

Department of  
**Community Investment**

**Memorandum**

Monday, January 12, 2015

TO: Redevelopment Commission

FROM: Chris Fielding 

SUBJECT: Blackthorn Golf Course

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Included in the Commission packet is an executed purchase agreement between the Acquisitions Group LLC and the RDC. This Purchase Agreement clearly outlines the terms of the sale that would result in the transfer of the Blackthorn Golf Course to a private entity on or about February 6<sup>th</sup> 2015. Key terms that have been negotiated with the buyer include:

- The inclusion of a clause that would require RDC approval for the sale of the course within the first 3 years
- The terms by which the buyer will purchase the golf carts over the next 3 years (40,000, \$55,000, \$70,000)
- The purchase price of \$1.655 million to be paid in full at closing minus the earnest money held as performance guarantee
- The requirement that RDC buyout the current golf cart lease prior to closing in order to eliminate liability for cart users
- The inclusion of the minimum maintenance standards for the course into the future
- The return of all cash on hand, cash in accounts and any vendor deposits to the RDC

Staff is requesting the approval and execution of the enclosed Purchase Agreement. It is anticipated that additional closing documents will be required and may require execution by Marcia prior to closing.



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ASSET PURCHASE AGREEMENT

by and between

CITY OF SOUTH BEND, INDIANA, DEPARTMENT OF REDEVELOPMENT

and

ACQUISITION GROUP, LLC

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of January \_\_\_\_\_, 2015, is entered into by and between Acquisition Group, LLC, an Indiana limited liability company ("Buyer") and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission ("Seller").

### RECITALS

A. Seller is engaged in the ownership and operation of the golf course and clubhouse located at 6100 Nimitz Parkway, South Bend, Indiana 46628, commonly known as Blackthorn Golf Club (the "Business"); and

B. Seller wishes to sell, transfer and assign certain of Seller's assets to Buyer upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, warranties, representations and conditions contained in this Agreement, it is hereby agreed as follows:

#### 1. SALE AND PURCHASE OF ASSETS.

1.1. Purchased Assets. On the terms and subject to the conditions contained herein, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, at the Closing and effective as of the Closing Date (as each such term is defined in Section 4.1 of this Agreement), free and clear of all liens, claims and encumbrances, all of Seller's right, title and interest in and to all of Seller's assets and properties used in the Business wherever situated, except for those assets and properties specifically excluded by Section 1.2 hereof (the "Purchased Assets"). The Purchased Assets shall include all assets used in the Business wherever situated including, but not be limited to, the following:

1.1.1. Real Property and Improvements. The real property commonly identified as Blackthorn Golf Club, 6100 Nimitz Parkway, South Bend, Indiana 46628, as more particularly described in Exhibit A hereto, and any and all improvements thereon (the "Property").

1.1.2. Equipment. All equipment, machinery, tools, appliances, furnishings, furniture, fixtures, trade fixtures, fertilizer and pesticide inventory, supplies, telephone and computer equipment and other items of tangible personal property, including seventy-five (75) E-Z-Go TXT electric golf carts with related equipment (the "Golf Carts") located on the Property (collectively, the "Equipment").

1.1.3. Accounts Receivable. Seller's accounts receivable in connection with the Business as reflected in Seller's books and records identified in Section 1.1.8 below.

1.1.4. Contracts and Certain Other Rights of Seller. All rights and interests of Seller in, to and under any and all contracts assigned to Buyer to the extent permitted by law (the "Assigned Contracts"), and all other claims, rights and causes of action of Seller against third parties under such Assigned Contracts which relate to the Business.

1.1.5. Proprietary Rights. All trade names, logos, trademarks (including registrations and applications therefor), copyrights, data processing software, licenses, technology, trade secrets, know-how, customer and prospect lists, inventions, patents, patent applications, telephone numbers, domain names and websites owned or used by Seller specifically relating to the Business, and the goodwill associated therewith, and other proprietary information and rights employed or utilized in the conduct of the Business including, without limitation, the exclusive rights to the corporate and trade names "Blackthorn Golf"; "Blackthorn Golf Club", "Blarney Hole"; and all derivations thereof, any and all golfing leprechaun logos, and the URL "www.blackthorngolf.com".

1.1.6. Permits. All of Seller's right, title and interest in and to all permits, licenses, certificates of occupancy, approvals, authorizations and orders obtained from any governmental authority and relating to the Property and the Business, but only to the extent such permits may be transferred under applicable law.

1.1.7. Entitlements. All of Seller's right, title and interest in and to all land use entitlements, rights or approvals relating to or authorizing the ownership, development and/or operation of the Property; all plans and specifications, all contract rights (including any and all guarantees and warranties relating to the construction of any improvements); all architectural and engineering plans and reports, specifications and drawings, as-built drawings, maps; and any documents of the same or similar nature pertaining to the Property.

1.1.8. Books and Records. Copies of all books and records relating to the business of owning, operating, maintaining and/or managing the Property and Business, including without limitation all accounting, financial, tax, employment, sales and other records, but only to the extent permitted under applicable law and subject to Section 1.2.3 below.

1.1.9. Proceeds of Black Card Sales. All funds paid to Seller for the purchase of Black Card discount/membership cards (the "Black Cards") on or after January 1, 2015, less the amount expended by Seller to advertise, market, and promote sales of Black Cards on or after January 1, 2015, which shall be separately accounted for by Seller.

1.2. Excluded Assets. Notwithstanding anything to the contrary contained herein, the following assets (the "Excluded Assets") are excluded from the Purchased Assets and shall not be sold to Buyer upon Closing, and all of such Excluded Assets shall be retained by Seller as of the Closing Date:

1.2.1. Cash and Cash Equivalents. All of the cash on hand, petty cash, cash on deposit in banks or other financial institutions, prepaid accounts, prepaid expenses, deposits, claims for refunds, and security deposits of Seller and other cash equivalents, and funds in payroll accounts of Seller related to the Business.

1.2.2. Inventory. All current pro shop inventory of Seller in connection with the Business, that is held for resale and which has not been sold by the Closing Date.

1.2.3. Records. All personnel files and records and other records that Seller is required by law to retain in its possession.

1.2.4. Liquor License. The liquor license held by Seller in connection with the Business, which is not transferrable to Buyer under applicable law.

1.3. Name Following the Closing. Immediately following the Closing, Seller and/or any of its respective Affiliates, successors or assigns shall not thereafter use names which are, in the judgment of Buyer acting reasonably, confusingly similar to the names "Blackthorn Golf," "Blackthorn Golf Club", or "Blarney Hole."

1.4. Documentation. In order to effectuate the sale, assignment and transfer contemplated by Section 1.1 hereof, Seller shall execute and deliver on the Closing Date the Bill of Sale in the form attached hereto as Exhibit B (the "Bill of Sale"), the General Assignment in the form attached hereto as Exhibit C (the "General Assignment"), the Limited Warranty Deed in the form attached hereto as Exhibit D (the "Limited Warranty Deed"), and such other closing documents as shall be necessary or appropriate to vest or confirm in Buyer all right, title and interest of Seller in and to all of the Purchased Assets, all of which documents shall be in form and substance reasonably acceptable to Buyer.

