

**Debtors' Emergency Motion for Entry of an Order Approving (A) the Turnover Agreement By and Between WCI Communities, Inc. and Gulf Harbour Golf & Country Club, Inc., (B) the Rejection of Certain Executory Contracts and Leases and (C) the Sale of Certain Equity Memberships, Inventory and Supplies (the "Gulf Harbour Motion")**

By the Gulf Harbour Motion, the Debtors seek entry of an order approving a turnover agreement (the "Turnover Agreement") by and between WCI Communities, Inc. ("WCI") and Gulf Harbour Golf & Country Club, Inc. (the "Club") including (i) the rejection of certain executory contracts and leases, and (ii) the sale of certain equity memberships, inventory, and supplies, in connection therewith.

The Club is a non-profit equity club located in Fort Meyers, Florida. The Club offers its members (collectively, the "Equity Members"), among other amenities, an 18-hole championship golf course, eight tennis courts, a clubhouse, a waterfront restaurant, two formal dining rooms, pro shops, and a spa & fitness center (collectively, the "Club Facilities"). The Debtors sell memberships for a lump sum payment and, thereafter, the Equity Member becomes an interest owner in the Club and is assessed periodic membership dues. WCI currently manages and operates the Club pursuant to a management agreement and a marketing, access and use agreement. Additionally, WCI and the Club entered into a club acquisition agreement, pursuant to which, among other things, WCI transferred certain Club Facilities to the Club and agreed to renovate certain facilities for the benefit of the Club. Pursuant to the Club's membership plan (the "Membership Plan"), the Club issued a total of 400 golf memberships (collectively, the "Golf Memberships") and 1,000 sports memberships (collectively, the "Sports Memberships"). Currently, WCI owns seven Golf Memberships and 304 Sports Memberships (collectively, the "WCI Memberships").

The Membership Plan contemplates that control of the Club and the Club Facilities will not be transferred to the Equity Members until December 30, 2009. However, in light of WCI's bankruptcy filing and uncertain financial status, an early turnover committee comprised of certain Equity Members (the "Turnover Committee") was formed to negotiate the expedited transfer of the Club from WCI to the Equity Members.

As a result of negotiations, the parties entered into the Turnover Agreement, the salient terms of which are summarized below:

- Turnover. Control of the Club and the Club Facilities will be transferred to the Equity Members on December 31, 2008 (the "Turnover Date") (one year early), and at such time, all members of the board of governors designated by WCI will resign from such positions and the representatives of the Equity Members elected to take over will begin serving as the board of governors.
- Rejection of WCI Contracts. Subject to Court approval, the Debtors will reject each of the leases, service contracts and other agreements between the applicable

lessor/vendor and WCI that relate to the operation, management and use the Club Facilities (the “WCI Contracts”) as of the Turnover Date.<sup>1</sup>

- Assignment of Licenses and Permits. On the Turnover Date, WCI will assign all assignable licenses and permits which relate to the Club Facilities and the operation for the Club and any warranties which may have been received by WCI as of the Turnover Date from manufacturers or suppliers as to any of the Club Facilities, without recourse to WCI. Any cure amounts required to be paid pursuant to the Bankruptcy Code shall be paid by the Club.
- Credit for Inventory and Supplies. On the Turnover Date, the Club will pay WCI an amount equal to the sum of: (i) the cost of the food, beverage and merchandise or pro shop inventory on hand on the Turnover Date, *provided* that in no event shall the Club be required to pay more than \$100,000 for such items, (ii) the cost of supplies used in the maintenance or operation of the Club (which are estimated at approximately \$16,000), and (iii) certain amounts prepaid for contracts which will benefit the Club after the Turnover Date.
- Prorations. On the Turnover Date, the following items shall be prorated in the customary manner: (i) water, sewer, electric and other utility charges and deposits, (ii) any property taxes or assessments on the real estate portion of the Club Facilities, (iii) any rents, revenues, accounts receivable and accounts payable of the Club Facilities, (iv) all wages and payroll taxes of employees which relate to the operation of the Club Facilities, (v) any other accrued or prepaid expenses incurred in connection with the operation of the Club Facilities, (vi) all assignable license and permit fees related to the development or operation of the Club Facilities, and (vii) any prepayment of dues, fees or assessments.
- Purchase of WCI Memberships. On the Turnover Date, WCI will assign, free and clear of all liens, claims and encumbrances, all of its right, title and interest in and to all WCI Memberships as of the Turnover Date. WCI shall not sell any of the seven Golf Memberships still owned by WCI as of the date of the Turnover Agreement. WCI will continue to have the right to sell the Sports Memberships, however, until the Turnover Date, at a price not less than \$7,000 per Sports Membership. In consideration of the assignment of the WCI Memberships on the Turnover Date, the Club shall pay to WCI on the Turnover Date the sum of \$960,000, reduced by \$50,000 for the repair of the “Major Repair Items”<sup>2</sup> on the

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<sup>1</sup> The WCI Contracts consist of agreements relating to, among other things, (i) uniform and linen rental, (ii) beverage sales, and (iii) other similar agreements necessary for the day-to-day operation of the Club and Club Facilities. WCI is seeking to reject the WCI Contracts because, after the Turnover Date, the WCI Contracts will have no further value to the Debtors, and the Club is not interested in accepting an assignment of such agreements.

<sup>2</sup> The Turnover Agreement defines “Major Repair Items” to include (i) the remediation of the metal retaining walls for the pump station serving the golf course irrigation system, (ii) the repair of several clubhouse terraces that are leaking water or otherwise causing water intrusion into the clubhouse structure, and (iii) mold remediation that must be performed at the clubhouse in conjunction with repairing or rebuilding the defective terraces.

Turnover Date, to the extent such amount has not previously been advanced by WCI.

- Dock A Litigation. The Club and Gulf Harbour Marina (the “Marina”) are parties to a cross access easement providing that the Club and the Equity Members will have an easement over a portion of property owned by Marina known as “Dock A”. Pursuant to a dispute between Marina and WCI, Marina filed suit against WCI (the “Dock A Litigation”). The Club has agreed (i) to assume all responsibility for providing its members with access to Dock A and (ii) will indemnify WCI from claims relating to the use thereof, ensuring that WCI will not be liable for any further claims that may result from the Dock A Litigation. In addition, the Club has agreed that the accommodations required to provide Equity Members with access to Eagle Perch Island, which could include making improvements to Dock A or constructing an alternate bridge to the island, will be at the Club’s own expense.
- Teering Litigation. Pursuant to the Turnover Agreement, the Club has agreed, at its sole cost and expense, to cause to dismiss a lawsuit commenced by an Equity Member against WCI and the Club’s board of governors. In addition, the Club has agreed to indemnify WCI for any claims relating to such litigation (the “Teering Litigation”).

The Debtors assert that entry into the Turnover Agreement and the early turnover of the Club will relieve WCI of its management obligations for the Club and the significant time and expense such obligations entail. Additionally, the Debtors maintain they will obtain significant benefits arising from the Club’s agreement to assume all responsibility for providing its members with access to Dock A.

In connection with the Gulf Harbour Motion, the Debtors filed a separate motion seeking to shorten the notice period with respect to the Gulf Harbour Motion so that the Court may consider the Gulf Harbour Motion at the omnibus hearing scheduled for December 17, 2008 at 11:00 a.m. (the “Motion to Shorten Time”). On December 9, 2008, the Court approved the Motion to Shorten Time.