

Gruzen Samton LLP's Motion for Order Compelling Debtor to Assume or Reject Executory Contract or for Adequate Protection (the "Gruzen Motion")

By the Gruzen Motion, Gruzen Samton LLP ("Gruzen") seeks entry of an order compelling Debtor WCI Communities, Inc. ("WCI" or the "Debtor") to assume or reject the Agreement (as defined below).

Pursuant to a Letter Agreement, dated October 13, 2004 (the "Letter Agreement"), Gruzen agreed to perform certain architectural and construction administrative services (the "Gruzen Services") for WCI in connection with the development and construction of a twelve story, approximately 206 unit residential condominium project know as the "The Watermark" in North Bergen, New Jersey (the "Project"). Subsequent to the date of the Letter Agreement, a dispute arose concerning WCI's alleged failure to make certain payments to Gruzen.

The parties ultimately resolved this dispute, and memorialized the resolution thereof in a settlement agreement, dated April 18, 2008 (as it incorporates the Letter Agreement, the "Agreement"), which, among other things, confirmed WCI's obligations to pay the disputed amounts to Gruzen. Additionally, WCI agreed to pay Gruzen (i) \$32,000 for construction administrative services rendered in May and June of 2008 (the "Services Payment") and (ii) an additional \$117,403 (the "Additional Payment") within thirty days of issuance of the Final Certificate of Occupancy for the Project (the "CO").

In the Gruzen Motion, Gruzen asserts that (i) it has not been paid the Services Payment and (ii) there is further work Gruzen needs to perform to finalize the Project and obtain the CO.

Gruzen believes that its work on the Project, including obtaining the CO, greatly benefits WCI's estate by allowing WCI to realize its investment in the Project. Gruzen maintains it has diligently continued to perform work on the Project since the commencement of the Debtors' chapter 11 cases on August 4, 2008 (the "Petition Date"), but WCI has failed and refused to pay Gruzen on a post-petition basis. Gruzen maintains it has sought to receive assurance of payment, but WCI has not provided such assurance.

Gruzen asserts that the WCI's prepetition default, coupled with the fact that the Debtors have not paid Gruzen for the work that Gruzen has performed postpetition, warrants an immediate decision regarding the Agreement. In the meantime, Gruzen alleges that it bears all the risk of WCI's inaction. Gruzen maintains that it is unfair to put Gruzen at risk of facing the prospect of WCI's potential administrative insolvency when Gruzen has to incur the cost associated with its work on the Project, including costs associated with the submissions required to obtain the CO, regardless of whether WCI pays Gruzen. In addition, Gruzen claims the issuance of the CO is imminent. WCI should not be permitted to delay their decision to ensure that the Agreement is no longer executory in nature, thus obtaining the benefit of the bargain without having to justly compensate Gruzen.

Alternatively, Gruzen believes that the Court should protect its interest and property by requiring WCI to provide adequate protection to Gruzen. Gruzen asserts that WCI continues to use Gruzen's work product, without having to compensate Gruzen therefor. Additionally, to the extent that Gruzen's plans and submissions are used to obtain the CO, Gruzen remains obligated

to monitor such work product for code compliance, life, health and safety, and other related issues that Gruzen remains responsible for regardless of whether it is ultimately paid by the Debtors. Unless the Debtors are required to immediately commence adequate protection payments to Gruzen equal to the amounts due under the Agreement, Gruzen asserts it will be irreparably harmed.