Advance Preparation
Golf Market Analysis
Golf Property Appraisals
How Buyers Determine Value—The Exit Strategy Approach
Employment
Accelerated Sales Process
Buyer’s Most Frequently Asked Questions
Purchase And Sale Agreements
Common Closing Issues And Problems
HOW TO BUY AND SELL A GOLF COURSE

Introduction by
Henry DeLozier, Global Golf Advisors

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This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances, nor is it intended to address specific disclosure or compliance issues that may arise in particular circumstances or provide an exhaustive discussion of the topics discussed herein. The contents are intended for general informational and educational purposes only, and you are urged to consult counsel concerning your particular situation and any specific legal questions you may have. For further information regarding the topics described herein, you may contact any of the contributors.

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**Additional Resources**

This guide represents the best advice of lawyers, appraisers, brokers and consultants who specialize in the specific category of golf course deals. The NGCOA thanks each of the contributors, all of whom are experts in their fields, for making this resource possible. How to contact them is outlined in each chapter.

For those who wish to learn more, we suggest exploring two additional NGCOA resources: The Buyers Guide and Golf Course Market. The Buyers Guide is an online directory of a wide variety of consultants and suppliers to the golf industry. It can be found at www.ngcoabuyersguide.com. The Golf Course Market offers property listings available for sale, making it a resource for a buyer’s review, as well as an excellent advertising vehicle for sellers. It can be found at www.golfcoursemarket.com and in every issue of Golf Business.
Introduction

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How do I know what I don’t know?” Every golf course owner poses a similar question when it comes to buying or selling a golf course. The fact of the matter is that the sale and purchase of a golf course is a straight-forward transaction that becomes uniquely complicated by the circumstances of each golf course. The National Golf Course Owners Association (NGCOA) has prepared this useful guide to help each golf course owner plan and prepare for a successful golf course transaction.

This guide represents the best advice of lawyers, appraisers, brokers and consultants who specialize in the specific category of golf course deals. Nevertheless, this guide does not profess to be ‘everything that one should know’ but it includes the important aspects for which one should prepare. In addition, invaluable checklists and reference points are included to help. These transactional elements that follow are a part of every golf course transaction.

As soon as one begins to contemplate the purchase or sale of a specific golf course, Chapter 1 becomes the guide. Robyn Nordin Stowell, the remarkable attorney who specializes in golf course transactions (robyn.stowell@hro.com) for the firm of Holme, Roberts & Owen (www.hro.com), provides comprehensive instruction for assembling all of the information and documentation about the course that is required to execute the transaction. This chapter provides the foundation of the deal.

Larry Hirsh (larry@golfprop.com), the Founder and President of Golf Property Analysts (www.golfprop.com) fills Chapter 2 with a careful explanation of market analysis. One of the baselines that must exist for a balanced transaction is a clear and objective understanding of the local golf market.

In Chapter 3, Larry provides the basics that formulate the golf course appraisal. Investors, lenders and fellow deal-makers rely upon the appraised value in establishing a basis for each golf course deal. It is wise to understand the appraisal process together with the limitations and opportunities that it can represent.

The masterful deal-maker, Ken Arimitsu (karimitsu@coreland.com) shows how buyers determine the value of a golf course in Chapter 4. The significance of the buyers’ viewpoint is that it begins to demonstrate ‘market value’ - usually a factor of cash flow of the golf course multiplied by a current-market capitalization rate. As the Director of Investment Brokerage at Coreland Companies (www.coreland.com), Ken has executed hundreds of golf course transactions and can speak from both sides of golf course deals.

Chapter 5 identifies primary Employment Issues with which every Buyer and Seller must be fluent. Carolyn Cox (Carolyn.cox@hro.com) is an attorney who is expert in employment matters for Holme Roberts & Owen (www.hro.com). Employee-related issues are a critical check-point in every golf course transaction.

Hilda Allen (Hilda@hilda-allen.com) is an expert with the accelerated sales process, which is known to some as an ‘auction approach’ and described artfully in Chapter 6. Hilda Allen Real Estate Company (www.hilda-allen.com) facilitates many golf course transactions using traditional and accelerated methods as market conditions allow.
What should one know? In Chapter 7, Buyer and Seller alike will find a summary of the 10 questions that should be asked, based on the many transactions that Z Gordon Davidson (zdavidson@dc.rr.com) has brokered at his firm (www.zdavidsongolf.com).

Van Tengberg (vtengberg@foley.com), one of the industry’s most experienced attorneys, leads the exceptional golf & resort team at Foley & Lardner, LLP (www.foley.com) and discusses purchase agreements in Chapter 8. Illustrated from both the buyer and seller perspective, the agreement is where all the details previously covered in this handbook come together.

Randy Addison (raddison@addisonlaw.com) is a proven lawyer who has closed hundreds of golf-related deals (www.addisonlaw.com). In Chapter 9, Randy shows key issues that need to be covered ahead so they do not arise at closing. The savvy Buyer and Seller will prepare for these issues well in advance.

NGCOA members benefit from the collective knowledge and experience of these contributors, who are some of the best in the business of buying and selling golf courses. As an on-going resource, NGCOA (www.ngcoa.org) can facilitate additional inquiry and dialogue with these experts.

Buying right and selling smart reflect favorably on each golf course owner. Doing so is a reflection of the good sense to obtain the greatest wisdom that is available.
Meet Henry DeLozier

Henry DeLozier is a principal in Global Golf Advisors, an international consultancy of service to the investment banking, real estate development and golf asset ownership and operations business segments. Henry joined Global Golf Advisors after nine years as the Vice President-Golf of Pulte Homes. During his tenure at Pulte Homes, the company became the largest developer of golf communities and of golf courses in the USA. Henry is a past president of the NGCOA and current board member.

For the past 15 years, Global Golf Advisors (formerly KPMG Golf Industry Practice) has provided specialized consulting and support services to over 2,000 golf courses worldwide. The wide ranging disciplines of the company’s professionals enables it to provide invaluable assistance in all aspects of golf course development, management and maintenance.

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Chapter One - Advance Preparation

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There is certain information every golf course owner should maintain in a current and organized fashion. If you hope to sell your course in the next few years, there is additional information and documentation you should maintain as well.

The types of information you should maintain are outlined on the attached draft checklist. Each property includes somewhat different facilities and assets. You should consider your own specific facilities and fill in additional details on this checklist so it is tailored for your own use. Other chapters in this book detail specific issues, and that information will help you evaluate exactly which information may apply to your club.

You should choose an organizational style that works for you. Some prefer a 3-ring binder with numbered or titled tabs. This can be easily updated and re-organized. Some prefer a large file filled with labeled manila folders that can be easily reordered or replaced. Others scan all documents and maintain e-files (be sure to maintain a back-up e-copy at an alternative location).

Whatever you choose, if you begin the process now gathering and organizing information, you can control the cost and velocity of the pre-sale preparation and requirements, which you cannot do if you attempt all of these efforts at the last minute. Maintaining this information in a manner that is organized and readily available can also benefit your business in its operations.

The exercise of assembling this key information provides multiple benefits. It will help you identify gaps in your records prior to the urgent pace of sale negotiations. It may help you identify any weaknesses in your negotiating position. You will be better able to negotiate the details of the purchase contract when you are familiar or have access to all these details. For example, you may identify aspects of your insurance coverage that impact how you negotiate the apportionment of risk of loss prior to closing. Purchase agreements usually include a provision on who bears what risk if a casualty occurs prior to closing. You can better evaluate whether to commit to rebuild in certain circumstances when you understand your coverage and deductible. Reviewing your key documents will help you evaluate other important issues, such as what obligations must be assumed by buyer, and whether you have personal guarantees that must be released by the lender. Reviewing this information can help you anticipate and evaluate factors that may be of concern to a prospective buyer during due diligence.

Having ready access to all important information can help reduce expenses, such as attorney and accountant fees. It also projects a more professional image that lends credibility during negotiations.

