOCIATION, INC., <i>et al.</i> , ¹)	Case No. 19-50026 (DRJ)
Debtors.)	Jointly Administered

**DEBTORS’ EXPEDITED MOTION FOR ENTRY OF AN ORDER APPROVING THE
SALE OF BROADMOOR GOLF LINKS FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS**

AN EXPEDITED HEARING WILL BE CONDUCTED ON THIS MATTER ON JUNE 15, 2020, AT 2:00 P.M. THE BANKRUPTCY COURT WILL CONDUCT THE HEARING VIA TELEPHONE (832-917-1510, CONFERENCE ROOM CODE: 205-691), AND VIA VIDEO CONNECTION (AT *JOIN.ME* CODE: JUDGEJONES). IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT PRIOR TO THE SCHEDULED HEARING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS PLEADING; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”) file this Motion (the “Motion”) for entry an Order in the form submitted concurrently herewith (the “Sale Order”) Approving the Sale of the Broadmoor Golf Links Free and Clear of

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Westwind Manor Resort Association, Inc. (7533); Warrior ATV Golf, LLC (3420); Warrior Acquisitions, LLC (9919); Warrior Golf Development, LLC (5741); Warrior Golf Management, LLC (7882); Warrior Golf Assets, LLC (1639); Warrior Golf Venture, LLC (7752); Warrior Premium Properties, LLC (0220); Warrior Golf, LLC (4207); Warrior Custom Golf, Inc. (2941); Warrior Golf Equities, LLC (9803); Warrior Golf Capital, LLC (5713); Warrior Golf Resources, LLC (6619); Warrior Golf Legends, LLC (3099); Warrior Golf Holdings, LLC (2892); and Warrior Capital Management, LLC (8233). The address of the Debtors’ corporate headquarters is 15 Mason, Suite A, Irvine, California 92618.

All Liens, Claims, Encumbrances, and Interests. In support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. § 1408.

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 105 and 363 and Rules 2002, 6004, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

A. General Background

3. On March 4, 2019, April 4, 2019, and May 30, 2019, an aggregate of 16 entities each filed a petition in the Bankruptcy Court seeking relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).

4. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases.

5. On March 19, 2019, the Office of the United States Trustee for the Southern District of Texas appointed an Official Committee of Unsecured Creditors (the “Committee”) in the Chapter 11 Cases pursuant to Section 1102(a) of the Bankruptcy Code.

6. A detailed description of the Debtors’ business and the facts precipitating the filing of the Chapter 11 Cases are set forth in the Declaration *of Jeremy Rosenthal in Support of*

Debtors' Chapter 11 Petitions and First Day Relief [Docket No. 9] (the "First Day Declaration"). Those facts are incorporated herein by reference.

7. On March 18, 2020, the Bankruptcy Court entered the Order approving the Disclosure Statement at Docket No. 783 (the "Disclosure Statement and Solicitation Order"), *inter alia*, approving of the *Debtors' First Amended Disclosure Statement for the Joint Plan of Reorganization Proposed by the Debtors and the Committee Pursuant to Section 11 25 of the Bankruptcy Code* [Docket No. 786] (the "Disclosure Statement"). The Disclosure Statement is in reference to *Debtors' and Committee's First Amended Joint Plan of Reorganization* [Docket No. 787] (the "Joint Plan"). The Disclosure Statement and Joint Plan are incorporated herein by this reference. Pursuant to the terms of the Disclosure Statement and Solicitation Order, the Debtors are actively in the process of soliciting votes on the Joint Plan and a confirmation hearing has been set for June 15, 2020 at 2:00 p.m. (the "Confirmation Hearing").

B. The Debtors' Golf Course Business

8. As set forth in the First Day Declaration, the Debtors operate two distinct business segments. Warrior Custom Golf, Inc. focuses on the manufacture and sale of custom golf clubs. Warrior Acquisitions LLC ("Warrior Acquisitions"), however, manages affiliates that own golf courses.

9. Warrior Acquisitions is the manager of six (6) entities that own and operate 18 golf courses and parcels of land located throughout California, Florida, Colorado, Iowa, Alabama, North Carolina, South Carolina, Tennessee and Georgia. Warrior Acquisitions' golf courses (i.e. those under its indirect management) serve their local communities and are located in secondary and tertiary markets.

10. Warrior Acquisitions' managed courses generated approximately 267,500 rounds of golf in 2018. Many of the golf courses have additional amenities including golf pro shops,

driving ranges, clubhouses, restaurants, bars, swimming pools, private villas and banquet facilities. Warrior Acquisitions' managed courses generated approximately \$13 million in annual revenue over the past few years but generated an operating loss of approximately \$680,000.00 in 2018.

