

Debtors' Motion Pursuant to 11 U.S.C. §§ 105 and 363 and Rules 2002(a)(2) and 6004 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Debtors' Sale of Certain Real Property Located in Marion County, Florida to Ocala 623 Land Development LLC Free and Clear of Liens, Claims, Encumbrances and Interests (the "Ashley Farms Sale Motion")

By the Ashley Farms Sale Motion, the Debtors seek entry of an order (i) approving the Debtors' sale (the "Sale") of their property at and interests in the Ashley Farms Golf and Country Club ("Ashley Farms") to Ocala 623 Land Development LLC (the "Joint Venture") free and clear of any liens and interests (collectively, the "Interests").

The Joint Venture was formed between WCI Ocala 623, Inc. ("WCI Ocala"), a non-Debtor affiliate of WCI Communities, Inc. ("WCI"), and IHP Investment Fund III, L.P. ("IHP") to purchase and develop a tract of land in Ocala, Florida into the Ashley Farms residential community. WCI executed a guaranty in favor of IHP (the "Guaranty"), whereby WCI guaranteed the full performance of all of WCI Ocala's obligations under the Joint Venture's operating agreement (as amended, the "Operating Agreement").

Ashley Farms is an approximately 600-acre "Planned Unit Development". The current plans contemplate the development of 1,299 residential units, a golf course, and a clubhouse. Phase I of the infrastructure for Ashley Farms is complete and includes 261 finished single-family lots, a welcome center, a golf course, and a water treatment facility. In 2007, WCI purchased 25 lots from the Joint Venture. On 14 of these lots, WCI constructed 11 single family homes, including seven model homes, and nearly completed the construction of three additional single family homes¹ (collectively, the "WCI-Owned Homes"). The remaining 11 lots are finished but remain vacant (the "WCI-Owned Lots", and together with the WCI-Owned Homes and certain tangible and intangible rights and other property, the "Property").

Prior to the commencement of the Debtors' chapter 11 cases, WCI Ocala failed to take down additional lots in Ashley Farms as required under the Operating Agreement. In July 2008, IHP and WCI Ocala agreed (i) to put the project on hold pending a recovery in the real estate and financial markets and (ii) share security and maintenance expenses during such time. As a result, all development of lots has ceased and no amenities have been completed.

According to the Operating Agreement, WCI Ocala must bear the first losses in the Joint Venture. Further, WCI Ocala is in default under the Operating Agreement because its guarantor, WCI, has commenced these chapter 11 cases. Therefore, IHP is permitted to exercise a "Buy/Sell" provision contained in the Operating Agreement, which provides IHP with the right to purchase WCI Ocala's membership interest in the Joint Venture upon a default.

As the ultimate parent of WCI Ocala, which was formerly the managing member of the Joint Venture,² and as the owner of the Property, the Debtors estimate that WCI will incur costs of

¹ The Debtors estimate that it would require an additional \$20,000 to finish each of these partially completed homes.

² IHP exercised its right to replace WCI Ocala as the managing member of the Joint Venture in accordance with the Operating Agreement by a letter dated December 3, 2008.

approximately \$260,000 per year to (a) maintain the Property, (b) provide adequate and appropriate security, and (c) pay real estate taxes.

The Purchase Agreement. On October 28, 2008, IHP offered to purchase (i) the Property from WCI and (ii) WCI Ocala's membership interest in the Joint Venture (the "Membership Interest"). WCI's board authorized the sale to IHP, and on January 15, 2009, WCI and WCI Ocala executed a purchase agreement (the "Purchase Agreement") with the Joint Venture and IHP. The following are the key terms of the Purchase Agreement:

- Real Property. The Joint Venture shall purchase the Property from WCI.
- Membership Interest. WCI Ocala shall assign its entire Membership Interest in the Joint Venture to the Joint Venture.
- Purchase Price. The aggregate purchase price shall be \$2,120,000 (the "Purchase Price"). The Purchase Price includes the purchase price of \$2,680,000 for the Property,³ less \$560,000 relating to IHP's forgiveness of WCI Ocala's shortfall obligation,⁴ and credit for one year cost of ownership.
- Deposit. The Joint Venture shall place a deposit of \$200,000 into an interest bearing escrow account for the benefit of the Joint Venture.
- Prorations / Closing Costs. Taxes, assessments, other obligations, closing costs, and real property tax obligations are to be prorated between WCI, WCI Ocala and the Joint Venture as set forth in the Purchase Agreement.
- Monetary Liens. WCI shall cause any and all monetary liens against the Property to be paid or otherwise released and discharged at or prior to closing.
- Closing Date. Closing shall occur no later than February 28, 2009.
- Release Upon Closing. Effective as of the Closing Date, IHP and the Joint Venture shall release WCI from any and all claims or obligations related to, among other things, the Property, the Operating Agreement and the Guaranty.

³ Of the \$2,680,000, \$1,980,000 is for 11 finished homes, \$480,000 is for the 3 unfinished homes, and \$220,000 is for the 11 finished lots.

⁴ The Operating Agreement contains a "shortfall" provision, under which WCI Ocala likely would owe IHP for a portion of its negotiated return upon the sale or dissolution of the Joint Venture.

- Assumption/Rejection of Executory Contracts. The Debtors shall assume and reject certain executory contracts and/or unexpired leases in connection with the Sale.

Additionally, closing is expressly conditioned on the entry of a Court order authorizing the sale of the Property free and clear of Interests other than certain liabilities specifically assumed under the Purchase Agreement.

Although WCI is not prohibited from considering and/or accepting higher and better bids, WCI has agreed under the Purchase Agreement not to conduct an auction of the Property. Closing is conditioned on the Court waiving the ten-day stay period typically required by the Bankruptcy Rules and the order approving the Sale not otherwise being stayed.

The Debtors submit that the Purchase Price is close to the most recent appraised value of the Property and WCI will not likely obtain any reasonable return or profit from the Joint Venture. Moreover, in return for the Purchase Price, WCI is being relieved of further taxes, costs, and other obligations and liabilities relating to the Property. Accordingly, the Debtors believe that their creditors will receive more value through a prompt sale of the Property than through a piecemeal sale. Additionally, the Debtors assert that WCI will obtain a valuable release with respect to liabilities that it might otherwise have as guarantor with respect to WCI Ocala's obligations under the Operating Agreement.

In connection with the Sale, the Debtors also filed a separate motion (the "Assumption Motion") seeking to assume and assign WCI's water and wastewater system service contract with Marion County (the "Contract") to the Joint Venture. WCI entered the Contract to ensure that central water and wastewater facilities (the "Water Facilities") were constructed and maintained on the Property so that adequate water services would be furnished to Ashley Farms' occupants.

The Contract provides, among other things, that: (i) WCI shall pay for the construction of the Water Facilities- which has occurred- and shall transfer ownership of such facilities to Marion County- which has been accomplished in part; (ii) WCI shall pay monthly fees to Marion County and comply with Marion County's rules applicable to water and wastewater service; (iii) Marion County shall allow connection of the Water Facilities to Marion County's central water and wastewater facilities, and (iv) Marion County shall provide water and wastewater service to Ashley Farms in accordance with the Contract. Upon closing of the Sale, the Debtors have no use for the Contract and, thus, the Contract will be assigned to the Joint Venture allowing the Debtors to end their obligations thereunder. The Debtors believe that they are current in all payments under the Contract and, thus, there will be no cure amounts assertable by the counterparty, Marion County.