The attached checklist should serve as a strong starting point to help you identify the important information you should review and maintain for your own operations or in anticipation of a sale transaction.
Advance Preparation Checklist

Financial Information. A potential buyer’s first analysis of your business will likely be numbers driven. Buyer will evaluate income and expense in gross, by categories, by trends, etc. Therefore, Buyer will immediately ask for detailed financial information. Depending on your operation, that list might include the following, as examples. Evaluate your operation and decide if there is additional important financial information that you should have organized and available.

1. Three years actual financials
2. Current year’s budget with year to date actuals
3. Next three years’ budgets
4. Last three years’ tax returns
5. Rounds summaries
6. Membership statistics and summaries
7. Property tax records
8. Fixed Assets Lists
9. Depreciation Schedules
10. Insurance Policies/Coverage
   (a) Summary of Coverage
   (b) Policies
11. Appraisals

Contracts and Leases. Buyer will immediately review your existing contracts to determine which can and which must be assumed by Buyer. When leases expire and whether Buyer can negotiate more favorable terms with lessors will factor into Buyer’s analysis and the purchase price. There may be some contracts you will require Buyer to assume, and you need to have your list of deal points prepared before negotiations begin.

1. Loan Documentation
2. Equipment
   (a) Golf carts
   (b) Maintenance equipment
   (c) Cars, trucks and trailers
3. Facilities
   (a) Maintenance
   (b) Office equipment
   (c) Operations
   (d) Consultants
   (e) Security
   (f) Computers and Software
   (g) Janitorial
Employment. There is a more detailed chapter on employment issues in this book. Generally, Buyer wants to know who your employees are and what the general terms of their employment are. Transactions are often structured so that employees are terminated at closing and hired by Buyer, but Buyer nonetheless will want to know employees’ expectations (prior salary and benefits), etc.

1. Employee contracts
2. Employee handbook
3. Employee lists
4. Benefit programs/information
   (a) Plan Administration
   (b) Insurance
   (c) Retirement

Licenses and Permits. Buyer will want to know that you have current licenses and permits for all of your operations. Buyer will also be investigating whether they can assume your licenses and permits or if they will need to apply for new ones. You should add any additional license and permits not listed here that apply to your facility - for example, many facilities do not have child care or spas, but might have licenses related to catering, or fireworks displays.

1. Facilities
   (a) Elevator
   (b) Chemical applications
   (c) Pesticides
   (d) Fire extinguishers
   (e) Health permits (locker room and restaurants)
   (f) Certificates of occupancy

2. Spa
   (a) Manicure
   (b) Facialist
   (c) Operator
   (d) Massage

3. Operations
   (a) Liquor license
   (b) Catering license
   (c) Childcare facilities license
   (d) Use and sales tax permit
Facilities Information. Buyer will investigate your sources and uses of water, whether there are potential environmental issues, the condition of the assets, etc. You may elect not to provide all of this information and to require Buyer to obtain their own inspection, but it will help you and your advisors evaluate your options if you have the existing materials assembled.

1. Water information
   (a) Evidence of water rights
   (b) Evidence of historic use
   (c) Back up water plan

2. Environmental Information
   (a) Copies of existing environmental documentation, state filings, reports, correspondence and Phase I ESAs.
   (b) All soil reports, engineering tests, environmental hazardous substances and geotechnical reports and similar reports and all correspondence relating thereto.
   (c) Details, correspondence and reports on existing dump sites, wetlands, endangered species and sewer treatment ponds or any other contaminated ponds or wetlands.
   (d) List and description of environmental permits and authorizations.
   (e) Descriptions of hazardous substance treatment, storage, transportation and discharge policies and any conditions or practices presenting compliance issues.

3. Title insurance policy
4. As-built drawings
5. Inspection reports
   (a) ADA audit
   (b) Reserves Report
   (c) Termite Inspection
   (d) Fire Marshall Inspection
6. ALTA Survey
7. Scorecards
8. Aerial photographs

Programs and Promotions. You will need to make immediate disclosure to Buyer if you participate in any reciprocal or prepaid programs that will impact their financial projections. In addition, Buyer will evaluate your marketing programs as they develop their business plan.

1. Description of Program
2. Marketing materials
3. Outstanding loyalty card balances
4. Outstanding gift certificate balances

Contact Information. For your convenient reference and to provide ready access to your advisors, you should have information on all of your advisors assembled.

1. Accountant
2. Attorney
3. Benefits representative
4. Banks and financial institutions
5. Insurance agent
Meet Robyn Nordin Stowell

Robyn Nordin Stowell is a nationally recognized attorney who leads Holme Roberts & Owen’s golf course and resort & community development team. She represents buyers, sellers, lenders, clubs and member groups in the acquisition, disposition and financing of golf and private club assets, with an emphasis on transition from developer to member owned clubs. She counsels clients on a wide variety of issues including membership issues, operational concerns and equity conversion. A frequent speaker at industry-related events, as well as a regular contributor for private club publications, Ms. Stowell is a knowledgeable and experienced attorney in the golf and private club industries.

Holme Roberts & Owen is a full-service international law firm with U.S. offices in Arizona, California, Colorado, and Utah. Known for its cutting-edge corporate and litigation counsel, the firm has an experienced team of attorneys that serve the golf industry on club-specific matters such as purchase and sale, financing, conversion, membership programs, operational matters, and club transition. The firm’s attorneys counsel golf and club industry clients on a wide variety of matters, including real property, water, tax, insurance, employment, non-profit governance, risk prevention, and conflict resolution. For more information please visit www.hro.com.
Chapter Two - Golf Market Analysis

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The primary purpose of a market analysis is to determine the character, depth and pricing present in the marketplace. Any discussion on market analysis for golf properties must begin with the concept of the “inverted triangle”, whereby the analyst kicks off the study by defining the macro market (say, Central Pennsylvania) and logically works down to the site specific portion of the analysis.

The time necessary to complete such a study can depend on several variables, including the depth of the study to be done, the size of the market (# of relevant competitors) and the different elements to be analyzed (golf, residential, etc.). A simple market analysis can sometimes be done in less than 2 weeks, while more complex studies can take as long as 90 to 120 days. Cost can also have a big range from just a few thousand dollars with no formal report and limited information to more than $100,000 for the most complex studies with a vast scope of work.

Within any market analysis, location demographics set the stage for the myriad of possibilities to consider and are continually refined to define competition as they relate to the characteristics of the subject property. Within the universe of potential competition are several segments, broadly categorized as:

1. Daily Fee
2. Semi-Private
3. Private

Within each of these broad categories are sub segments (upscale, affordable, residential, resort, etc.) that help to define the appropriate market position of each and every golf course facility. Each has its own demand source (residents, tourists, etc.) and each typically has unique operational characteristics that are distinguishable from courses in other market segments.

When considering a project or entry into a given market the investor/developer is seeking a niche where he/she can effectively compete with minimal obstacles to success. The market analysis can assist in defining the product to be offered, or in the case of an existing golf course whether it needs to be repositioned in the marketplace. The market analysis conclusions, sometimes more so than the characteristics of the property itself form the basis for decisions critical to the project’s success.

If one is looking to EXIT the market, he or she is looking to enhance the appeal of the property and understanding how it fits into the market, or even what alternative uses may enhance the property’s market value is critical to maximizing sale proceeds. This may go well beyond simply understanding the golf market, but also requires the ability to sense what other uses the property may have that represent highest and best use in a given market environment.

In the development of a golf market analysis, we often focus on supply in the different market segments, property specific and overall market performance, natural and geographic characteristics as they refer to the travel habits of market inhabitants and of course, price and services. We also like to consider whether a property is achieving its “fair share” of the overall market and evaluate the demand generators for golf in a given community.
Investing in a market analysis may seem like wasteful spending in an environment where every dollar counts and one may already have pre-defined goals. However, the investment in a pair of INDEPENDENT eyes often provides insight and a perspective that is lost in the rush to make a deal, whether one is a buyer or a seller. The cost, even of the most expensive studies, pales in comparison to the impact that may occur from making ill-informed decisions. If buying, a thorough understanding of the market is essential to deciding on the market segment to target, while sellers can use the same information to understand the property’s potential and also use it in establishing an asking price or negotiating price and terms of a sale.