C. The Real Property

11. Warrior Golf Management, LLC ("WGM") is the owner of the Broadmoor Golf Links ("Broadmoor") located in Fletcher, North Carolina. Broadmoor features, among other things, a nearly 7,000 yard, 18-hole championship golf course complete with an approximately 15,000 square foot clubhouse outfitted with dining and event facilities, as well as a driving range and attendant maintenance facilities all situated on approximately 140 acres. Importantly, Broadmoor is located just outside of Asheville, North Carolina near the Asheville Regional Airport.

12. Post-Petition, beginning on June 7, 2019 before this Court and continuing thereafter, the Debtors' engaged in substantial litigation with the North Carolina Department of Transportation (the "NC DoT") regarding relief from the automatic stay to conduct a taking of certain portions of Broadmoor. Such litigation with respect to the automatic stay (as opposed to the substantive taking) was resolved by agreement among the Debtors, the Committee, and the NC DoT as Ordered at Docket No. 753.

D. Liens on Broadmoor

13. Broadmoor is subject to a pre-petition lien in favor of Broadmoor Group, Inc., Albert Robert Smoak, and Zoe Anne Smoak (collectively, the "Broadmoor Lenders") in the original principal amount of \$2,000,000 (the "Broadmoor Loan"), as more fully set forth in that certain *Purchase Money Promissory Note*, dated March 5, 2010, and that certain *North Carolina*

Purchase Money Deed of Trust.² Post-Petition, on May 6, 2019, the Broadmoor Lenders filed that certain Proof of Claim [Claim No. 96] (the “Lenders’ Proof of Claim”), asserting an aggregate amount outstanding under the Broadmoor Loan of \$1,312,649.32.³

14. Additionally, Broadmoor serves as collateral of Serene WG Loan Investors (the “DIP Lender”) under the Debtors’ debtor in possession financing. The sale of Broadmoor is subject to the terms of the court-approved Senior Secured, Super-Priority Debtor-in-Possession Loan and Security Agreement dated April 2, 2019, as amended [Docket Nos. 125, 529, and 773] (collectively, the “DIP Credit Agreement”), or as may be agreed by the Debtors and the DIP Lender.

E. Negotiations to Sell Broadmoor

15. Since the commencement of the Chapter 11 Cases, the Debtors have explored numerous avenues for selling their golf courses, including Broadmoor, and have been marketing them, in one form or another, since that time. To expose Broadmoor to the market and ensure that value is maximized for the benefit of these estates, the Debtors (i) listed Broadmoor on Loopnet.com, an online marketplace for commercial properties and (ii) listed Broadmoor on the website of Links Capital Advisors (“LCA”), the Debtors’ real estate broker as retained at Docket No. 598. Furthermore, the Debtors have used LCA’s decades of experience and database of over 15,000 investors to market Broadmoor. After the Petition Date, the Debtors received numerous expressions of interest from investors and other interested parties regarding the sale Broadmoor. These expressions of interested culminated in multiple offers to purchase Broadmoor.

² The Court has previously approved of the Debtors entry into a Loan Modification Agreement with respect to the Broadmoor Loan at Docket No. 762. As of the date of filing this Motion, the Debtors are seeking this Court’s consideration and approval of a further amendment to the Broadmoor Loan. *See* Docket No. 938.

³ At this time, the Debtors take no position as to the Lenders’ Proof of Claim, including, *inter alia*, the amounts set forth therein.

16. After fulsome arms'-length negotiations on price and terms of sale, the Debtors reached an agreement to sell Broadmoor to the Greater Asheville Regional Airport Authority (the "Purchaser" or "Airport") for a \$2,750,000, as memorialized in the agreement attached to the Sale Order as **EXHIBIT 1** (the "Agreement").

17. Although the Debtors received numerous expressions of interest and multiple offers for the sale of Broadmoor, the Agreement was markedly better than any offer received by an interested party that was willing to consummate such a sale. Based on the Debtors' marketing and negotiation efforts to date, the Debtors believe that the terms of the Agreement represent the highest and best offer they are likely to receive with respect to Broadmoor under the circumstances and represent limited risk to these Debtors' Estates.