1.5. Certain Consents to Assignment. To the extent that the assignment of any right or agreement the benefit of which is to be acquired by Buyer pursuant to this Agreement shall require the consent, approval, authorization, or waiver of any other party or governmental authority, and Buyer shall have waived the obtaining of such consent prior to the Closing Date, this Agreement shall not constitute a contract to assign or assume the same until such consent is obtained. If any such consent is not obtained, (a) this Agreement shall not constitute a sale, transfer, or assignment or an attempted sale, transfer, or assignment of the same if a sale, transfer, or assignment or an attempted, sale, transfer, or assignment without such consent, approval, authorization, or waiver would constitute a breach of such right or agreement or create in any party thereto the right or power to cancel or terminate such right or agreement, and (b) Buyer shall use commercially reasonable efforts, and Seller will cooperate with Buyer, to obtain any such required consent, authorization, approval, or waiver or to obtain in writing the release of all parties to such an agreement or a novation of all liabilities and obligations under such

an agreement, provided, however, that, in any event, Buyer will be solely responsible for all such liabilities and obligations from and after the Closing Date.

## 2. PURCHASE PRICE; ALLOCATION.

### 2.1. Purchase Price and Post-Closing Payments.

2.1.1. Purchase Price. Subject to the terms and conditions contained herein, Buyer agrees to pay, and Seller agrees to accept, as the "Purchase Price" for the Purchased Assets and for the covenants described in Section 9.1 hereof, an aggregate amount equal to One Million Six Hundred Fifty Five Thousand and No/100 Dollars (\$1,655,000.00). Buyer will deliver the Purchase Price in full in cash at Closing.

2.1.2. Post-Closing Payments. After the Closing, Buyer shall make the following payments to Seller (the "Post-Closing Payments"): Forty Thousand Dollars (\$40,000.00) due and payable on September 30, 2015; Fifty-five Thousand Dollars (\$55,000.00) due and payable on September 30, 2016; and Seventy Thousand Dollars (\$70,000.00) due and payable on September 30, 2017. The Post-Closing Payments shall not be deemed credits against the Purchase Price stated in Section 2.1.1 and shall have no effect on the Purchase Price stated in Section 2.1.1.

2.1.3. Post-Closing Reimbursement for Redeemed Gift Certificates. Seller has issued certain gift certificates or cards (collectively, the "Gift Certificates") related to the Business to customers which have not yet been redeemed. Notwithstanding any other provision of this Agreement to the contrary, Buyer expressly assumes liability for any valid Gift Certificate presented for redemption on or after the Closing Date. Buyer shall retain each Gift Certificate presented by a customer upon redeeming its full value. Buyer shall maintain a complete and accurate record of the Gift Certificates presented and/or redeemed on or after the Closing Date, including the date of presentation, the amount redeemed, the goods or services provided in exchange for the redemption, and a unique number or other identification of each Gift Certificate presented. On an annual basis beginning on September 1, 2015, Buyer will submit a verified report of the foregoing information to Seller. Upon Seller's satisfaction with the contents of Buyer's annual report and Seller's determination that all amounts stated therein were properly redeemed by Buyer, Seller will reimburse Buyer for the amount of Gift Certificates redeemed by Buyer during the reporting period. The amount of such reimbursement from Seller to Buyer may be deducted from the amount of the contemporaneous Post-Closing Payment due from Buyer to Seller in accordance with Section 2.1.2 of this Agreement. Seller's obligation to reimburse Buyer for the amount of Gift Certificates redeemed by Buyer shall not exceed a total of \$65,000.00 in the aggregate, and Seller shall not reimburse Buyer for the amount of any Gift Certificates redeemed by Buyer after September 30, 2017, regardless of the aggregate amount redeemed by Buyer on or before that date. The

reimbursement(s) contemplated in this Section 2.1.3 shall have no effect on the Purchase Price stated in Section 2.1.1.

## 2.2. Prorations and Other Payment Obligations.

2.2.1. Utilities. All utilities relating to the Purchased Assets, including without limitation electric, telephone, gas, cable, water, sewage, internet, wireless charges, shall be prorated as of the Closing Date, such that Buyer expressly agrees that it will be liable for all such utilities from and after the Closing Date.

2.2.2. Transfer Taxes. Buyer and Seller shall share equally in paying any state or local transfer taxes arising from the transactions contemplated by this Agreement.

## 3. ASSUMPTION OF LIABILITIES.

3.1. Liabilities of Seller Not Assumed. Except as specifically provided in this Agreement, and subject to the terms of Section 1.5 above, Buyer shall not assume, or in any way become liable for, any liabilities or obligations of Seller or the Business of any kind or nature, whether accrued, absolute, contingent or otherwise, or whether due or to become due, or otherwise, whether known or unknown, arising out of events, transactions or facts which shall have occurred, arisen or existed on or prior to the Closing Date, which liabilities and obligations, if ever in existence, shall continue to be liabilities and obligations of Seller (collectively, the "Excluded Liabilities"). Notwithstanding the foregoing sentence, in addition to those liabilities expressly assumed by Buyer by operation of any other provision in this Agreement, Buyer expressly assumes the following:

3.1.1. Trade Accounts. All trade accounts payable by Seller to third parties in connection with the Business that remain unpaid as of the Closing Date, except for any amounts stated in any invoice(s) presented to the Seller that the Seller agrees in advance of the Closing Date to pay.

3.1.2. Assigned Contracts. All liabilities and obligations arising under or relating to the Assigned Contracts.

3.1.3. Employees. All liabilities and obligations of Buyer relating to employee benefits, compensation, or other arrangements with respect to any employee arising on or after the Closing Date.

3.1.4. Taxes. All liabilities and obligations for taxes relating to the Business, the Purchased Assets or the assumed liabilities for any taxable period ending after the Closing Date, and Buyer's share of transfer taxes pursuant to Section 2.2.2 above.

3.1.5. Post-Closing Liabilities. All other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the Business and the Purchased Assets on or after the Closing Date, as specified in Section 4.1 below.

#### 4. CLOSING.

4.1. Time; Place. The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place on February 6, 2015, or an earlier or later date mutually agreed by the parties (the "Closing Date") at a mutually agreeable place. At the Closing, Seller shall sell, transfer, assign, convey and deliver to Buyer the Purchased Assets, and the parties shall execute and deliver the agreements, certificates, opinions and other documents required to be delivered pursuant to Section 1.4 and elsewhere in this Agreement.

4.2. Effective Time. Title to the Purchased Assets shall be deemed to have been transferred to Buyer effective as of the Closing Date.

4.3. Further Assurances. If at any time after the Closing Date Buyer shall consider or be advised that any further deeds, assignments or assurances in law or any other acts are necessary, desirable or proper to (a) vest, perfect or confirm, of record or otherwise, in Buyer, the title to the Purchased Assets, or (b) otherwise carry out the purposes of this Agreement, Seller agrees that it shall execute and deliver all such deeds, assignments and assurances in law and do all acts reasonably necessary, desirable or proper to vest, perfect and confirm title to such Purchased Assets in Buyer, and otherwise to carry out the purposes of this Agreement and the transactions contemplated by this Agreement and the expense of the foregoing shall be borne as provided in Section 12.3 hereof.

4.4. Closing Costs. Seller agrees to pay for closing costs up to, but not more than, the sum of (a) \$375.00, plus (b) half the total cost of recording fees. Buyer agrees to pay all closing costs not paid by Seller.

#### 5. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller represents and warrants to Buyer as follows:

5.1. Organization and Power. Seller has full power to execute and deliver this Agreement and to consummate each and all of the transactions contemplated hereby.

5.2. Authority. Seller has all necessary power and authority to make, execute and deliver this Agreement and all other agreements and documents to be executed and delivered pursuant hereto, and Seller has taken all necessary actions required to be taken to execute and deliver this Agreement and such other agreements, and to perform all of the obligations, undertakings and agreements to be observed and performed by each of them hereunder and thereunder, respectively. This Agreement has been duly executed and delivered by Seller, and constitutes the valid and binding agreement of Seller enforceable in accordance with its terms.