Engaging a credible firm, with the independence to tell the bad as well as the good is critical in assisting the client’s decision-making process. How would you like to spend millions of dollars and later find out you didn’t buy what you thought you did? How would you like to spend all the up front costs only to find out you can’t get financing? How would you like to sell a property only to learn that you could have gotten much more? All of these things happen and can sometimes be prevented with an investment in a reliable and credible market analysis.

The market analysis is only one part of a carefully orchestrated process of buying or selling a golf course. It is critical that the elements of this process be prioritized so that funds are expended as and when needed in an orderly fashion and only when it is prudent to take the “next step”. For instance, you can commission the market analysis in phases, as needed based on the parameters of the potential deal being negotiated.

While much data is developed and analyzed in a comprehensive market analysis, the process is as much art as science and requires knowledge, experience and understanding of the market to develop that data into meaningful and useful conclusions. I hope the following outlines assist the reader in understanding what is involved in a market analysis and what elements can be included.
Golf Market Analysis Checklist

- Location Analysis
  - Demographics
  - Infrastructure
- Market area delineation
  - Geography
  - Transportation
  - Competition
- Market Segmentation
  - Daily Fee
    - Affordable
    - Value
    - Upscale
  - Private
    - Private Resident
      - Affordable
      - Value
      - Upscale
    - Private Non-Resident
      - Affordable
      - Value
      - Upscale
- Factors that determine market segment:
  - Course design and quality
  - Facilities design and quality
  - Legal requirements (deed restrictions, club bylaws, etc.)
  - Social and economic characteristics of the club and community
  - Location, including how the golf course fits with the community growth structure and with competitive courses
  - Competition – Present & Planned
  - Future Golf Demand
  - Market
  - Market Segment
  - Fair Share and Market Penetration
  - Financial Analysis
  - Investment Analysis
  - Cost vs. value (Feasibility, which is a different analysis)
  - Market Position
  - Operations
  - What is the golf course’s market value? (appraisal)
Meet Laurence A. Hirsh

Laurence A. Hirsh, CRE, MAI, SGA is the president of Golf Property Analysts, a leading golf property appraisal consulting and brokerage firm based in Harrisburg, PA. He has performed appraisal and consulting assignments on more than 2,500 golf properties in 45 US states, Canada, the Caribbean and Scotland and has previously written 2 articles on golf property valuation in The Appraisal Journal, co-authored The Urban Land Institute’s Residential Golf Community Development and authored many articles for a variety of industry publications. Hirsh has also lectured at seminars, meetings and universities and has been on the education faculty for the PGA of America. A founder and first president of the Society of Golf Appraisers (SGA), Hirsh has also developed a golf course and brokered more than $100 million in golf course properties.

Golf Property Analysts is a leading golf property consulting, appraisal and brokerage firm that has completed more than 2,500 golf property assignments in 45 states, Canada, Scotland and The Caribbean. With 9 professionals on staff including a staff agronomist, as well as close affiliations with management, design, food and beverage and legal experts, we have established a comprehensive team to assist any club with a variety of challenges. We are based in Harrisburg, PA and have professionals located in North Carolina and Florida as well.

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Chapter Three - Golf Property Appraisals

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While the purpose of a golf course (or any property) appraisal is typically to estimate market value, there are many functions that can be served by an appraisal. The most common include:

- Mortgage Financing
- Purchase & Sale
- Ad-Valorem Tax Assessment
- Eminent Domain/Condemnation
- Estate Planning
- Matrimonial Disputes
- Project Feasibility
- Litigation Support
- Conservation Easements

With any appraisal of a golf facility, location demographics and a focused golf market analysis set the stage for the myriad of possibilities to consider and are continually refined to define competition as they relate to the characteristics of the subject property.

The subject property characteristics are analyzed to determine the property’s capabilities and potential and then the highest and best use is determined.

With golf course appraisals, we consider two kinds of highest and best use:

- As Improved
- As Vacant

In addition, within the “as-improved” analysis, it is critical to understand that market positioning and course type (daily fee, semi-private, private, etc.) warrant consideration as the highest and best use as improved may be something other than how it’s operated.

The three approaches to value (income, sales comparison and cost) are then considered based on the highest and best use and applied as appropriate. In today’s environment, it is typical for the income approach to be most relevant, though not exclusively based on historical income. Depending on a number of factors, a property’s potential income deserves ample consideration.

Inherent in any appraisal assignment is a definition of the scope of work. Golf properties in particular can very complex “animals” and it is critical to define what is being appraised. Is it just a golf course? Is it a highest and best use appraisal? Are memberships included? Are there development rights or encumbrances. These need to be identified up front. The function of the appraisal is also critical, since there are often different rules for different situations or jurisdictions.
In the development of a golf property appraisal, we add to the considerations in a market analysis, an income capitalization, a review of sales of other golf properties and an analysis of what the property would cost to replace. This is required by the Uniform Standards of Professional Appraisal Practice (USPAP) with which any appraisal should comply.

A well done appraisal can be a valuable tool, especially if done by an experienced and credible professional. The golf industry is fortunate that there is a group of appraisers called the Society of Golf Appraisers (SGA) with qualified professionals around the country, some of whom do nothing but golf course appraisals and all of whom have demonstrated considerable experience in golf property valuation and received invitations to such membership.

Engaging a credible firm, with the independence to tell the bad as well as the good is critical in assisting the client’s decision-making process. Your appraiser should be able to provide not only a useful report, but also credible expert testimony, if required to support his or her appraisal in a court of law. In cases involving tax assessment appeals, eminent domain (condemnation), marital disputes and other matters of litigation, the appraiser with a reputation for independence, vast experience and the ability to testify convincingly is a valuable tool. An appraiser with extensive experience in the type of property to be appraised and the background of education and industry involvement is critical to the appraisal’s credibility.

It is typical for most golf property appraisal assignments to be completed within 30 to 60 days of engagement, of course with some less and other more complex assignments taking additional time. The cost of a golf property appraisal varies greatly, depending on the experience of the appraiser and the complexity of the assignment. It is most important to make level comparisons in this regard and ensure not only that the appraisers you may be comparing for cost are of comparable skill level, but also that each is proposing a similar scope of work and consistent end work product. Often, clients require discussion with their appraiser on determining the scope of work, which should be done mutually by appraiser and client. Only when the scope of work is determined and the complexity of the assignment determined can a realistic fee be quoted. Most appraisers bill on a pre-agreed fee, plus expenses or on an hourly basis depending on the assignment. Much like a doctor, lawyer or investment advisor, it is advisable to develop confidence in the appraiser and negotiate a fair fee with the confidence that the appraiser will do the job not only professionally, but independently.

The appraisal process is as much art as science and requires knowledge, experience and understanding of the market to develop that data into meaningful value conclusions. I hope the following outline assists the reader in understanding what is involved in a proper golf property appraisal and what elements are required.
Golf Property Appraisal Checklist

- Location Analysis
  - Demographics
  - Infrastructure
- Market Analysis
  - Competition - Present & Planned
  - Future Golf Demand
  - Market
  - Market Segment
- Property Analysis
  - Site
    - Size
    - Shape
    - Topo
    - Utilities/Water
    - Drainage
    - Zoning
  - Improvements
    - Golf Course
    - Clubhouse
    - Maintenance Facility
    - Ancillary buildings
- Highest and Best Use
  - As- Improved
  - As Vacant
  - Four Tests
    - Physically Possible
    - Legally Permissible
    - Financially Feasible
    - Maximally Productive
- Approaches to Value
  - Income Approach
    - Present worth of future benefits
  - Sales Comparison Approach
    - Theory of Substitution
  - Cost Approach
    - What can it be replaced for?
  - Correlation
    - Which approach(es) are most relevant?
Meet Laurence A. Hirsh

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Chapter Four - How Buyers Determine Value—
The Exit Strategy Approach

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There are many ways to value a golf course; however an “Exit Strategy” approach focuses primarily on Buyer behavior. Irrespective of the type of Buyer (Professional National Golf Operators, Professional Regional Golf Operators, Individual Entrepreneurs, or Ego Buyers) the overriding consideration when analyzing a golf course as a viable business is profit—how much operating revenue can the property produce. As in many businesses, a golf course’s value is tied to a multiple of its Earnings before Income Tax, Depreciation, and Amortized debt expense (EBITDA). The problem with the EBITDA approach is that in the golf industry, the term has become so loosely used and defined, that it has become somewhat meaningless. This proposal will suggest that a more precise method of valuation would be to tie a golf course’s value to a multiple of its Sustainable Operational Revenue (Loss) (“SOR”).