F. The Agreement

18. A summary of the principal terms of the Agreement is as follows:⁴

Purchaser	Greater Asheville Regional Airport Authority
Purchase Price	\$2,750,000
Assets to be Sold	All of WGM's current right, title and interest in the Real Property, Personal Property, Assumed Contracts, permits, intangibles, entitlements, tradename and trademark, books and records and insurance claims or proceeds with respect to Broadmoor. All other assets of WGM including all cash, accounts, receivable and bank deposits as well as all causes of action relating to Broadmoor are not being transferred to the Purchaser.
Conditions to Sale	Pursuant to the terms of the Agreement and other than this Court's approval of the Sale, the Sale is subject to the following conditions: (i)

⁴ The highlighted terms and summary of the Agreement is provided for the benefit of the Court and other parties-in-interest. The Agreement is incorporated herein by reference. To the extent of any conflict between this summary and the Agreement, the terms of the Agreement shall govern. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to them in the Agreement.

	<p>Due Diligence, the Purchaser shall have the ability to conduct diligence, including conducting surveys, tests, examinations and inspections with respect to Broadmoor during the Due Diligence Period which shall expire on July 17, 2020 at 5:00 p.m. Eastern, (ii) title, title objections shall be asserted no later than July 8, 2020, (iii) approval of the Purchaser's Board of Directors, as set forth in Section 8.3(d) of the Agreement; and (iv) the purchaser's receipt of tax exempt status from Henderson County, North Carolina with respect to the Sale, as set forth in Section 8.4(e) of the Agreement.</p>
Termination	<p>The Agreement can be terminated as follows: (i) mutual written agreement of the Purchaser and WGM; (ii) if the Purchaser or WGM materially breaches or defaults in the performance and satisfaction of any representations, warranties, covenants or obligations under the Agreement and the default is not cured as set forth therein; and (iii) if the Sale Order does not become a final order on or before July 10, 2020; (iv) if any of the conditions to closing are not satisfied; (v) by WGM or the Purchaser at any time prior to the entry of the Sale Order, including in the event that WGM pursues an Alternative Transaction; and (vi) by WGM if closing does not occur by July 31, 2020.</p>
Qualified Expense Reimbursement	<p>The Purchaser shall be entitled to Expense Reimbursement for reasonable expenses actually incurred by Purchaser in pursuit of the Sale in an amount not to exceed \$75,000 in the event that an Alternative Transaction is authorized by the Bankruptcy Court.</p>
Transition Services Agreement	<p>Prior to the expiration of the Due Diligence Period, WGM and the Purchaser shall determine if the parties wish to enter into a Transition Services Agreement.</p>
Executory Contracts and Unexpired Leases	<p>The Purchaser will not seek the assumption of any executory contracts or unexpired leases.</p>

Brokers	LCA shall be paid a commission in an amount to be determined, not to exceed 5%.
Closing	The closing shall occur no later than July 31, 2020
Deposit	\$150,000

RELIEF REQUESTED

A. The Sale of the Broadmoor is an Exercise of the Debtors' Sound Business Judgment

19. Section 363(b) of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate; however, bankruptcy courts in this District and elsewhere have required that the authorization of such use, sale, or lease of property of the estate out of the ordinary course of business be based upon sound business justification. *See Institutional Creditors of Continental Air Lines, Inc v. Continental Air Lines, Inc., et al. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *see also In re Asarco*, 650 F.3d at 601; *In re Cowin*, No. 13-30984, 2014 WL 1168714, at *38 (Bankr. S.D. Tex. Mar. 21, 2014); *In re St. Marie Clinic PA*, No. 10-70802, 2013 WL 5221055, at *9 (Bankr. S.D. Tex. Sept. 17, 2013); *In re Particle Drilling Techs., Inc.*, No. 09-33744, 2009 WL 2382030, at *2 (Bankr. S.D. Tex. July 29, 2009); *In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 944 (Bankr. S.D. Tex. 1988). Once the Debtors articulate a valid business justification, “[t]he business judgment rule is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re S.N.A. Nut Co.*, 86 B.R. 98 (Bankr. N.D. Ill. 1995);

see also In re Integrated Res., Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“ . . . a presumption of reasonableness attaches to a Debtor’s management decisions.”).

20. The Debtors have a sound business justification for selling Broadmoor under the terms of the Agreement, subject to higher and better offers which may be made at any time up to and including at the hearing on the Motion.⁵ Due to the Airport being a public entity that is not well positioned to participate in an auction, the Debtors’ agreement to seek a private sale was a material inducement to the Airport both agreeing to the price set forth in the Agreement and its willingness to enter into the Agreement in the first place. Furthermore, the Debtors believe that the probability that a competing bidder will emerge with a higher or better bid is unlikely given the extensive marketing of the property and the negotiations with other potential buyers seeking to acquire this Property – none of whom made a higher or better bid. The Debtors believe that a private sale of the Broadmoor to the Airport, rather than a public auction, is value maximizing in light of the prior sale efforts and the strong offer made by the Airport in its Asset Purchase Agreement.