5.3. No Violation. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (a) will constitute a violation of, or be in conflict with, or result in a cancellation of, or constitute a default under, or create (or cause the acceleration of the maturity of) any debt, obligation or liability affecting, or result in the creation or imposition of any security interest, lien, or other encumbrance upon, any of the assets owned or used by Seller under: (i) any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Seller or the Business; (ii) any statute or law applicable to Seller or the Business; or (iii) any contract, agreement, indenture, lease or other commitment to which Seller is a party or by which Seller is bound; or (b) will cause any material change in the rights or obligations of any party under any such contract, agreement, indenture, lease or commitment. To the knowledge of Seller, no consent of, or notice to, any federal, state or local authority, or any private Person, is required to be obtained or given by Seller in connection with the execution, delivery or performance of this Agreement or any other agreement or document to be executed, delivered or performed hereunder by Seller, or to enable Buyer to continue to conduct the Business after the Closing Date in the manner in which it is currently conducted, except the following:

5.3.1. Joint Committee Approval. The Joint Committee (“Joint Committee”) was established and operates pursuant to that certain Agreement Among The South Bend Redevelopment Authority, The South Bend Redevelopment Commission And The St. Joseph County Airport Authority For The Operation And Management Of Blackthorn Golf Course, dated October 8, 1992 (the “Management Agreement”). In accordance with the Management Agreement, the Joint Committee must approve the sale of the Property as contemplated in this Agreement. The Joint Committee’s approval of the sale is a condition precedent to the Closing.

5.3.2. Redevelopment Authority Approval. In accordance with the Management Agreement, the South Bend Redevelopment Authority approved the sale of the Property as contemplated in this Agreement on December 17, 2014, by its Resolution No. 189.

5.3.3. Airport Authority Approval. In accordance with the Management Agreement, the St. Joseph County Airport Authority (the “Airport Authority”) must approve the sale of the Property as contemplated in this Agreement. The Airport Authority’s approval of the sale is a condition precedent to the Closing.

5.4. Ownership of Assets and Related Matters.

5.4.1. Ownership; Sufficiency of Assets. Seller warrants title to the Property only to the extent stated in the Limited Warranty Deed. Seller warrants that it has good and marketable title to all other Purchased Assets, free and clear from all liens, security interests, and other encumbrances, except as otherwise provided herein. The Purchased Assets constitute all the assets and properties necessary to conduct the Business as currently conducted, and Buyer agrees to

accept each Purchased Asset as-is, where-is, without any warranty as to its condition or suitability for use.

5.4.1.1 Golf Carts. Seller holds the Golf Carts under the terms of a lease. Seller's obtaining good and marketable title to the Golf Carts is a condition precedent to Closing.

5.4.2. Condition of Certain Assets. The equipment and other tangible property included in the Purchased Assets are in good operating condition and good state of repair, ordinary wear and tear excepted.

5.4.3. Environmental. Seller has no knowledge of any disposal of any substance deemed hazardous by applicable Environmental Laws on the Property during Seller's ownership of the Property. Seller has no knowledge of any leaks of petroleum products or hazardous materials from any storage facilities onto the Property or of any contaminated soil on the Property which violates applicable Environmental Laws pertaining to health or the environment or which requires remediation under applicable Environmental Laws. Seller also has no knowledge of the presence on the Property of friable asbestos or asbestos containing material deemed hazardous by applicable Environmental Laws. Further, Seller is aware that Buyer commissioned the preparation of a Phase I Environmental Assessment report in connection with the Property on or around September 25, 2014, but Buyer has not disclosed said report to Seller.

For purposes of this subparagraph 5.4.3, "Environmental Laws" means all present federal, state or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authorities, which relate to the environment and/or which classify, regulate, impose liability, obligations, restrictions on ownership, occupancy, transferability or use of the Property, and/or list or define hazardous substances, materials, wastes, contaminants, and/or pollutants and any similar federal, state or local laws and ordinances and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto and other state and federal laws relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any hazardous substances, materials, wastes, contaminants, and/or pollutants.

5.5. No Default, Violation or Litigation. Seller represents and warrants that it is not in violation in any material respect of any law, regulation, judgment or order of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality applicable to the Business, and Seller has not received any notice of claimed noncompliance. Seller further represents and warrants that, (a) there are no lawsuits, proceedings, claims or governmental investigations pending or, to the knowledge of Seller, threatened against or involving Seller or against or involving any of its properties or business, which could materially affect the Business or the Purchased Assets; and (b) there are no judgments, consents, decrees, injunctions,

or any other judicial or administrative mandates outstanding against Seller , which could materially affect the Business or the Purchased Assets.

5.6. Trademarks and Licenses. Seller owns, possesses or has certain licenses or similar rights to utilize all trademarks, trade names, service marks, franchises, and technology (including computer software) necessary for the conduct of the Business as presently conducted without, to the knowledge of Seller, any infringement of or conflict with the rights of others. The consummation of the transactions contemplated by this Agreement will neither terminate nor alter Buyer's ability to utilize the above described rights or the terms of such use.

5.7. Disclosure. To Seller's knowledge, no representation or warranty of Seller made hereunder or in the Schedules or in any certificate, statement or other document delivered by or on behalf of Seller hereunder contains any untrue statement of a material fact.

5.8. Fee Title. Seller holds fee simple title to the Property.

5.9 Use of Property. There exists no contract or enforceable promise between Seller and any owner of property in the Blackthorn Corporate Office Park restricting or limiting the uses or purposes of the Property.

## 6. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer represents and warrants to Seller as follows:

6.1. Organization, Power and Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Indiana, and has all requisite power and authority to own or hold under lease its properties and assets and to carry on the Business. Authority. Buyer has all necessary power and authority to make, execute and deliver this Agreement and all other agreements and documents to be executed and delivered pursuant hereto, and Buyer has taken all necessary actions required to be taken to authorize it to execute and deliver this Agreement and such other agreements, and to perform all of its obligations, undertakings and agreements to be observed and performed by it hereunder and thereunder, respectively. This Agreement has been duly executed and delivered by Buyer, and constitutes the valid and binding agreement of Buyer enforceable in accordance with its terms.

6.2 No Violation. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (a) will constitute a violation of, or be in conflict with, or result in a cancellation of, or constitute a default under, or create (or cause the acceleration of the maturity of) any debt, obligation or liability affecting, or result in the creation or imposition of any security interest, lien, or other encumbrance upon, any of the assets owned or used by Buyer under: (i) any term or provision of the articles of organization or bylaws (or other organic document) of Buyer; (ii) any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Buyer; (iii) any statute or law applicable to Buyer; or (iv) any contract,

agreement, indenture, lease or other commitment to which Buyer is a party or by which Buyer is bound; or (b) will cause any material change in the rights or obligations of any party under any such contract, agreement, indenture, lease or commitment. To the knowledge of Buyer, no consent of, or notice to, any federal, state or local authority, or any private Person, is required to be obtained or given by Buyer in connection with the execution, delivery or performance of this Agreement or any other agreement or document to be executed, delivered or performed hereunder by Buyer, or to enable Buyer to continue to conduct the Business after the Closing Date in the manner in which it is currently conducted.

6.3 Litigation. There are no lawsuits, proceedings, claims or governmental investigations pending or, to the knowledge of Buyer, threatened against or involving, Buyer or against or involving any of its properties or business, or against or involving any officers or directors of Buyer and which could have a material adverse effect on the performance of Buyer's obligations hereunder.