**Sustainable Operational Revenue (SOR) =**

Stabilized Projected Income (SPI) - Real Sustainable Expenses (RSE)

Please click here to review example of this spreadsheet described in the following examples. [www.ngcoa.org/pdf/bookstore/BOV.xls](http://www.ngcoa.org/pdf/bookstore/BOV.xls)

**Stabilized Projected Income (“SPI”)**

*RPI is directly tied to the local micro-economy. By examining the local market property level data, experienced golf operators can usually accurately predict how many annual golf rounds/memberships an individual market can produce.*

**Real Sustainable Expenses (“RSE”)**

*RSE are the recurring operational and financial expenses for a golf course running at typical efficiency for a normalized year. These expenses usually include a capital improvement reserve and a management fee reserve.*

To calculate RSE, Buyers incorporate actual trailing expenses into a worksheet and review each expense line item. The Buyer will compare the particular golf course’s actual expenses against industry and local standards to identify and adjust for any inefficiency and unaccounted costs. The Buyer will also compare the level of documented expenses against the actual condition of the property to again adjust for any abnormalities. RSE reflect expenses once all of the adjustments have been made.

Once SOR has been projected, Buyers will then value the golf course on a capitalization multiple consistent with their investment criteria. The value and investment criteria depend heavily on the type of Buyer that purchases the golf course.
Buyer Classifications and Valuation Criteria

There are four major categories of Buyers. They are summarized as follows:

**Professional National Golf Course Operators**

Professional National Golf Course Operators ("National Operators") are defined as those operators not bound by geographic location. They take a uniform and systematic approach to golf course management on a national scale. Administrative and training functions are centralized with a goal to standardize basic operation at all of their courses. They purchase based upon opportunity but almost exclusively focus on large metropolitan markets. In recent years several National Operators have merged to create large conglomerations.

The advantage for a Seller to engage National Operators is that they are generally well funded and financing is usually not an issue. The disadvantage to Sellers is that these buyers are the most conservative. Their high internal rate of return investment criteria tends to drive down the sales price.

**Professional Regional Golf Course Operators**

Professional Regional Golf Course Operators ("Regional Operators") are very similar to National Operators except they are focused on a specific geographic region. Many of these companies are family owned and have amassed their properties over time. In many respects, Regional Operators are the most successful type of operator. They usually enjoy the same purchasing and financing power as the National Companies, but because of their market familiarity, they tend to run golf courses extremely efficiently.

The advantage for a Seller to engage a Regional Operator is that they are able to write down certain expenses and may or may not include a Capital Expense reserve in their overall RSE calculations. The disadvantage to Sellers is that these types of Buyers tend to be extremely selective. It is hard to convince a Regional Operator to buy.

**Individual Entrepreneurs**

Individual Entrepreneurs ("Entrepreneurs") can be national or local and constitute the largest pool of today’s Buyers. For these Buyers, the motivation for purchasing a golf course is grounded heavily in a course’s romantic appeal and therefore they will typically focus on properties or geographic areas that they know. These individuals usually have some level of golf course operation experience and will take a hands-on approach to golf ownership. They drive value into a golf course by subsidizing many of the administrative and management costs with sweat equity. By reducing RSE costs, their overall RSP calculations become greater.

Financing is the key to Entrepreneurs. Unless they are self-funded, most Entrepreneurs must rely on a financial partner or private lender. This results in a higher cost of capital. The only true disadvantage of engaging an Entrepreneur is that financing will almost always be a contingency.
Ego Buyers
Ego Buyers ("Ego Buyers") For the Ego Buyer, a golf course’s profit is not the uppermost purchase consideration. These Buyers focus on higher-end properties and tend to make purchase decisions based on prestige rather than a return on investment. Ego Buyer’s tend to pay all cash and financing is a secondary concern.

The advantage of engaging an Ego Buyer is that they will often pay top dollar for a golf course. The disadvantage is that more often than not, these buyers tend to walk away from deals once they realize the complexities of golf course ownership.

Buyer Pool

National / Regional (1-5 Prospects)
The recent downturn in the golf economy has shrunk the universe of National and Regional Professional Golf Operators. And unless they already have a presence in the local market, the likelihood that a National or a Regional Operator would have interest in expanding is highly unlikely.

Pricing Expectations: 15-20% Capitalization Rate on SOR.
Benefit: All cash close and high probability of closing on time.
Negative: Lower sales price.

Entrepreneurs (1-10 Prospects)
Entrepreneurs will be exposed to the property through strong regional marketing efforts. We have found that it is usually from this grouping that the highest priced purchase offer is typically generated.

Pricing Expectations: 10-12% Capitalization Rate on adjusted RSP.
Benefit: Higher sales price. Typically all cash close and high probability of closing.
Negative: Harder to find a qualified “real” buyer. A wrong buyer could substantially delay the sales process.

Ego Buyers (1-3 Prospects)
During any given marketing campaign, an individual will surface that expresses interested in a golf course for reasons other than pure economics. These buyers are rare. Foreign Buyer’s will often fall into this category.

Pricing Expectations: 5-10% Capitalization rate on adjusted RSP.
Benefit: Higher sales price with less emphasis on due diligence.
Negative: Low probability of closing.
Meet Ken Arimitsu

The Coreland Companies (www.coreland.com) is one of the largest privately held commercial real estate service companies based in California. Founded in 1989, Coreland Companies is the premiere full-service commercial real estate firm specializing in retail, office, and industrial properties throughout the Western United States.

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Chapter Five - Employment

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In any acquisition, the potential buyer must carefully evaluate the facility’s employees and the potential liability that may arise from personnel matters and issues. The potential buyer must understand the nature of the facility’s workforce and its employment needs in order to determine which, if any, of the target’s employees will be hired or retained after the transaction closes. Often, promises regarding employment of existing employees are a deal point for the seller (i.e., the seller requires that the buyer agree to employ all or a significant portion of its work force, or requires that the buyer assume existing employment agreements).

Understanding employee-related expenses is also important, as personnel costs are a significant aspect of a facility’s overall budget. Employee-related expenses include not only direct expenses such as employee compensation (including regular wages, whether salary or hourly, overtime, bonus and incentive compensation), but also employee benefits, payroll taxes, workers compensation, unemployment insurance and training and compliance (such as OSHA) expenses.

The target facility’s employment practices can be a major source of potential liability. Liability can arise from incorrect or incomplete immigration compliance, inappropriate payroll procedures, or discrimination or harassment claims. Immigration practices are of particular concern, as poor immigration practices may lead not only to liability, but result in a loss of employees. Because employment liability automatically passes with a stock sale but does not in an asset sale, the amount of potential liability presented by a particular facility may affect the structure of the transaction. The risk taken on by the buyer will also obviously affect the price the buyer is willing to pay. Thus, a careful evaluation of the employment risks presented by the target facility is very important.

