

Motion of National City Commercial Capital Company, LLC for Assumption or Rejection of Unexpired Lease; or in the Alternative, Relief from the Automatic Stay (the “National City Motion”)

By the National City Motion, National City Commercial Capital Company, LLC (“National City”) seeks entry of an order either (i) directing Debtor WCI Communities, Inc. (“WCI”) to assume or reject the lease (the “Lease”) and three related lease schedules (collectively, the “Lease Schedules”) and, together with the Lease, the “Lease Agreement”) relating to certain equipment (the “Equipment”) leased to WCI, and (a) if assumed, directing WCI to cure all outstanding obligations due under the Lease and provide adequate assurance of WCI’s ability to make future payments, or (b) if rejected, directing WCI to (x) pay rejection damages, and (y) return the Equipment, or (ii) granting National City relief from the automatic stay to recover the Equipment and exercise its rights under state law or in equity.

National City maintains that WCI (i) agreed to pay an aggregate of approximately \$10,500, plus sales tax, in monthly rental payments under the Lease Schedules, (ii) made its last rental payments on September 1, 2008, (iii) is in default of the Lease Agreement, and (iv) continues to use the Equipment for the benefit and preservation of their estates. The table below shows that amounts that National City alleges are due and outstanding under the Lease Agreement:

<i>Lease Schedule</i>	<i>Monthly Payment</i>	<i>Termination Date</i>	<i>Number of Months Rental Outstanding</i>	<i>Total Amount Outstanding (plus sales tax)</i>
First	\$ 5,852.19	2/1/2009	5	\$29,260.95
Second	\$ 4,195.84	3/1/2009	6	\$25,175.04
Third	\$ 489.60	5/1/2009	8	\$ 3,916.80
Total	\$10,537.63			\$58,352.79

National City asserts that the Debtors should be required to assume or reject the Lease Agreement because (i) section 365(d)(5) of the Bankruptcy Code requires WCI to perform all obligations arising from or after 60 days after the Petition Date under the Lease Agreement until such lease is assumed or rejected and WCI has failed to do so, and (ii) WCI still retains possession and use of the Equipment even though WCI has not yet assumed the Lease Agreement or complied with its postpetition obligations thereunder.