6.4 Disclosure. No representation or warranty of Buyer made hereunder or in any certificate, statement or other document delivered by or on behalf of Buyer hereunder contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

## 7. CONDITIONS AND DELIVERIES AT CLOSING.

7.1. Mutual Conditions. The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of each of the following conditions, unless waived by such party at or prior to the Closing Date:

7.1.1. No Suit. No suit, action or other proceeding or investigation shall to the knowledge of any party hereto be threatened or pending before or by any governmental agency or by any third party questioning the legality of this Agreement or the consummation of the transactions contemplated hereby in whole or in part.

7.2. Conditions to Buyer's Obligations. The obligation of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of each of the following conditions, unless waived by such party at or prior to the Closing Date:

7.2.1. Consents and Approvals. All material authorizations, consents, waivers, approvals or other action required in connection with the execution, delivery and performance of this Agreement by Buyer and Seller, and the consummation by such parties of the transactions contemplated by this Agreement, shall have been obtained, and Seller shall have obtained any authorizations, consents, waivers, approvals or other action required in connection with the execution, delivery and performance of this Agreement to prevent a material breach or default by Seller under any contract to which Seller is a party

and for the continuation of any agreement to which Seller is a party and which relates and is material to the Business or to the Purchased Assets.

7.2.2. Instruments of Transfer and Conveyance. Seller shall have delivered to Buyer the Bill of Sale, the General Assignment, the Limited Warranty Deed and such other closing documents as shall have been reasonably requested by Buyer, in form and substance reasonably acceptable to Buyer's counsel.

7.2.3. Current Coverage. Seller shall deliver to Buyer a certificate of insurance evidencing that commercial general liability insurance has been obtained (and is fully paid for) covering the Business through the Closing Date (the "Current Coverage").

7.3. Conditions to Seller's Obligations. The obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following conditions unless waived by such party at or prior to the Closing Date:

7.3.1. Good Standing. Buyer shall have delivered to Seller a certificate from the State of Indiana stating that Buyer is duly organized and is in good standing under the laws of the State of Indiana, which certificate shall be dated not more than thirty (30) days prior to the Closing Date.

7.3.2. Resolutions. Buyer shall have delivered to Seller such duly adopted resolutions of the governing body or individual(s), as the case may be, of Buyer consenting to and authorizing the purchase of the Business by Buyer, in form and substance reasonably acceptable to Seller's counsel.

7.3.3. Approvals. All material authorizations or approvals or other actions required in connection with the execution, delivery and performance of this Agreement by Buyer, and the consummation by Buyer of the transactions contemplated by this Agreement shall have been obtained, including, without limitation, the approvals identified in Sections 5.3.1 and 5.3.3 of this Agreement.

7.3.4. Instruments of Transfer and Conveyance. Buyer shall have delivered to Seller such closing documents as shall have been reasonably requested by Seller, in form and substance reasonably acceptable to Seller's counsel.

7.3.5. Purchase Price. The Purchase Price described in Section 2.1.1 shall have been paid by Buyer to Seller.

## 8. INDEMNIFICATION.

8.1. Indemnification of Buyer. Seller covenants and agrees with Buyer that it shall indemnify and hold harmless Buyer from and against any liability, loss, or damage, whether or not resulting from third party claims, suffered by Buyer (collectively "Buyer's Damages"), which arises out of or results from:

- (a) any untruth, inaccuracy or breach of or in the representations and warranties of Seller under this Agreement;
- (b) any Excluded Liabilities; or
- (c) any failure of Seller to perform or observe any term of or covenant in this Agreement.

The parties agree that Buyer's Damages will not include Buyer's attorneys' fees or litigation costs of any kind incurred in connection with any legal proceeding giving rise to Seller's obligation to indemnify Buyer, and Seller will not defend or reimburse such fees or costs the defense costs of Buyer in any such legal proceeding.

8.2. Indemnification of Seller. Buyer covenants and agrees with the Seller that Buyer shall reimburse, defend, indemnify and hold harmless Seller from and against any liability, loss, damage or expense (including, but not limited to, reasonable attorneys' and accountants' fees and expenses), whether or not resulting from third party claims, suffered by Seller (collectively "Seller's Damages"), which arises out of or results from:

- (a) any breach of the representations and warranties of Buyer contained in this Agreement;
- (b) all claims or demands made against Seller by any third parties to the extent arising as a result of Buyer's ownership, management, or conduct of the Business or the Purchased Assets after the Closing Date;
- (c) any failure of Buyer to perform or observe any term of or covenant in this Agreement;
- (d) any environmental condition existing on the Property on or after the Closing Date; or
- (e) any and all actions, suits, claims, proceedings, investigations, audits, demand, assessments, fines, judgments, costs and other expenses (including, without limitation, reasonable audit and legal fees and collection expenses) incurred by Seller resulting from the circumstances described in Sections 8.2(a) through (d) above.

8.3. Method of Asserting Claims. Subject to the time periods set forth in Section 8.4 hereof, the party seeking indemnity ("Indemnitee") will give prompt written notice to the party or parties providing indemnity ("Indemnitor") of any Claim (as defined below) which it discovers or of which it receives notice after the Closing Date and which might give rise to a Claim by it against Indemnitor under Section 8 hereof, stating the nature, basis and (to the extent known) amount thereof. Copies of any papers received in connection with a Claim shall be forwarded to Indemnitor together with the notice of the Claim. In case of any Claim or suit by a third party or by any governmental body, or any legal administrative or arbitration proceeding with respect to which Indemnitor may have

liability under the indemnity agreement contained in this Section 8, Indemnitor shall be entitled to participate therein, and, to the extent desired by Indemnitor, to assume the defense thereof, and after notice from Indemnitor to Indemnitee of the election to so assume the defense thereof, Indemnitor will not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense thereof, other than reasonable costs of investigation, unless Indemnitor does not actually assume the defense thereof following notice of such election. Indemnitee and Indemnitor will render to each other such assistance as may reasonably be required of each other in order to ensure proper and adequate defense of any such suit, claim or proceeding. Indemnitee will not make any settlement of any Claim which might give rise to liability of an Indemnitor under the indemnity agreement contained in this Section 8 without the prior written consent of Indemnitor, which consent shall not be unreasonably withheld. If Indemnitor shall desire and be able to effect a bona fide compromise or settlement of any such suit, claim or proceeding at its expense and such settlement includes as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnitee of a release from all liability in respect of such suit, claim or proceeding and does not provide any form of relief from the Indemnitee other than the payment of money damages or other money payment, and Indemnitee shall unreasonably refuse to consent to such compromise or settlement, then the Indemnitor's liability under this Section 8 with respect to such suit, claim or proceeding shall be limited to the amount so offered in compromise or settlement together with all legal and other expenses which may have been incurred prior to the date on which Indemnitee has refused to consent to such compromise or settlement. For purposes hereof, the term "Claim" shall mean any claim for which any of the Buyer Indemnified Parties or the Seller Indemnified Parties may be entitled to indemnification pursuant to Sections 8.1 or 8.2 above.

8.4. Nature and Survival of Representations. The representations and warranties made by the parties pursuant to Sections 5 and 6 of this Agreement shall survive the Closing for a period of 18 months following the Closing Date, and no Indemnitor shall be required to pay any Buyer's Damages or Seller's Damages, as the case may be, unless a notice of a claim therefor is received by such Indemnitor prior to such date.