Because of the need to understand clearly the employment needs, costs and liabilities, the buyer will likely request detailed information from the seller regarding seller’s employees, employment practices and employment claims. Depending on the nature and size of the facility, the specific requests will vary somewhat. The following list is a sample to use as a starting point as you begin to organize and think about the information that may be requested by a potential buyer. You can adapt this list to your facility and circumstances.
Employment Checklist

1. **Employees.** A potential buyer will want to learn as much as possible about the employees of the target business. The buyer needs to understand the amount and type of manpower needed to run the business, and the payroll costs required on an ongoing basis. Such information also helps the buyer assess compliance with the Fair Labor Standards Act (“FLSA”), which governs such issues as minimum wage and overtime. In a stock sale, the buyer will use the information gathered to determine whether any of the existing employees will be terminated after the sale. In an asset purchase, the buyer will use the information to determine to which employees the buyer wishes to extend an offer of employment.

   A. Listing of all employees giving name, race, sex, citizenship, date hired, employee number, rate of pay, position, classification as exempt or non-exempt under the FLSA, location, current fiscal year-to-date compensation and prior fiscal year compensation, including any incentive or bonus compensation
   B. List of active employees and employees not currently working who have reemployment rights (e.g., employees on military leave, medical leave, family leave, pregnancy leave or employees on layoff with recall rights)
   C. List of all temporary personnel, casual personnel, contract personnel, or independent contractors giving name, position, and the actual and budgeted compensation for the current fiscal year
   D. Copies of unemployment history for last 3 years

2. **Employment Discrimination Compliance.** Buyer needs to be aware of any existing employment claims, along with the target’s history of such claims. In a stock sale, unless excepted, the Buyer will be responsible for any existing claims and therefore needs to understand the potential liability. However, such information is critical even with respect to an asset purchase. For example, a large number of claims may signify that the target had poor human resource management, or that the Buyer can expect additional claims to arise after the sale.

   A. Copies of EEO-1 reports for preceding three years
   B. Copies of most recent Affirmative Action Plan, if applicable
   C. List of all employee terminations within the last 12 months, including name, employee number, age, race, sex, position, date of termination, reason for termination
   D. List of any discrimination/employee complaints against company within last three year
   E. List of any outstanding discrimination/employee complaints
3. **Employee Relationships.** Buyer will need to review the information listed in this section to determine whether the target has established an at will relationship with its employees. Buyer also needs to be aware of and carefully review any individual employment contracts or arrangements with employees that are other than at will. The Buyer also needs to understand the personnel policies employed by the target, even if Buyer intends to establish new or different policies. Finally, Buyer needs to be aware of any confidentiality or non-compete type agreements.

A. **Employment Policies and Contracts**
   1. Copy of human resources policy manual, employee handbook or booklet, miscellaneous personnel policies or any other similar documents that describe policies or programs applicable to employees
   2. Organization charts and copies of position or job descriptions
   3. Sample employment application, sample offer letter outlining the terms and conditions of employment, or, if a standard offer letter is not used, copies of individual offer letters setting forth the terms and conditions of employment
   4. Any individual employment contracts

B. **Other Agreements, Arrangements, and Contracts**
   1. Brief description of all consulting and management agreements, arrangements, or understandings to which the Company is a party and, if the same are in writing, copies thereof
   2. Copies of all indemnification contracts or arrangements insuring or indemnifying any director, officer, employee or agent against liability incurred in such capacity
   3. Copies of all confidentiality, non-compete or non-solicitation agreements with employees or independent contractors

4. **Compensation and Benefits.** Buyer will want to understand compensation arrangements with the employees, and the different benefit programs offered to employees. The details of any deferred compensation arrangements are particularly critical as the failure to comply with the IRS regulations governing deferred compensation can create potential liability for improper withholding or claims from employees for the adverse tax consequences. The information obtained will provide important reference points as the Buyer establishes its future compensation and benefit programs.

A. **Compensation**
   1. Analysis of employee headcount, by department, and approximate total wage or salary cost of each department at the most recent interim date and at the last two fiscal year-end dates
   2. Brief description of any annual salary review/wage raise cycle policy (Performance Review)
   3. Brief description of policies regarding bonuses and incentives
   4. Description of all deferred compensation programs affecting officers, directors, or employees of the Company. State the amount accrued and/or paid during the most recent fiscal year under such programs, and amounts of accruals thereunder through a recent date.
   5. Access to, and copies as requested of, all performance bonus plans, deferred compensation plans, and incentive compensation plans adopted by the board of directors of the Company and each Subsidiary during the past five years
B. Employee Benefits
   1. Copies of summary plan description and plan documents and copies of all employee benefit plans, including health and medical plans, group life insurance plans, cafeteria plans or other such medical reimbursement plans, supplemental unemployment benefit plans, disability plans, defined benefit or defined contribution retirement plans, salary continuation plans, and any other benefit plans or programs provided to employees
   2. Copies of any insurance contracts pursuant to which welfare or other benefits are provided to employees; copies of any contracts with individuals or entities that administer benefit plans of target, i.e., third party administrator (“TPA”) contracts
   3. Copy and/or description of any severance program or plan
   4. Summary of employee sharing of premiums or cost for benefits last fiscal year and current fiscal year-to-date
   5. Identification of any accrued but unpaid amounts due to any benefit plan
   6. Identification of any audits of the target’s benefit plans by federal or state authorities; identification of any administrative claims or litigation against or related to the benefit plans
   7. Copies of Form 5500s for the past three years for all welfare and pension plans

5. Immigration. Review of immigration documentation is critical, particularly in a stock sale, or where Buyer is a "successor-in-interest" for purposes of immigration compliance and intends to rely on the target’s existing immigration documentation.
   A. I-9 Compliance/Audit
      1. Copies of the facility’s I-9’s or other immigration compliance documents
      2. Determine whether the facility has completed I-9s for all current employees and for all former employees who were hired within past 3 years or terminated within past year
      3. Determine whether the I-9’s are facially valid and whether supporting documentation is still valid (i.e., has not expired)
   B. Non-Citizen Status Audit
      1. List of all current employees who are not citizens of U.S.
      2. Copies of employment eligibility documentation for each non-citizen (i.e., valid and unexpired visas, green cards, etc.)
      3. Determine whether any visa-holders have been terminated before the expiration of their visas and if so, whether the facility has notified USCIS and paid any required return transportation costs
   C. No-Match Letters
      1. Copies of any “no-match” letters regarding any current employee
      2. Determine what steps the facility has taken to resolve no-match
   D. State Law Compliance
      1. Determine whether facility is in compliance with all state immigration laws
   E. Corporate Policies and Future Compliance
      1. Identify and obtain copies (where in writing) of facility’s immigration policies and procedures and determine whether such policies are in compliance with applicable laws
   F. Discrimination
      1. List of any employees terminated within the past 300 days for immigration related issues, and explanation of the circumstances surrounding such terminations
6. **Environmental, Safety, and Health.** Buyer must evaluate the target’s work safety record, and potential liability associated with the target’s workplace safety policies. The information in this section will also provide Buyer with necessary information regarding the facility’s history of worker’s compensation claims.

A. **Workplace Safety Records**
   1. Copies of last three years of Occupational Safety and Health Administration (OSHA) forms 101 and 200
   2. Copies of last three years Experience Modification Rate (EMR), OSHA Recordable Rate, and Lost Workday case rates
   3. Copies of workers’ compensation insurance policies
   4. Access to, and copies as requested of, accident/injury reports for the past five years
   5. Identification of any investigations by state or federal occupational safety and health administration agencies; identification of any claims or complaints filed against employer for violation of workplace safety rules and regulations
   6. Copies of serious accident reports filed in the last 12 months
   7. Summary and description of current and on-going injury claims

B. **Training**
   1. Access to, and copies as requested of, all employee training programs related to:
      a. Hazardous waste and chemicals handling, storage, and processing
      b. Environmental compliance
      c. Safety
   2. Access to, and copies as requested of, all employee certifications and training records related to the above identified training

C. **Description of Worker’s Compensation Coverage; Copy of Policy/Ratings**

7. **Insurance and Self-Insurance.** Buyer will want documentation of any insurance policies through which the target facility complies with unemployment and workers compensation laws, or which otherwise relate to employment or benefit issues.

