

Debtors' Motion for Entry of an Order Authorizing and Approving (i) the Asset Purchase Agreement with Great Expectations, L.L.C.; (ii) Rejection of an Unexpired Lease and an Executory Contract; and (iii) Assumption and Assignment of an Executory Contract (the "GE Motion")

By the GE Motion, the Debtors seek entry of an order authorizing and approving (i) the asset purchase agreement (the "APA") between Debtors The Mansion Ridge Sewer Company, Inc. ("MRSC") and WCI Homes Northeast, Inc. ("WCI Homes Northeast") and Great Expectations, L.L.C. ("GE"); (ii) the rejection of an unexpired lease and an executory contract, and (iii) the assumption and assignment of an executory contract.

The Mansion Ridge Contracts. In December of 2000, Spectrum Skanska, Inc. ("Spectrum Skanska")¹ and GE entered into an agreement (the "Purchase Agreement") for the purchase of land for the development of residences surrounding a golf course in the Town of Monroe, New York, known as "The Golf Club at Mansion Ridge" ("Mansion Ridge"). At that time, Mansion Ridge contained the following three tracts of land: (a) the golf course parcel (the "Golf Course Parcel"); (b) certain remaining non-golf lands; and (c) the mine tract (the "Mine Tract"), which includes a 15 million gallon lagoon (the "Golf Lagoon"). The Developer acquired only a portion of the remaining non-golf lands (the "Residential Premises") for \$10 million, on which the Debtors built approximately 80 townhomes and 20 single-family residences.

Under the Purchase Agreement with GE, the Developer was obligated to either obtain a municipal connection for the Residential Premises or construct and maintain a sewage treatment plant. The Developer fulfilled this obligation by having a subsidiary of WCI Homes Northeast, MRSC, enter into a ground lease (the "Ground Lease") and construct a sewage treatment plant (the "Sewage Treatment Plant") on the Mine Tract. In conjunction with the Purchase Agreement, GE executed, and the Developer consented to, a Supplemental Declaration of Easements, Covenants and Restrictions (the "Supplemental ECR"), under which the Developer was required to apply for governmental approvals, if necessary, to drill sufficient wells to ensure that the total of the treated effluent and the well water flow being supplied by MRSC was at least 60,000 gallons per day. The Sewage Treatment Plant produces treated effluent, which is treated and then discharged for irrigation of the Golf Course Parcel and certain residential landscaping. The Debtors maintain that, since its inception, MRSC has been incurring losses on account of its operation of the Sewage Treatment Plant.

Also in connection with the Purchase Agreement and Supplemental ECR, GE, the Developer, and American Golf Corporation ("American Golf") entered into a Consent Agreement (the "Consent Agreement"), under which, American Golf consented to, among other things, the sale of the Residential Premises in exchange for, among other things, the Developer's agreement to construct the necessary facilities to provide 60,000 gallons of irrigation water per day to irrigate the Golf Course Parcel.

¹ Spectrum Skanska is the predecessor-in-interest of Mansion Ridge Home & Land Company, L.L.C. (the "Developer"), which is a wholly-owned subsidiary of WCI Homes Northeast – itself a wholly owned subsidiary of WCI.

In December of 2006, GE, MRSC and American Golf entered into a Joint Cooperation and Compliance Agreement (the “Cooperation Agreement” and, collectively with the Purchase Agreement, the Supplemental ECR, the Consent Agreement, and the Ground Lease, the “Mansion Ridge Agreements”) whereby the parties hired an independent consultant to represent the common interests of the parties and monitor the quality of the Sewage Treatment Plant.

The GE Litigation. On October 31, 2008, the Debtors filed a motion seeking an extension to the time period within which they may assume or reject unexpired leases of nonresidential property (the “Motion to Extend Time”), which was set for hearing on November 18, 2008. On November 11, 2008, GE filed an objection to the Motion to Extend Time (the “Objection”), wherein GE alleged, among other things, that the Debtors were not in compliance on a postpetition basis with the Ground Lease’s terms and conditions. The Debtors filed a reply (the “Reply,” collectively with all the pleadings related to the Motion to Extend Time, the “GE Litigation”) to the Objection on November 25, 2009, in which they wholly dispute each of GE’s allegations. At the December 2, 2008 omnibus hearing, the parties agreed to continue the hearing on GE’s Objection to the next omnibus hearing on January 6, 2009, at which time the parties entered into an interim agreement whereby all matters relating to the GE Litigation would be continued to the February 4, 2009 omnibus hearing date. Before the expiration of the claims bar date on February 2, 2009, GE filed four unliquidated proofs of claim against (i) MRSC, (ii) WCI Homes Northeast, (iii) the Developer, and (iv) WCI.