8.5. Insured Losses. Notwithstanding any other term or provision of this Section 8, neither party shall be required to indemnify the other party for Seller's Damages or Buyer's Damages, as applicable, to the extent that such damages have been reimbursed by the indemnified party's receipt of insurance proceeds. In the event that insurance does not cover the full amount of the Seller's Damages or Buyer's Damages, as applicable, the indemnifying party shall remain liable for the difference between the insurance payment as described above and the amount of the Seller's Damages or Buyer's Damages, as applicable. Notwithstanding anything else herein to the contrary, in the event that the amount of indemnification to which an Indemnitee is entitled is reduced by any reason of such insurance payment, the Indemnitee shall be responsible for any increased premium(s) arising from such claim for insurance payment.

8.6. Injunctive and Other Relief. Notwithstanding any other provision contained in this Section 8, the parties specifically acknowledge that any breach by Seller

of Section 9.1 of this Agreement would result in irreparable injury to Buyer for which there is no adequate remedy at law. In the event of a breach of any of the terms and provisions of Section 9.1, Buyer shall be entitled to an order in any suit brought for that purpose to enjoin such other party from violating any of the terms and provisions of such Section. The remedies provided under this Section 8.6 shall be without prejudice to any other remedy or remedies available to the injured party under this Agreement or otherwise.

## 9. OTHER AGREEMENTS.

### 9.1. Covenants.

9.1.1. Non-Competition. Seller has transferred all of its rights to the Purchased Assets and the Business (including, without limitation, the Accounts) to Buyer hereunder and, in connection therewith, covenants and agrees that, until the fifth anniversary of the Closing Date, none of the Seller, its successors or assigns will, without the prior written consent of Buyer, operate a golf course, whether as an owner, consultant, manager, partner, independent contractor, agent or otherwise or by means of any corporate or other device, except for the operation of any golf courses owned and/or operated by the City of South Bend, by and through any of its departments or agencies, during the six (6) months immediately preceding the Closing Date (the "Existing Golf Courses"). The foregoing sentence shall not be deemed to prohibit, restrict, or otherwise limit the maintenance, expansion, or other functioning or the disposition of the Existing Golf Courses in any manner whatsoever.

9.1.2. Nonsolicitation. Seller further covenants and agrees that until the fifth anniversary of the Closing Date, it will not, without the prior written consent of Buyer, solicit or hire any Person employed or independently contracted in connection with the Business then or within the prior twelve (12) months of the Closing Date, whether as a partner, agent, employee, or otherwise.

9.1.3. Maintenance of Property. Buyer covenants and agrees, and the Limited Warranty Deed shall state, that Buyer will use its best efforts to maintain the Property as a public 18-hole golf course in good condition and in accordance with the Blackthorn Golf Course Minimum Course Maintenance Standards set forth in the Limited Warranty Deed, as determined in Seller's sole discretion, which discretion shall be reasonable under the circumstances.

9.1.4. Conveyance. Buyer covenants and agrees, and the Limited Warranty Deed shall state, that Buyer will not, without the prior written consent of Seller, sell, transfer, or otherwise convey the Property or any interest therein (including a transfer effected by any change in the ownership of Buyer) for a period of three (3) years following the Closing Date.

9.2. Acknowledgment. Buyer and Seller acknowledge that the restrictions and covenants set forth in such Section 9.1 are reasonable in time, scope and



duration, and are essential to the preservation of the value of the Purchased Assets purchased by Buyer hereunder.

## 10. SECURITY INTEREST

10.1 Grant of Security Interest. To secure Buyer's payment of the Post-Closing Payments to Seller as provided in this Agreement, Buyer grants to Seller, the secured party, a continuing lien on and security interest in all the Golf Carts and related equipment existing on the Property as of the Closing Date. Buyer agrees to keep the Golf Carts in good repair and condition and to use the Golf Carts only for their commercially intended purposes. Buyer will not sell, transfer, or otherwise convey any interest in the Golf Carts without Seller's prior written consent. Buyer hereby authorizes Seller to file on its behalf all appropriate financing statements or other filings to perfect the security interest granted herein.

## 11. DEFAULT/REMEDIES.

11.1. Seller's Default. In the event Seller shall default in any of its covenants, agreements or obligations hereunder or if Seller should fail to consummate the sale contemplated herein for any reason other than a default by Buyer, then, provided that Buyer is not then in default of any of Buyer's covenants, agreements or obligations hereunder, Buyer may:

(a) terminate this Agreement, without further liability on Buyer's part (except for Buyer's indemnity and other obligations set forth herein which expressly survive), in which event the Earnest Money deposit and all accrued interest on the Earnest Money deposit shall be returned to Buyer by Seller; or

(b) enforce specific performance of this Agreement.

11.2. Buyer's Default. In the event Buyer shall default in any of its covenants, agreements or obligations hereunder or if Buyer should fail to consummate the sale transaction contemplated herein for any reason other than a default by Seller, and provided that Seller is not then in default of any of Seller's covenants, agreements or obligations hereunder, Seller may terminate this Agreement and retain the Earnest Money deposit without any right on Buyer's part to claim or recover the Earnest Money deposit. Seller acknowledges and agrees that Seller may not enforce specific performance of this Agreement and that forfeiture of the Earnest Money deposit reflects Seller's and Buyer's good faith, reasonable estimate of Seller's actual damages.

11.3. Earnest Money. As used in this Section 11, "Earnest Money" is defined as the amount equal to Sixteen Thousand Five Hundred Fifty Dollars (\$16,550.00) deposited with Seller by Buyer in connection with its bid for the Property.

## 12. GENERAL PROVISIONS.

The parties further covenant and agree as follows:

12.1. Waiver of Terms. Any of the terms or conditions of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof but only by a written notice signed by the party or parties waiving such terms or conditions.

12.2. Amendment of Agreement. This Agreement may be amended, supplemented or interpreted at any time only by written instrument duly executed by each of the parties hereto.

12.3. Payment of Expenses. Except as otherwise specifically provided in this Agreement, the parties shall each pay its or their own expenses, including, without limitation, the expenses of its or their own counsel, advisors and accountants, incurred in connection with the preparation, execution and delivery of this Agreement and the other agreements and documents referred to herein and the consummation of the transactions contemplated hereby and thereby. Notwithstanding anything to the contrary in this paragraph 12.3, Seller shall be responsible for any and all closing costs related to the transfer of the Property and Business to Buyer.

12.4. Contents of Agreement, Parties in Interest, Assignment. This Agreement and the other agreements and documents referred to herein set forth the entire understanding of the parties with respect to the subject matter hereof. Any previous agreements or understandings between the parties regarding the subject matter hereof, including without limitation, the Seller's Request for Proposal package which expired at 9:00 a.m. on October 16, 2014, and Buyer's Final Bid package to Seller, dated October 14, 2014, are merged into and superseded by this Agreement. All representations, warranties, covenants, terms and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, legal representatives, successors and permitted assigns of the parties hereto; provided, however, that none of the rights or obligations of any of the parties hereto may be assigned without the prior written consent of, in the case of assignment by Seller, Buyer, or, in the case of assignment by Buyer, Seller, which consent shall not unreasonably be withheld. Notwithstanding the foregoing, Buyer may assign any of its rights or obligations to a wholly-owned subsidiary of Buyer without the consent of Seller.

12.5. Buyer's Acceptance. Buyer has not relied on any representations made by Seller other than those specified in this Agreement. Buyer further acknowledges that Seller has made no agreement or promise to repair or improve any of the Purchased Assets being transferred under this Agreement, except as otherwise set forth herein.