A. **Insurance Policies and Claims**
   1. List of all insurance policies relating to the business, assets, or properties of the Company (including directors’ and officers’ liability insurance), giving insurance company, policy number, term of coverage, property or risk covered, appraisal value of covered property (where appropriate), extent of coverage, deductibles, annual premium, and amount of premiums that are prepared or are unpaid from prior years
   2. A description of all insurance claims (over $5,000 in amount) currently pending
   3. Schedule of Company loss experience per insurance year for the last five years

B. **Workers Compensation/Disability Insurance**
   1. Documents representing or relating to workers’ compensation or disability policies, and any material claims with respect thereto
   2. Summary of all workmen’s compensation claims in preceding twelve months

C. **Unemployment Insurance**
   1. A description of the manner in which the Company fulfills its unemployment compensation insurance obligations in each state (i.e., insured or self-insured, etc.)
Meet Carolyn Cox

Carolyn Cox is a highly accomplished employment counseling and litigation attorney with the law firm of Holme, Roberts & Owen. She frequently advises clients with respect to the employment and benefit aspects of mergers and acquisitions. In addition, Ms. Cox defends employers in a wide variety of matters, including discrimination, contract, non-compete, ERISA and tort cases, both in administrative and judicial forums, and also counsels clients on a wide variety employment and benefit matters.

Holme Roberts & Owen is a full-service international law firm with U.S. offices in Arizona, California, Colorado, and Utah. Known for its cutting-edge corporate and litigation counsel, the firm has an experienced team of attorneys that serve the golf industry on club-specific matters such as purchase and sale, financing, conversion, membership programs, operational matters, and club transition. The firm’s attorneys counsel golf and club industry clients on a wide variety of matters, including real property, water, tax, insurance, employment, non-profit governance, risk prevention, and conflict resolution. For more information please visit www.hro.com.
Chapter Six - Accelerated Sales Process

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A sale by auction is a nontraditional sales method that is a possibility for sellers who are prepared for an accelerated process. Auctions simultaneously focus the attention of qualified, competing buyers on a single property in a concentrated period of time. Their collective assessment of the property's worth creates a market and establishes market price. This sales process may save money for the seller because it reduces holding costs.

Auction Characteristics
An auction differs from the tradition sales process of hiring a broker and listing your property in that it is fast and simple. The process can be completed in 75 to 120 days, from advertising to closing. The bidding system is also more efficient than evaluating and responding to traditional offers because it eliminates a series of negotiations. An auction, however, requires the buyer to complete all due diligence prior to the auction event.

Depending upon the property and the seller’s motivation to sell, the seller may choose the most appropriate auction style for the sales transaction.

- **Reserve Auction.** The process begins with a reserve price which is set by the seller in advance of the auction. If a bid does not meet the reserve price, the seller rejects all bids and maintains ownership of the property. Or the seller may elect to negotiate with the high bidder and/or secondary bidders to reach a mutually acceptable agreement with one of them.

- **Absolute Auction.** The property is sold to the highest bidder regardless of price. There are no minimums and no reserves. This style is for a seller who is more comfortable with risk. Absolute auctions invite buyers to bid competitively and often a property's sale price achieves its market price.

- **Sealed Bid Auction.** Offers are submitted in writing and are opened at a designated time and location as advertised.

- **Hybrid Auction.** Offers are submitted in writing and are opened at a designated time and location as advertised followed by an auction starting at the highest sealed bid. This combines the sealed bid auction style with the reserve.

- **Call for Offers Auction.** The seller advertises that it is motivated to sell and is "Calling for Offers.”

Sales Contract
A sales contract with the buyer is executed immediately following the auction with nonrefundable earnest money. The buyer with the second highest offer should be encouraged to execute a back up contract.
Meet Hilda Allen

Hilda Allen, the owner and broker of Hilda W Allen Real Estate, Inc., is a lifetime resident of Georgia. She holds a BS Degree from Valdosta State University (1974). For over 25 years, Hilda Allen has been actively in the real estate and auction business. Hilda hit the milestone of her 500th golf course sale with The Golf Club of Cypress Creek in Ruskin, Florida. Hilda is a licensed auctioneer and real estate broker in over 15 states. She is a member of the NGCOA, ULI, ARDA, NGF and the National Auctioneers Association (NAA).

Hilda has two sons and two grandsons. Hilda is an active adult and is single. Her hobbies include kayaking, cooking, and learning to play golf.

Hilda W. Allen Real Estate, Inc. is a licensed Real Estate Broker who specializes in the brokerage of golf courses, hotels, and related commercial properties throughout the United States and Canada.

The Company’s success is attributed to the professional ability of putting qualified investors with qualified and motivated sellers and closing the transactions in a timely manner.

It is Company policy that most of the due diligence should be done before putting the buyer and seller face to face. The properties are usually inspected first and then the seller is provided with a checklist of what is required before putting a complete package of specific information together for marketing the golf course.

We maintain a long list of qualified investors and sellers. Because Hilda W. Allen Real Estate, Inc. is conscientious and detailed; investors now seek out the company’s services to locate a specific golf property in which they can invest.

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Chapter Seven - Buyer’s Most Frequently Asked Questions

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The golf marketplace has entered a shift and is a ‘buyers market’ and the prospective buyer will be at an advantage in applying the recommendations in the earlier chapters from golf industry professionals.

The astute buyers are asking these following 10 questions;
1. Equipment: What is the condition of the golf course equipment and the FF&E (Furniture, Fixtures, & Equipment)?
2. Water: What is the source of water for the golf course and the recent cost for water? Is there a recent water analysis available to review? What are the water rights and value placed on the water rights?
3. Competition: What are the current green fees and how does this compare to their competition? Research the average green fees in the marketplace.
4. Trends: What are the trends in the past three years of Operating History, whether positive or negative?
5. Deferred Maintenance: What are the deferred maintenance for the golf course and facilities?
6. Capital Improvements: What capital improvements have been made in the past 12 months?
7. Special Events: What potential exist for increasing special events for increased revenue?
8. Developable Land: What excess land is available for future development?
9. Development Agreement: What agreements exist between the golf course and surrounding community? Does the development of the golf course propose any restrictions?
10. Demographics: What are the area demographics for golfers in the community? Has a golf market analysis been completed and available for review?

Although the questions below are not asked frequently, they would be on my discover list if I were a prospective buyer.
1. What are the golfers saying about the golf course, customer service, and amenities? It is surprising to me how many prospective buyers arrange a tour of the golf course and facilities and do not play the course, observe the staff, speak with the golfers, or read the online comments about the course.
2. What are the conditions of the fuel storage and chemical storage areas? Are they in compliance with the governmental agencies?

The professionals hired during the due diligence will bring a keen eye to this question as they review the records, talk to the agencies, and inspect the property. At one club in Southern California a buyer of a 27-hole facility was looking at their first golf course with a focus on how can we remove 9-holes and build homes. The idea at the time was appropriate and the area had a demand for more housing, however, with the focus on the “great idea”, they could have lost sight of the investment at hand. With due diligence and a team of experts, it was discovered that several deferred maintenance issues and compliance issues existed. The holding pond was leaking and required additional cost to repair and the fuel storage area was not in compliance. The regulatory agency was not even aware that the golf course was storing fuel on property and had never made an annual inspection. As it turned out, both the items were assigned an estimated cost to bring up to standard and the buyer was successful in negotiating a reduction in the original asking price in the equal amount for the anticipated expenditure.
3. What are the current cultural practices on the golf course, such as aerification?