21. In light of these considerations, the Debtors believe that selling Broadmoor to the Airport subject to higher and better offers which may be made at or before at the hearing on the Motion, is an appropriate exercise of the Debtors’ business judgment and strikes a reasonable balance between the available options to maximize the value of the Debtors’ assets. Given that the Debtors will entertain higher or better bids ahead of the Sale Hearing, the Debtors will continue their existing marketing efforts for Broadmoor to further “market test” the terms of the Agreement. The Debtors believe that a private sale to the Airport (which is subject to overbids)

⁵ Any offers received following the filing of this Motion but before the hearing on the motion will be reasonably disclosed at such hearing.

will maximize the value for the Debtors' estates, including by empowering the Airport to make a compelling offer for Broadmoor in light of the challenges the Airport faces in participating in an auction.

22. The proposed sale of Broadmoor was negotiated at arms' length and entered into in good faith by the parties. The Debtors believe that the sale is fair and reasonable and will provide a benefit to their estates. As set forth above, the purchase price under the Agreement is the highest, and otherwise best, offer that the Debtors have received from a party that is ready, willing, and able to consummate a sale of Broadmoor.

23. Based on the foregoing, the Debtors believe that the sale of Broadmoor is a valid exercise of their business judgment and should be approved.

B. Request to Approve Sale Free and Clear Pursuant to 11 U.S.C. § 363(f)

24. By this Motion, the Debtors request that the Court approve the sale of Broadmoor free and clear of all liens, claim, and encumbrances. In evaluating such a sale, a court must balance the need for flexibility with the concern of affected creditors. *In re Terrace Gardens Park P'ship*, 96 B.R. 707, 715 (Bankr. W.D. Tex. 1989). The Court must also determine that creditors' lien rights are adequately protected and that the offered price is the highest price and/or best terms obtainable under the circumstances in the particular case. *Id.*; *In re Beker Indus. Corp.*, 63 B.R. 474, 477-78 (Bankr. S.D.N.Y. 1986).

25. The Debtors maintain that one of the five subsections of Section 363(f) of the Bankruptcy Code will be satisfied and, therefore, the Debtors may sell the Real Property free and clear of all liens, claims, and encumbrances. To the extent there are any liens or encumbrances on Broadmoor, including the liens of the DIP Lender and the Broadmoor Lenders, the Debtors submit that any such lien, claim, or encumbrance will be adequately protected by attachment to the net proceeds of the sale, subject to any claims and defenses the Debtors may possess with

respect thereto and/or the Debtors will obtain the consent of the party holding the lien, claim or encumbrance. Accordingly, the Debtors request that Broadmoor be sold to the Purchaser free and clear of all liens, claims, and encumbrances, with such liens, claims, and encumbrances attaching to the proceeds of the sale Broadmoor.

C. A Private Sale of Broadmoor is Appropriate Under Bankruptcy Rule 6004

26. Bankruptcy Rule 6004(f) permits a debtor to conduct a private sale pursuant to section 363 of the Bankruptcy Code. Specifically, Bankruptcy Rule 6004(f) provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1) (emphasis added). See *In re Alisa P’ship*, 15 B.R. 802, 802 (Bankr. D. Del 1981) (holding that manner of sale is within the debtor’s discretion); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998) (stating that debtor has authority to conduct public or private sales of estate property).

27. Accordingly, in light of Bankruptcy Rule 6004(f) and case law regarding section 363 sales, a debtor may conduct a private sale if a good business reason exists. See, e.g., *In re Pritam Realty, Inc.*, 233 B.R. 619 (D.P.R. 1999) (upholding the bankruptcy court’s approval of a private sale conducted by a chapter 11 debtor); *In re Condere Corp.*, 228 B.R. 615, 629 (Bankr. S.D. Miss. 1998) (authorizing private sale of debtors’ tire company where “[d]ebtor has shown a sufficient business justification for the sale of the assets to the [p]urchaser”); *In re Embrace Sys. Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995) (“A large measure of discretion is available to a bankruptcy court in determining whether a private sale should be approved. The court should exercise its discretion based upon the facts and circumstances of the proposed sale.”); *In re Wieboldt Stores, Inc.*, 92 B.R. 309 (N.D. Ill. 1988) (affirming right of chapter 11 debtor to transfer assets by private sale).