12.6. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder shall be by hand-delivery, certified or registered mail, return receipt requested, telecopier (if a telecopier number is provided), or air courier to the parties set forth below. Such notices shall be deemed given at the time personally delivered, if delivered by hand or by courier, at the time received, if sent certified or registered mail, and when receipt is acknowledged by telecopy equipment, if telecopied.

If to Buyer:

Acquisition Group, LLC

Attn: Timothy P. Firestone, Manager  
124 N. Sunnyside Drive  
South Bend, IN 46617

With copies to:

Joseph R. Herbert  
1450 Corvey Court  
Walnut Creek, CA 94598  
Telecopier: (415) 633-0169

and

Sopko, Nussbaum, Inabnit & Kaczmarek  
Attn: Christopher M. Keefer, Esq.  
210 S. Michigan Street, Suite 500  
South Bend, IN 46601  
Telecopier: (574) 234-4220

If to Seller:

City of South Bend Department of  
Redevelopment  
Attn: Scott Ford, Executive Director of South  
Bend Department of Community Investment  
1400 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601  
Telecopier: (574) 235-9021

With a copy to:

City of South Bend Legal Department  
Attn: Cristal Brisco, Corporation Counsel  
1200 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601  
Telecopier: (574) 235-7670

12.7. Severability. The parties hereto hereby expressly agree and contract that it is not the intention of any party to violate any public policy, statute or common law principle, and that if any provision of this Agreement is ultimately determined to be invalid as applied to any fact or circumstance, it is their desire that such provision shall be modified by the minimum extent necessary to render it valid and shall not affect any other provision or the same provision, applied to any other fact or circumstance.

12.8. Attorneys' Fees. In the event any action is initiated for any breach of default in any of the terms or conditions of this Agreement, then the party in whose favor judgment shall be entered shall be entitled to have and recover from the non-prevailing party all costs and expenses (including attorneys' fees) incurred in such action and any appeal therefrom.

12.9. Exhibits. The exhibits referred to herein and attached hereto are incorporated herein by reference as if fully set forth in the text hereof.

12.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.11. No Third Party Beneficiary. This Agreement creates rights and duties only between the parties, and no third party is or shall be deemed to be or shall have any rights as a third party beneficiary.

12.12. Time is of the Essence. Time is of the essence for the performance of each and every obligation hereunder.

12.13. Headings and Conjunctions. The headings of the Sections and the subsections of this Agreement are inserted for convenience of reference only and shall not constitute a part hereof. The use of the singular shall be determined to include the plural.

12.14. Governing Law; Jurisdiction. IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF INDIANA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICT OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. BUYER AND SELLER AGREE TO SUBMIT TO PERSONAL JURISDICTION AND TO WAIVE ANY OBJECTION AS TO VENUE IN THE COUNTY OF ST. JOSEPH, STATE OF INDIANA. SERVICE OF PROCESS ON BUYER AND SELLER, IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE EFFECTIVE IF MAILED TO SUCH PARTY AT THE ADDRESS LISTED ABOVE.

12.15. Waiver of Jury Trial. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON,

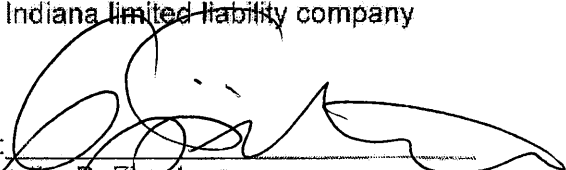
AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO ENFORCE OR DEFEND ANY RIGHTS OR REMEDIES UNDER THIS AGREEMENT.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the day and year first above written.

CITY OF SOUTH BEND, INDIANA,  
DEPARTMENT OF REDEVELOPMENT

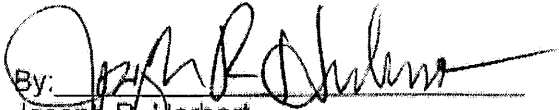
ACQUISITION GROUP, LLC,  
an Indiana limited liability company

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Timothy P. Firestone,  
Authorized Representative

ATTEST

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Joseph R. Herbert,  
Authorized Representative

## **Exhibit A**

### **LEGAL DESCRIPTION OF PROPERTIES**

Lot Numbered Six (6) as shown on the recorded Plat of Blackthorn Corporate Office Park, recorded October 7, 1994 as Document Number 9438010 in the Office of the Recorder of St. Joseph County, Indiana (Parcel No. 71-03-30-200-002.000-009).

Lot Numbered Seven "A" (7A) as shown on the recorded Plat of Blackthorn Corporate Office Park, Minor #10 and Blackthorn Corporate Office Park, First Replat recorded July 19, 2006 as Instrument Number 0630469 in the Office of the Recorder of St. Joseph County, Indiana (Parcel No. 71-03-30-200-003.000-009).

**Exhibit B**

**BILL OF SALE**

The City of South Bend, Indiana, Department of Redevelopment ("Seller"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with and subject to the terms and provisions of the Asset Purchase Agreement by and among Acquisition Group, LLC, an Indiana limited liability company ("Buyer"), and Seller, dated as of \_\_\_\_\_, 2015 (the "Asset Purchase Agreement"), hereby transfers, conveys, assigns and delivers to Buyer, its successors and assigns all of Seller's right, title and interest in and to all of the "Purchased Assets" as such term is defined in the Asset Purchase Agreement.

THE TRANSFER, CONVEYANCE, ASSIGNMENT AND DELIVERY CONTEMPLATED BY THIS BILL OF SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY SELLER EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THE ASSET PURCHASE AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, EXCEPT AS SPECIFICALLY SET FORTH IN THE ASSET PURCHASE AGREEMENT, SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PURCHASED ASSETS.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of \_\_\_\_\_, 2015.

CITY OF SOUTH BEND, INDIANA,  
DEPARTMENT OF REDEVELOPMENT

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit C**

**GENERAL ASSIGNMENT**

STATE OF INDIANA            )  
  )  
COUNTY OF ST. JOSEPH    )        KNOW ALL MEN BY THESE PRESENTS

That concurrently with the execution and delivery hereof, The City of South Bend, Indiana, Department of Redevelopment ("Assignor"), is conveying to Acquisition Group, LLC, an Indiana limited liability company ("Assignee"), by the appropriate Bill of Sale certain personal property as stated therein.

It is the desire of Assignor to hereby transfer, convey, assign and deliver to Assignee all of its interest in the personal property more specifically described herein.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged by Assignor, Assignor does hereby TRANSFER, CONVEY, ASSIGN and DELIVER to Assignee, its successors and assigns, all of Assignor's right, title and interest in and to all of the "Purchased Assets" as such term is defined in that certain Asset Purchase Agreement (the "Asset Purchase Agreement") by and among Assignee, and Assignor, dated as of \_\_\_\_\_, 2015, other than the Purchased Assets that are being transferred, conveyed, assigned and delivered by Assignor to Assignee pursuant to that certain Bill of Sale dated the date hereof.

THE TRANSFER, CONVEYANCE, ASSIGNMENT AND DELIVERY CONTEMPLATED BY THIS GENERAL ASSIGNMENT SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY ASSIGNOR EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF ASSIGNOR SET FORTH IN THE ASSET PURCHASE AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, EXCEPT AS SPECIFICALLY SET FORTH IN THE ASSET PURCHASE AGREEMENT, ASSIGNOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PURCHASED ASSETS.

IN WITNESS WHEREOF, Assignor has executed this assignment as of \_\_\_\_\_, 2015.