One morning on my email I received a one-liner text from a golf industry leader who requested an inspection of a premium property on the West Coast that overlooked the Pacific Ocean for which the developer was entertaining offers for the 18-hole resort golf course. During the property tour I was captivated by the spectacular view and notoriety of the golf course located in a high-end residential community. After taking my eyes off the freight liners trolling the coast and watching the waves crash along the shore, I began to explore the sub-surface of the greens with a soil profiler. As I removed the sample to collect pictures, a dark layer of black soil was visible. It was an example of poor turfgrass performance and is commonly known as 'black layer' due in part to a lack of oxygen to the soil. Basic cultural practices such as periodic aerification of the greens will improve the soil aeration, coupled with top dressing the greens. Somehow, during the transition of the property and focus on the residential development surrounding the gorgeous property, the greens were potentially put at risk. While the cooler ocean temperatures can be deceiving and the blades of bentgrass appear healthy on the surface, rising temperature could stress the turfgrass. Once the growing roots come in contact with the dark layer of soil, they would be cut off from a supply of water and fertility and the greens would decline. The golf course hosted televised celebrity fund raising events and could have experienced a playability problem.

4. Is the current loan assumable?

Due to the credit market conditions and disruption, volatility, and deterioration of the credit markets, it is worth exploring with current lender of the property the benefit of assuming the mortgage loan. This can accelerate the closing time frame and even potentially save the buyer money. Many of the loans for golf courses are funded by local commercial banks that have a stake in the community. Approaching the current lender can be an option for the buyer.

5. Will the current owner provide seller financing?

In today's economy, securing financing to purchase a golf course has become a full time job, and there is no guarantee all the hard work will pay off in the end. The seller of the property is another source of financing and the terms can be as flexible as the buyer and seller need them to be.
Meet Z. Gordon Davidson

Z. Gordon Davidson is a licensed real estate broker and certified general real estate appraiser who specializes in golf and resort properties. Mr. Davidson has brokered the sale of six golf properties with a transactional value totaling $74 million and appraised 982 golf holes or the equivalent of fifty-five (55) 18-hole golf courses with an aggregate value in excess of $500 million.

Prior to starting his own company, Mr. Davidson was Vice President of International Golf Maintenance, Inc, a wholly owned subsidiary of Meadowbrook Golf Group based in Orlando, Florida and worked as a golf course broker with the Golf Group for CBRE. He holds a number of degrees and agronomic certifications.

Z. Gordon Davidson & Associates, Inc, Golf & Resort Properties provides true full services of brokerage, consultation and appraisal services nationally to the golf property industry and non-golf entities involved with golf properties. Property types include stand-alone private and public golf courses, master planned residential golf communities and resorts. Our corporation functions on a local and national level and has provided services to our clients with a combined total aggregate value of approximately $650 million.

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Chapter Eight - Purchase And Sale Agreements

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The purchase and sale agreement is a critical document because it outlines the business and legal agreements and understandings of the parties. The failure of the parties to properly address key matters in the purchase agreement can leave one or both parties exposed to potential liability or can result in the omission of important terms, conditions or procedures.

Generally, a purchase agreement will address the following: (i) the property to be sold; (ii) the purchase price; (iii) the buyer’s inspection rights; (iv) the covenants, agreements and obligations of each party; (v) the representations and warranties of each party; (vi) events of default; and (v) the remedies available to each party upon an event of default. In addition to the foregoing, the purchase agreement should also deal with any specific issues that are unique to the transaction or the property being sold. For example, if a golf course is located in a master planned community, the seller will want to ensure that there are easements over the adjacent property in the community for access, parking, errant golf balls, overspray, encroachment or maintenance, and the buyer will want to ensure that there is a cost sharing agreement in place to cover expenses relating to shared improvements such as entryway gates, fencing, private roads and other common areas in the community.

Depending on whether you are the buyer or seller, the form of agreement will vary substantially. If you are the buyer, you will generally favor an agreement that provides an adequate opportunity to investigate the property and includes expansive seller covenants, representations and warranties. On the other hand, if you are the seller, you will generally desire to limit the seller covenants, representations and warranties to the greatest extent possible and cut off or minimize any trailing liability with respect to the property.

The form purchase and sale agreements will help you to identify and address these important issues. Please click here to access these documents:

Purchase Agreement
www.ngcoa.org/pdf/bookstore/FormGolfAcquisitionContract.pdf

Sales Agreement
www.ngcoa.org/pdf/bookstore/FormGolfDispositionContract.pdf
Meet Van A. Tengberg

Van A. Tengberg is a partner with Foley & Lardner LLP, where he is managing partner of the San Diego and Del Mar offices, co-chair of the Hospitality, Resort & Golf Industry Team and chair of the firm’s West Coast Real Estate Practice. Mr. Tengberg’s practice centers on real estate acquisition and development, with a primary focus on golf course and resort facilities, shopping centers, hotels, office complexes and industrial business parks.

Mr. Tengberg is highly skilled in all phases of golf course and resort acquisition and development, including operations, memberships, contract review, financial analysis, land use, zoning, entitlements, water rights, effluent, wetlands, sensitive habitat and hazardous materials remediation. He participates in the negotiation and preparation of the definitive purchase and sale agreement and related documents necessary to reflect the inter-relationships of the golf course and the surrounding community or resort. This includes development agreements, access agreements, utility and drainage easements, cost-sharing agreements and reciprocal use agreements.

Mr. Tengberg has extensive experience in structuring both equity and non-equity private golf clubs in conformance with applicable federal and state securities, income tax and property tax laws and regulations. Mr. Tengberg is also experienced in all areas relating to club operations, including the preparation and review of membership bylaws, rules and regulations, management agreements, food and beverage concession agreements, licenses and permits, CC&Rs, environmental issues, equipment lease agreements, sales and marketing programs, and employment agreements.

Foley & Lardner, LLP, continually evolves to meet the changing legal needs of our clients. Our team-based approach, proprietary client service technology, and practice depth enhance client relationships while seeing clients through their most complex legal challenges. By broadening our focus, we now offer a global perspective on the hospitality industry. Whether it’s a golf, resort, or timeshare project, we remain dedicated to helping you maximize opportunities and succeed in your ventures.
Chapter Nine - Common Closing Issues And Problems

Randy Addison, Principal
Addison Law
14901 Quorum Drive, Ste. 650
Dallas, Texas 75254

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www.addisonlaw.com
(972) 960-7719
The closing of the purchase or sale of a golf course facility, either public golf course or private club facility, is in many instances similar to acquiring a small city. It is not just a real estate acquisition, it is the acquisition of a “going concern” that involves the members, customers, governmental agencies, licenses and permits, water issues, adjacent land owners and property owner associations, environmental issues, operational contracts, membership plans and bylaws, tax issues, title and survey and other major issues. The closing is the date the ownership and operational control transfers to the buyer. In many instances, if the proper due diligence and problem solving of issues has not occurred, the buyer has “Closing Problems” that could have been avoided.

Some of the common things that can go wrong and delay a closing include the following:

Incorrect Exhibits and Schedules to be attached to the conveyance documents, including Bill of Sale, Assignment of Contracts and Deeds

- Proration Schedules and Closing Statements that are not prepared and reviewed prior to closing
- Lender checklist items not completed prior to closing
- Unresolved title and survey issues
- Licenses, permits, logos and tradenames are not transferred properly
- Special deals and concessions arising at the last minute for seller, founders, the development company and others
- Improper handling of tax issues concerning membership deposits and member Obligations

Too often, the buyer and seller wait until the last minute to attach the exhibits and schedules to the closing documents, which causes substantial issues for both parties. The inventory listing should be conducted in advance of the closing date and then updated in order to have a clear transfer of the personal property. The intangible personal property items that are sometimes missed include the website, phone numbers, IT systems, point of sale and other software programs.

The prorations of income, expenses, prepaid items, rentals, dues, account receivables, initiation deposits, deposits for tournaments, lockers, banquets, weddings and other prorations are mistakenly prepared at the last minute with various interpretations advocated between the parties if not drafted and prepared correctly. The parties should provide for a 60 to 90 day trueup period. The “lender closing checklist” should be carefully reviewed to have all the necessary documents, board consents and due diligence items completed and not overlooked prior to closing as the lender will not fund until completed. Many times, the lender closing checklist contains title and survey issues that must be resolved; these can often be complex and time consuming and should be handled well in advance of closing.
The transfer of licenses and permits have considerable timeline requirements and in many instances are overlooked until the last minute, which may result in no liquor license or operational permits available for the facility at closing. The issue of assignment and ownership of club logos and trademarks is also overlooked in many closings and requires careful consideration and drafting of specific license or transfer agreements. A checklist of some of the general documents to be provided at a closing is included in the Appendix.

