

**Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. § 363(b) and Rules 6004 and 9019 of the Federal Rules of Bankruptcy Procedure Authorizing and Approving (I) Agreement Regarding Transfer of Club Property and Transactions Contemplated Thereunder; and (ii) Payment of Certain Expenses Related to the Transfer of Real Property Under the Agreement (the "Old Palm Motion")**

By the Old Palm Motion, the Debtors seek entry of an order approving a transfer agreement (the "Transfer Agreement") between Debtor Communities Finance Company, LLC ("CFC") and Old Palm Golf Club, Inc. (the "Equity Club") and the transactions contemplated thereunder, and (ii) payment of certain expenses related to the transfer of certain real property under the Transfer Agreement.

*The Old Palm Community.* Prior to August 4, 2008 (the "Petition Date"), the Debtors developed and built a 650-acre gated luxury home community in Palm Beach Gardens, Florida known as the Old Palm Golf Club (the "Old Palm Community"). The Old Palm Community consisted of 294 planned custom homes and eight cottages, a private golf course, clubhouse, and related facilities. As of the Petition Date, approximately 149 of the planned homes remained unsold.

*The Equity Club.* The Equity Club was established to own and maintain the golf course, clubhouse, and related facilities of the Old Palm Community (the "Facilities"). As a privilege of home ownership in the Old Palm Community, residents are permitted to purchase from CFC equity memberships ("Equity Membership") in the Equity Club. An additional 55 recallable memberships are also available for sale to non-Old Palm Community residents.

CFC originally acquired the Equity Memberships pursuant to an agreement between CFC and the Equity Club (the "Club Acquisition Agreement"), pursuant to which CFC agreed to construct and fund the construction of the Facilities and then transfer to the Equity Club the real property upon which the Facilities were built (the "Facilities Property"), the improvements on such real property, and the contracts, equipment, and permits associated with the Facilities (collectively, the "Club Assets"). The Facilities Property with improvements was recently appraised at above \$30 million, and it has been assessed at approximately \$14.1 million for property tax purposes.

To date, the Equity Club has issued 330 Equity Memberships. CFC has sold 108 of the Equity Memberships and owns the remaining 222. At the current price for Equity Memberships of \$275,000, CFC could potentially realize in excess of \$61 million from the sale of the remaining Equity Memberships.

*The Asst Transfer.* The Facilities have been fully constructed and CFC has been selling the Equity Memberships. However, CFC has not yet transferred the Facilities to the Equity Club, as required by the Club Acquisition Agreement. The Debtors maintain that they only became aware of issues surrounding the timing of the transfer of the Club Assets (the "Asset Transfer") in the days immediately preceding the commencement of these chapter 11 cases. After analyzing their options, in an effort to continue to benefit from the significant value gained through CFC's continued sale of the Equity Memberships, which value can only be realized if the Equity Club owns the Club Assets, the Debtors believe that it is in the interest of their estates to satisfy the terms of the Club Acquisition Agreement and perform the Asset Transfer.

The Transfer Agreement. Based on the foregoing, CFC entered into the Transfer Agreement with the Equity Club on December 22, 2008, pursuant to which CFC agreed to convey the Club Assets to the Equity Club in accordance with the terms of the Club Acquisition Agreement. In exchange, the Equity Club will release any claims it may have against the Debtors relating to the timing of the Asset Transfer and CFC's sales of the Equity Memberships to date.

Expenses Related to the Transfer of the Real Property. As a result of the Asset Transfer, the Debtors anticipate that the Florida Department of Revenue will assert a \$98,709 administrative expense claim against the Debtors for documentary stamp transfer taxes (the "Transfer Taxes"). The Debtors believe that the Transfer Taxes are not payable pursuant to section 1146 of the Bankruptcy Code, but, to avoid any further disputes, the Debtors seek authority to pay the Transfer Taxes in the event that the Court finds that the Debtors are not entitled to an exemption. Additionally, in conjunction with the Asset Transfer and as required by the Club Acquisition Agreement, the Debtors request authority to pay approximately \$27,080 for the purchase of a title insurance policy and fees associated with recording of the real property transfer deed.

Prepetition Liens. Prior to the Petition Date, CFC agreed with the local water utility serving the Old Palm Community that it would relocate certain well fields located in the community. As of the Petition Date, the Debtors assert that approximately \$500,000 had been spent on account of this well field project, and approximately \$350,000 of this amount remains unpaid (the "Lien Claims"). As a result, certain contractors involved in the project have asserted the Lien Claims on the real property that is proposed to be transferred under the Transfer Agreement. The Debtors intend to pay the Lien Claims in accordance with the lien claimant order entered by the Court on October 21, 2008 (the "Lien Claimant Order"). The Debtors are unaware of any unpaid liens on the Club Assets, other than the Lien Claims.

Assumption of Contracts. Simultaneous with the filing of the Old Palm Motion, the Debtors filed a separate, yet related motion (the "Assumption Motion") seeking approval of the assumption of the contracts in connection with the Asset Transfer and subsequent assignment of such contracts to the Equity Club. Specifically, the Assumption Motion seeks authorization to assume and assign four separate executory contracts and unexpired leases (collectively, the "Contracts"). The Contracts consist of (i) a trailer lease, (ii) two services agreements, and (iii) an agreement for the waste handling system for the Facilities Property. The Debtors believe that they have no cure obligations relating to the Contracts and the Equity Club has agreed to assume the Contracts and perform all duties, responsibilities, covenants, and obligations of the Debtors relating thereto.