

Debtors' Motion to Reject Executory Contract in Connection with Management Agreement for the Waterlefe River Club Pursuant to Section 365(a) of the Bankruptcy Code *Nunc Pro Tunc* to December 19, 2008 (the "Waterlefe Rejection Motion")

By the Waterlefe Motion, the Debtors seek entry of an order authorizing them to reject a management agreement (the "Management Agreement") for the Waterlefe River Club (the "Club") located in Bradenton, Florida *nunc pro tunc* to December 19, 2008.

Prior to filing for bankruptcy, the Debtors developed and built a luxury community located in Bradenton, Florida known as the Waterlefe Golf & River Club (the "Waterlefe Community"), consisting of 588 residential homes and certain amenities, including the Club.¹ As of August 4, 2008, the Debtors had sold their entire inventory of homes developed in the Waterlefe Community.

The Club is a recreational club owned by the Waterlefe Mater Property Owners' Association, Inc. (the "HOA"). It consists of a restaurant and dining space, a fitness center, a play area, and a swimming pool. The Club is available for rent for special member-sponsored events. The Club's operations have been managed by the Debtors since approximately 2003. Currently the Debtors and the HOA are parties to the Management Agreement, dated January 1, 2008, which details the Debtors' responsibility for the general maintenance, operation, and management of the Club.

The Management Agreement is a year-long contract, which automatically renews annually unless either of the parties provides written notice of its intent to terminate at least 180 days prior to the last day of the current period. Currently, the Management Agreement expires on December 31, 2009.

As compensation for their managerial services, the Debtors receive the lesser of \$60,000 or 50% of the excess of all revenues over all expenses on an annual basis. Additionally, all of the HOA members' dues, approximately \$224 per member per quarter, are paid to the Debtors on a quarterly basis. Finally, the HOA pays the Debtors a fee of 3% of the Club's gross revenues for services they provide, including accounting, payroll, and computer support services.

The Management Agreement also provides that all "out of pocket" expenses the Debtors incur on account of the Club shall be reimbursed by the HOA. As of the date of the Waterlefe Rejection Motion, the Debtors believe that the HOA is substantially current on such amounts owed.

The Debtors maintain that they never intended to generate profit from the Management Agreement, and their records indicate that they essentially broke even under the Management Agreement in 2007 and 2008. Although the Management Agreement is not profitable, the

¹ The Waterlefe Community also includes an 18-hole golf course and related facilities (the "Golf Course Facilities"). In September 2008, we posted on the Committee website a summary of a motion whereby the Debtors sought to reject certain executory contracts in connection with their sale of the Golf Course Facilities to the Waterlefe Community Development District. An order approving the Debtors' rejection of such contracts was entered on September 23, 2008.

Debtors assert that they must expend significant corporate resources to manage the Club on a daily basis. The Debtors claim that, historically, they managed the Club because it was important to their ongoing home sales efforts that the Club be maintained in a high quality fashion. However, the Debtors no longer own any homes in the Waterlefe Community so they believe that continuing to expend corporate resources on account of the Management Agreement is unnecessary.

The Debtors acknowledge that the effective date of a rejection is normally the date the order approving such rejection is entered. However, the Debtors maintain that in this instance, the rejection of the Management Agreement *nunc pro tunc* to December 19, 2008 is proper as the Waterlefe Rejection Motion provides notice of the Debtors' intent to reject the Management Agreement. The Debtors assert that it is important for them to be able to reject the Management Agreement promptly in order avoid expending additional corporate resources on account of an agreement that yields little economic benefit.