The purchase and sale agreement, with its exhibits and schedules, should clearly define the assets being acquired and the liabilities being assumed. In many instances at a closing, the "special deals and/or exceptions" are disclosed at the last minute which can delay and interrupt the closing. These matters should be identified and addressed during the due diligence period so that there is no dispute at the closing.

Another item that is also a common problem at closing, when an entity is being acquired, is the tax entries for the developer subsides, membership contributions and other matters involving the tax issues. These tax issues should be resolved prior to closing with tax counsel and consultants as they are an important part of the transaction with very significant economic effect to both parties. They are not items to be resolved at the closing table. There are numerous other closing issues and mistakes that can occur at a closing. For example, improper survey certificates, title policy endorsements, title escrow letters and other matters. The use of experienced counsel and consultants will assist the parties in avoiding these costly "Closing Problems."
Closing Checklist

PURCHASE OF DALLAS MOUNTAIN COUNTRY CLUB
BY
DALLAS MOUNTAIN ACQUISITION ENTITY, L.P.

CLOSING: December 31, 2008

Seller (ASeller@): XYZ, Inc.
1234 Mountain Avenue
Anywhere, USA
Attention: Mr. J. Smith
Facsimile: 000/000-0000

Purchaser (ADMAE@): Dallas Mountain Acquisition Entity, L.P.
One Acquisition Way
Dallas, Texas 75201
Attention: Mr. D. Jones
Facsimile: 972/000-1111

Facility: Dallas Mountain Country Club

Closing Date: 12/31/2008

Purchase Price: $10,000,000.00

Counsel for Seller (AJJ@): J. James, Esq.
Attorney at Law
Lawyer Boulevard, Suite 500
Anywhere, USA 10101
Facsimile: 999/999-9999

Counsel for Purchaser (AADD@): Addison Law Firm
14901 Quorum Drive, Suite 650
Dallas, Texas 75254
Telephone: 972/ 960-8677
Facsimile: 972/ 960-7719
### A. OPERATIVE DOCUMENTS

<table>
<thead>
<tr>
<th>Document</th>
<th>Responsible Party</th>
<th>Status</th>
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</thead>
<tbody>
<tr>
<td>1. Purchase and Sale Agreement</td>
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<tr>
<td>1.a. List of Contracts</td>
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<tr>
<td>1.b. Seller’s Non-foreign Status Affidavit form</td>
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<tr>
<td>1.c. Members Notice form</td>
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<tr>
<td>1.d. Description of Names, Trade Names, and Logos</td>
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<tr>
<td>1.e. Club Membership Representations</td>
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<tr>
<td>1.f. Membership List (updated at Closing)</td>
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<td>1.g. Deed form</td>
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<td>1.h. Assignment of Bonds, Warranties, and Guaranties form</td>
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<tr>
<td>1.i. Assignment of Contracts form</td>
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<td>1.j. Assignment of Licenses and Permits form</td>
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<td>1.k. Assignment of Water Rights and Permits form</td>
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<td>1.l. Bill of Sale form</td>
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<td>1.m. Seller’s Bringdown Certificate form</td>
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<td>1.n. Purchaser’s Bringdown Certificate form</td>
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<tr>
<td>1.o. List of Existing Personal Property Conditions</td>
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<tr>
<td>1.p. List of Licenses and Permits</td>
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<td>1.q. Real Property legal description</td>
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<td>1.r. List of Tangible Personal Property</td>
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<td>1.s. Opinion of Seller’s Counsel form</td>
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<td>1.t. Opinion of Purchaser’s Counsel form</td>
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<td>1.u. Updated Inventory (updated at Closing)</td>
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<td>1.v. List of Waste Disposal Activities</td>
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<td>2. Deed</td>
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<td>3. Quitclaim Deed</td>
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<td>4. Assignment of Contracts</td>
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<tr>
<td>5. Bill of Sale</td>
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<td>6. Assignment of Bonds, Warranties, and Guaranties</td>
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<td>7. Assignment of Licenses and Permits</td>
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<td>8. Assignment of Water Rights and Permits</td>
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<tr>
<td>9. Seller’s Bringdown Certificate</td>
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</table>

**Closing Checklist**

Randy Addison, Principal; Addison Law
<table>
<thead>
<tr>
<th>Document</th>
<th>Responsible Party</th>
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<tbody>
<tr>
<td>10. Opinion of Seller=s Counsel</td>
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<tr>
<td>11. Seller=s Non-foreign Status Affidavit</td>
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<td>12. Purchaser=s Bringdown Certificate</td>
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<tr>
<td>13. Opinion of Purchaser=s Counsel</td>
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<tr>
<td>14. Notice to Members</td>
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<tr>
<td>15. Required state, county, and municipal transfer declarations, if any</td>
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<tr>
<td>16. Approved Contracts</td>
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<tr>
<td>17. Letters to parties under Approved Contracts</td>
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<tr>
<td>18. Termination of all contracts other than Approved Contracts</td>
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<tr>
<td>19. ALTA statement or other affidavit</td>
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<tr>
<td>20. Assignment of Marks (if applicable)</td>
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<tr>
<td>21. Assignment of Accounts Receivable (if applicable)</td>
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<tr>
<td>22. Transfer of domain/website (if applicable)</td>
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**B. TRANSFER OF LIQUOR LICENSE**

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<td>1. Liquor Escrow</td>
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<tr>
<td>2. Liquor Purchase Price</td>
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<tr>
<td>3. Transfer of Liquor License</td>
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<tr>
<td>4. Notice of Intended Transfer</td>
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<td>5. Notice of Intention to Engage in the Sale of Alcoholic Beverages</td>
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<tr>
<td>6. Temporary Liquor License</td>
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**C. ORGANIZATION DOCUMENTS OF SELLER: Seller**

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<thead>
<tr>
<th>Document</th>
<th>Responsible Party</th>
<th>Status</th>
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<tbody>
<tr>
<td>1. Certificate of Legal Existence and Good Standing</td>
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<tr>
<td>2. Incumbency Certificate</td>
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<td></td>
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<tr>
<td>3. Corporate Resolutions Authorizing Sale</td>
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</tbody>
</table>
### D. ORGANIZATION DOCUMENTS OF PURCHASER: DMAE

1. Certificate of Legal Existence and Good Standing
2. Incumbency Certificate
3. Corporate Resolutions Authorizing Purchase

### E. MISCELLANEOUS

1. Instruction Letter to Title Insurance Company (i) confirming wiring instructions, and (ii) arranging for recording/filing of documents
2. Final Owner’s Title Policy Commitment
3. Final ALTA Survey
4. Final Settlement Statement/Final Prorations
5. Cash Portion of Purchase Price
6. Replacement of Credit Card Plates
7. Insurance Certificates
8. Sales Tax Clearance Certificate
9. Consents to Assignment of Contracts
10. Loan Documents

### F. POST-CLOSING

1. Delivery of Final Title Insurance Policies
2. Copies of Recorded Documents
3. Closing Binders
Meet Randy Addison

Randy Addison, founding partner of Addison Law, has represented parties involved in the ownership, purchase and sale, operation, and development of equity and non-equity private clubs, public golf facilities, resort projects, residential/golf course projects, including purchase and sale agreements, development documents, membership plans, club bylaws, and operational matters in projects throughout the United States.

Addison Law (the "Firm"), celebrating its 30th year, provides comprehensive legal representation to the golf, club, resort, residential development and hospitality industries. The professionals of the Firm have over 100 years combined experience, with over 1500 transactions throughout the U.S. and abroad. The Firm has gained an in depth knowledge and understanding of the issues that affect the profitability of its clients, translating into unequaled legal service. The Firm has been named "Law Firm of the Year" in the golf industry by Boardroom Magazine for the last ten years.

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Golf + Hospitality + Land
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