28. The Debtors submit that the proposed private sale of Broadmoor to the Purchaser in accordance with the Agreement, subject to higher and better offers which may be made at any time up to and including at the sale hearing, is appropriate in light of the facts and circumstances of these Chapter 11 Cases. For each day that passes, the Debtors' estates accrue continued administrative expenses for, among other things, interest on secured claims, real estate taxes and related expenses to maintain Broadmoor. Moreover, the Debtors believe that (i) the costs and delay arising from a lengthy, competitive auction process would be reasonably unlikely to increase value for the estate and (ii) the probability that a competing bidder will actually emerge with an offer higher or better does not justify the costs and risks associated with such delay. Furthermore, and as discussed above, the Purchaser is a public agency and not a private citizen. As a result, the Airport lacks sufficient flexibility to competitively participate in an auction setting. In light of these constraints, Purchaser made what the Debtors' have determined to be the highest and best bid for Broadmoor. Under the circumstances, and in light of the Purchaser's status as a governmental entity and the Debtors' substantial marketing and negotiation efforts to date, the Debtors believe that a private sale of Broadmoor under the terms of the Agreement, subject to higher and better offers made up to and including at the sale hearing, is appropriate and should be approved by the Court.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(H)

29. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Here, the need for the Court's approval of the Sale of Broadmoor and the attendant entry of the Sale Order on the timing set forth in the Agreement are crucial components to the Sale contemplated in the Agreement. Accordingly, the Debtors request that the Court waive the fourteen-day stay period under Bankruptcy Rule 6004(h).

30. Accordingly, the Debtors request that the Court (i) enter the Sale Order; and (ii) grant the Debtors other just relief.

NOTICE

31. Notice of this Motion has been provided by electronic transmission or regular mail to (a) all entities known to have expressed an interest in Broadmoor at any time; (b) all entities known to have asserted any lien, claim, interest or encumbrance in or upon Broadmoor; (c) all federal, state and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; (d) the United States Attorneys' office; (e) the state Attorney General's office where Broadmoor is located; (f) the Internal Revenue Service, (g) those parties who have filed the appropriate notice requesting notice of all pleadings filed in the Chapter 11 Cases; (h) counsel for the Committee; (i) the Purchaser; (j) the NC DoT; and (k) the Office of the United States Trustee for the Southern District of Texas. Additionally, the Debtors will serve the sale notice attached hereto as **EXHIBIT A** on all known creditors of WGM. The Debtors submit that, under the circumstances, no other or further notice is required for the solicitation of potential higher and/or better offers and for court approval of the Agreement and sale.

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CONCLUSION

32. The Debtors respectfully request that the Court enter the Sale Order and grant such other and further relief as is just and proper.

Dated: June 1, 2020

Respectfully submitted,

By: /s/ Michael D. Warner

Michael D. Warner (TX Bar No. 00792304)

Benjamin L. Wallen (TX Bar No. 24102623)

COLE SCHOTZ P.C.

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Ft. Worth, TX 76102

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Counsel for the Debtors

EXHIBIT A

Schotz P.C., 301 Commerce Street, Suite 1700, Fort Worth, Texas 76102 (Attn: Michael D. Warner, Esq.) (mwarner@coleschotz.com), (ii) counsel for the Official Committee of Unsecured Creditors Cozen O'Connor, 1201 North Market Street, Suite 1001, Wilmington, Delaware 19801 (Attn: Thomas J. Francella, Jr., Esq.) (tfrancella@cozen.com), and (iii) any persons who have filed a request for notice in the above-captioned chapter 11 cases on or before the Objection Deadline.

Failure of any entity to file an objection on or before the Objection Deadline shall be deemed to constitute consent to the sale of Broadmoor and other relief requested in the sale motion, and be a bar to the assertion, at the sale hearing or thereafter, of any objection to the Debtors' consummation and performance of the terms of the asset purchase agreement entered into with the Purchaser, if authorized by the Court.

Any party that wishes to submit a higher and/or better offer for Broadmoor must appear at the Sale Hearing with (i) a deposit of no less than 10% of the purchase price, (ii) acceptable evidence of financial ability to close, and (iii) an executed asset purchase agreement acceptable to the Debtors. If the Debtors receive higher and better offers, they will request that the court hold an auction at the Sale Hearing. Parties wishing to submit a higher and/or better offer for Broadmoor are encouraged to contact the undersigned Debtors' counsel as soon as possible.

This notice is subject to the full terms and conditions of Sale Motion.

Dated: June 1, 2020

Respectfully submitted,

By: /s/ Michael D. Warner

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Benjamin L. Wallen (TX Bar No. 24102623)
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