The APA. After extensive negotiations regarding the GE Litigation, the parties agreed to resolve all outstanding disputes and claims related thereto pursuant to a settlement embodied in the APA. The following is a summary of certain key terms of the APA:

Sale of MRSC’s Assets. The Debtors will sell substantially all MRSC’s assets to GE in exchange for \$1 and certain assets listed in the APA (collectively, the “Purchased Assets”). The Purchased Assets will be conveyed (i) free and clear of all liens (except for the Assumed Liabilities described in the APA), and (ii) “as is, where is, with all faults”.

Assumed Liabilities. GE will assume all “Liabilities” and obligations under that certain Turnover Agreement dated August 7, 2000 between the Town of Monroe and GE (the “Turnover Agreement”). GE will also assume all Liabilities and obligations in connection with the ownership and operation of the Purchased Assets arising out of events occurring on or after the Closing Date.

Rejection of Certain Executory Contracts and Unexpired Leases. The Debtors will reject the Ground Lease and the Mansion Ridge Wastewater Treatment Facilities Operating Agreement by and between WCI and AOS Operating Company (the “Operating Agreement,” collectively with the Ground Lease, the “Rejected Agreements”), effective as of Closing.

Assignment or Assumption and Assignment of Certain Executory Contracts and Unexpired Leases. The Debtors will assume and assign the Turnover Agreement to GE.

Operation of the Sewage Treatment Plant. GE agrees to continue to provide sewage treatment to the Debtors’ customers for a minimum of one year or the time remaining under the ten year performance and maintenance guarantee period referenced in the Turnover Agreement, whichever is greater, or otherwise provide or arrange for adequate sewage treatment services for

such minimum period to the reasonable satisfaction of the Town of Monroe.

Settlement. The Debtors and GE will settle and resolve all the GE Litigation and GE's proofs of claim pursuant to the terms and conditions of the APA, as described in the mutual release attached to the APA (the "Mutual Release").

Mutual Indemnification. The parties agree to mutual indemnification as set forth in the APA and the Mutual Release.

Release Upon Closing. GE will release and hold harmless all claims it has or may have against the Debtors and any of its affiliates, as set forth in the Mutual Release.

Closing Date. The closing shall take place on July 8, 2009, but will in no event be earlier than two 2 business days after Bankruptcy Court approval of the APA.

Additionally, although WCI is not prohibited from considering and/or accepting higher and better bids, WCI has agreed not to conduct an auction of the Purchased Assets.

The Debtors submit that (i) settlement with GE through the APA allows the Debtors to resolve all outstanding claims relating to the Mansion Ridge Agreements for significantly less than it would cost to continue the GE Litigation as well as litigate GE's proofs of claim and any potential third-party claims, (ii) the APA also allows the Debtors to avoid all future liability regarding any claims associated with the Sewage Treatment Plant, (iii) maintaining customer relationships and the Debtors' reputation is particularly important in this situation as the Debtors provide sewage drainage services to the homeowners and treated water to the Golf Lagoon for use by American Golf, and (iv) without approval of the APA, the Debtors will potentially face substantial costs relating to the continued maintenance and operation of the Sewage Treatment Plant or damages associated with rejection of the Mansion Ridge Agreements.

Rejection of the Ground Lease and the Operating Agreement. Pursuant to the terms of the APA, the Debtors also seek to reject the unexpired lease and executory contract known as the Ground Lease and the Operating Agreement. After the Court approves the APA, the Ground Lease and the Operating Agreement will have no further value to the Debtors and GE is not interested in accepting an assignment of the Ground Lease, as GE is the lessor under the Ground Lease. As such, the Rejected Agreements are unnecessary and burdensome, and any delay in rejecting the Rejected Agreements will result in an unnecessary accrual of costs and expenses to the detriment of the Debtors' estates and creditors. Accordingly, the Debtors seek to reject the Rejected Agreements effective as of the date of the entry of order approving the APA in order to relieve themselves of burdensome and unnecessary obligations and minimize their post-petition expenses, thereby maximizing value for their estates and creditors.

Assumption or Assumption and Assignment of the Turnover Agreement. Also pursuant to the terms of the APA, the Debtors seek to assume the Turnover Agreement and assign it to GE. The Debtors submit that, (i) upon information and belief no defaults exist or require cure under the Turnover Agreement as required under the Bankruptcy Code, and (ii) the Debtors are in compliance with the terms of the Turnover Agreement. Additionally, GE, as the assignee of the Turnover Agreement, has agreed to abide by the terms of such agreement and be obligated to assume all future performance required thereby.