CITY OF SOUTH BEND, INDIANA,  
DEPARTMENT OF REDEVELOPMENT

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_



**Exhibit D**

**LIMITED WARRANTY DEED**

**This Instrument Prepared By:**

Christopher M. Keefer  
5th Floor - Plaza Building  
210 S. Michigan St.  
South Bend, Indiana 46601

**After Recording, Return to:**

Acquisition Group, LLC  
124 N. Sunnyside Ave.  
South Bend, IN 46617

Property Appraiser's Tax Folio No.:  
[LIST]

*This space reserved for Recorder's use only.*

**LIMITED WARRANTY DEED**

THIS INDENTURE WITNESSETH, that City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission ("Grantor"), CONVEYS AND SPECIALLY WARRANTS to Acquisition Group, LLC, an Indiana limited liability company ("Grantee"), for the sum of One Million Six Hundred Fifty-Five Thousand Dollars (\$1,655,000.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described real estate located in St. Joseph County, State of Indiana:

Lot Numbered Six (6) as shown on the recorded Plat of Blackthorn Corporate Office Park, recorded October 7, 1994 as Document Number 9438010 in the Office of the Recorder of St. Joseph County, Indiana (Parcel No. 71-03-30-200-002.000-009).

Lot Numbered Seven "A" (7A) as shown on the recorded Plat of Blackthorn Corporate Office Park, Minor #10 and Blackthorn Corporate Office Park, First Replat recorded July 19, 2006 as Instrument Number 0630469 in the Office of the Recorder of St. Joseph County, Indiana (Parcel No. 71-03-30-200-003.000-009).

Such real estate (collectively, the "Property") is commonly known as Blackthorn Golf Club, 6100 Nimitz Parkway, South Bend, Indiana 46628.

It is understood and agreed by the parties hereto that title to the Property is warranted only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.

Each of the undersigned persons executing this Limited Warranty Deed (the "Deed") on behalf of Grantor represents and certifies that s/he is a duly authorized representative of Grantor and has been fully empowered, by proper action of the governing body of Grantor, to execute and deliver this deed; that Grantor has full capacity to convey the real estate described herein; and that all necessary action for the making of such conveyance has been taken and done.

This Deed is subject to any and all easements, covenants, conditions, restrictions, and other matters of record, including, without limitation, the matters stated in the Warranty Deed granted by the St. Joseph County Airport Authority dated October 12, 1992, and recorded on October 13, 1992, as Document No. 9237762 in the Office of the Recorder of St. Joseph County, Indiana (the "Airport Authority Deed"); subject to the lien for real property taxes not delinquent; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the real estate; and subject to all applicable building codes and zoning ordinances.

Grantee, for itself and its successors and assigns, covenants (1) that it shall maintain the Property as a public 18-hole golf course in good condition and in accordance with the Blackthorn Golf Course Minimum Course Maintenance Standards attached hereto as Exhibit 1, as determined in Grantor's sole discretion, which discretion shall be reasonable under the circumstances, and (2) that it will not, without the prior written consent of Grantor, sell, transfer, or otherwise convey the Property or any interest therein (including a transfer effected by any change in the ownership of Grantee) for a period of three (3) years following the date of this Deed. The covenants stated in this Deed shall be covenants running with the land and shall be binding for the benefit of and shall be enforceable by Grantor, the City of South Bend, Indiana, and any successors in interest to the Property against Grantee, its successors and assigns, every successor in interest to the Property, and any party in possession or occupancy of any part of the Property.

If, subsequent to Grantor's delivery of this Deed to Grantee, Grantee shall violate any covenant, condition, or restriction stated in the foregoing paragraph of this Deed or stated in the Airport Authority Deed, then Grantor shall have the right, at its option, to re-enter and take possession of the Property and to terminate and revert in Grantor the estate conveyed by this Deed to Grantee. The intent of this provision is that Grantee's compliance with said covenants, conditions, and restrictions is a condition subsequent upon which the conveyance of the Property to Grantee is made.

IN WITNESS WHEREOF, Grantor has executed this deed this \_\_\_ day of \_\_\_\_\_, 2015.

GRANTOR:

City of South Bend, Indiana Department of Redevelopment

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF INDIANA    )  
                                  ) SS:  
ST. JOSEPH COUNTY )

Before me, a Notary Public in and for said County and State, appeared \_\_\_\_\_ and \_\_\_\_\_, the duly authorized \_\_\_\_\_ and \_\_\_\_\_ of the South Bend Redevelopment Commission, the governing body of the City of South Bend, Indiana Department of Redevelopment, who acknowledged the execution of the foregoing Limited Warranty Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that any representations therein contained are true on the \_\_\_ day of \_\_\_\_\_, 2015.

My Commission Expires:

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Residing in St. Joseph County

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Christopher M. Keefer

Grantee's mailing address for tax statements is: Acquisition Group, LLC, 124 N. Sunnyside Ave., South Bend, IN 46617.

EXHIBIT 1 TO LIMITED WARRANTY DEED

BLACKTHORN GOLF COURSE  
MINIMUM COURSE MAINTENANCE STANDARDS

The following outlines standard annual minimum maintenance routines, and the policies that will govern the maintenance operations.

GREENS, PRACTICE PUTTING GREENS & NURSERIES

- A. Mowing - seven days per week at a height of  $\frac{3}{16}$ " -  $\frac{1}{4}$ " during the growing season for bent grass. Mowing height of collar or apron of green should be the same as height of cut for tees.
- B. Change cup locations on all greens and practice putting greens daily during the active season. Cup location will be moved at least twenty feet from the previous placement and will be determined by the weekly/daily cut placement plan. As a rule, six cups will be set back, six will be set middle and six will be set front.
- C. Repair hallmarks, divots or any other damaged turf on or near all greens and practice greens daily. Crews are expected to spend at least 10 minutes per day, per hole on this task.
- D. Aerify all greens, practice putting greens and nurseries at least three times per year, or as dictated by conditions.
- E. Topdress all greens, practice putting greens and nurseries as needed to maintain a smooth putting surface. Topdressing will be a mix similar to that used to construct the greens.
- F. Light vertical mowing of all greens, practice putting greens and nurseries shall be performed as appropriate to smooth and true the putting surfaces.
- G. Spiking of all greens and practice greens shall be performed as needed between aerifications to maintain water infiltration.
- H. Fertilization - All bent grass greens, practice greens and nurseries shall receive a complete fertilizer (3-1-2 ratio) at rate of  $\frac{1}{2}$  lbs. N/M per growing month.
- I. Fungicide - All greens, practice greens and nurseries shall have appropriate fungicide applications to prevent and/or control fungal disease activity. (Preventative applications are essential on bent grass).

- J. Pre-emergent herbicides such as Balan, Dacthal, etc., shall be used in the appropriate amounts and appropriate times to prevent intrusion into the greens of weeds difficult to eradicate.
- K. Weed Control - All greens, practice greens and nurseries shall be maintained free of undesirable grasses and weeds.
- L. Insecticides - All greens, practice greens and nurseries shall be treated as necessary to prevent or halt insect damage.
- M. Speed - The desired average green speed, as measured by a stimpmeter shall be 9.0 to 9.5. Greens may be maintained at a slower speed if necessary during periods of stress or intensive maintenance, or at a faster speed for certain tournaments (e.g. a U.S. Open qualifier).

TEES - ALL AREAS USED FOR TEE SURFACE

- A. Mowing - All tees shall be mowed at a height of 3/8" - 5/8" four times per week during growing season.
- B. Topdressing - All worn areas on tees shall be topdressed weekly, or more often if needed, to fill divots and level tee surface.
- C. Seeding - All tee areas shall be overseeded annually at a rate of not less than 10 lbs. /1,000 square feet. Seed used shall be a suitable species or blend.
- D. Set Up - Tee markers and all tee equipment shall be moved daily for proper teeing and control of turf wear. Placement of tees shall be done in conjunction with pin positions and per a weekly plan.
- E. Weed Control - Tees shall be kept weed free to an extent of at least 98% of the area by the proper and timely application of post-emergent herbicides.
- F. Vertical Mowing - All tees shall be vertically mowed as necessary to control mat or thatch build-up or uneven growth.
- G. Aerification - All tees shall be aerified at least every two months from March through October.
- H. Fertilizer - All tees shall be fertilized with complete fertilization (3-1-2 ratio) equal to greens applications.

FAIRWAYS - ALL AREAS OF PLAY EXCEPT GREENS, TEES, AND NATURAL GROWTH AREAS

- A. Mowing - All fairways shall be mowed at least three times per week at a height of 1/2" - 7/8" during the growing season and as needed for the balance of the year. Contour mowing shall be maintained.
- B. Aerification - All fairways shall be aerified a minimum of two times per year, once in spring and summer. Aerification holes shall not exceed a spacing of eight inches on center or be of a diameter of less than 1/2".
- C. Fertilization - All fairways shall be fertilized with a complete fertilizer per soil test results at a rate of 1lb. N/M for minimum of 2 applications.
- D. Vertical Mowing - All fairways will be vertically mowed as necessary to control mat or thatch build-up.
- E. Weed Control - Fairways shall be kept weed free to an extent of at least 98% of the area by the proper and timely application of pre-emergent and/or post-emergent herbicides.

ROUGHES

All turfed areas of play except greens, tees, fairways and natural growth areas.

- A. Mowing - All roughs shall be mowed as necessary during the year to maintain heights of 1 1/4" - 1 1/2".
- B. Aerification
  - 1) Fairway-to-tree line play areas shall be aerated at least two times per year.
  - 2) Within wooded play areas - as necessary to establish and/or maintain turf.
- C. Fertilization - Roughs shall be fertilized as equal to fairway applications.
- D. Weed Control - Shall be performed as necessary to control seed formation, or to allow proper play.



### NATURAL GROWN AREAS

All areas in which native or introduced vegetation is allowed to survive without routine mowing, cultivating, irrigation or other routine turf maintenance procedures. May be out of play areas, steep slopes, barriers, windbreaks, nature trails, etc. Such areas are to be maintained free of trash, noxious weeds and vertebrate pests, and in such manner as to comply fully with fire department regulations or other such regulations as may apply. Such natural growth areas may be improved and may from time to time be subjected to irrigation, cultivation, pruning, or other such practices as may be necessary or desirable to establish or maintain them.

### PLANTERS - ALL AREAS PLANTED WITH ORNAMENTAL PLANTS, NOT INTENDED FOR GOLF PLAY AND HAVING A DEFINABLE BORDER

- A. Clean Up - All planters shall be maintained free of trash and debris such as paper, drinking cans, bottles, fallen limbs and leaves, etc.
- B. Weed control - All planters shall be maintained free of weeds or grass whether by mechanical, manual or chemical means.
- D. Trimming - The plant material (trees, shrubbery and ground covering) in planters shall be trimmed for protection from wind and insect damage and for appearance.

### TREES - ALL TREES WITHIN THE PROPERTY LINES OF THE GOLF COURSE

- A. Stakes - Trees shall be staked as necessary until of sufficient size to stand unassisted. Stakes shall be removed as soon as possible.
- B. Pruning - All trees shall be properly pruned for protection from wind and pests as well as for appearance and safety by using established arboricultural practices.
- C. Mowing - Large area mowers shall not be used within one foot of the trunk of any tree.
- D. Removal and Replacement - All dead trees, for whatever cause, shall be removed and replaced within twenty working days. Replacement shall be made with a tree of appropriate type and size.

IRRIGATION—ALL EQUIPMENT REQUIRED TO IRRIGATE ALL AREAS OF THE PROPERTY

- A. Repair or replace all heads, valves, controllers, wiring and pipe as needed to maintain the proper operation of the entire golf course irrigation system (including greens, tees, fairways, planters, flower beds, etc.) on an on-going basis.
- B. The golf course shall be irrigated as necessary to support proper growth of the golf turf and associated landscaping (trees, shrubs, flowers, etc.).
- C. The course shall comply with any applicable local laws, moratoriums or restrictions relative to golf course watering.

FENCES—ALL FENCES AND WALLS, CHAIN LINK OR BARBED WIRE, ETC., ON OR WITHIN BOUNDARIES OF THE PROPERTY

- A. Repair all broken or damaged fencing as necessary.
- B. Immediately repair or replace as necessary all fences, gates and locking devices needed for the protection of the golf course or equipment.

CLUBHOUSE AND STRUCTURES — ALL STRUCTURES WITHIN THE BOUNDARIES OF THE GOLF COURSE

- A. **Course Restrooms:** All course restrooms shall be checked at least hourly and maintained in a manner so as to provide clean and sanitary facilities for the public as well as employees of the course. Soap, towels, toilet paper, etc. shall be provided in adequate quantity at all times. Portable facilities shall be maintained similarly. There are to be no exceptions to this clean restroom policy.
- B. All buildings and structures shall be maintained in good repair at all times. Surrounding areas shall be maintained free of weeds, brush, disorganized junk or broken equipment, trash piles, etc. Interior areas shall be clean and neatly organized, safe and sanitary, for customers and employees. Painting, rodent and insect control, and landscaping shall be performed as necessary.
- C. **Cart Paths:** Maintain all cart paths in a smooth and clean condition and repair promptly.

### EDGING

All sidewalks, patios and concrete paths must be kept edged. Edging around valve boxes, meter boxes, backflow preventers, etc. shall be done as needed to insure that there is no obstruction of play or maintenance from growth around these items.

### SAND TRAPS

All sand traps shall be edged as necessary to maintain an appropriate lip, raked daily and filled with fresh sand as needed to maintain a minimum of 4" depth on slopes and in the bottom. Replacement sand will be of a dust-free type, suitable for trap use and compatible with the original course sand in appearance and playability.

### PRACTICE CENTER

- A. Practice holes will be maintained in every respect in the same manner as the holes on the golf course.
- B. Range tee will be maintained more aggressively than golf course tees to insure rotation of hitting status and good quality grass tee areas for patrons.
- C. Individual tee stations will be delineated at 10-foot minimal intervals using ropes or other markers. Bag racks will be provided at all stations.

### COLOR AREAS

The various planting areas throughout the course shall be cultivated, weeded, pruned and fertilized on a regular basis, with at least two replanting programs for annuals scheduled each year.

### CREWS

Other than during inclement weather, a maintenance crew of sufficient size shall be on duty at the course daily supervised by the superintendent. Regular hours will be established and maintained.

### TRASH AND REFUSE

Shall be collected daily and removed from the property as necessary to ensure minimal problems from refuse odors, insects, etc.

### VERTEBRATE PEST CONTROL

Shall be routinely performed throughout the property on an on-going basis, in such a manner that vertebrate pest populations are steadily reduced and eventually eliminated, in a fashion consistent with applicable state laws.

### AQUATIC

All lakes, ponds and streams shall be maintained in a safe and sanitary manner and in good appearance through the application of appropriate aquatic vegetative controls.

### SOIL AND WATER

Analysis will be performed yearly by an approved professional laboratory. Soil ph of turf shall be maintained at a level of 6.3 to 6.8. Planter soil shall have a ph agreeable with plant species.