

**Debtors' Motion for Entry of an Order Approving (A) Acquisition and Reimbursement Agreement, (B) Assumption and Assignment of an Executory Contract in Connection Therewith and (C) Conveyance of Certain Facilities Free and Clear of Liens, Claims and Encumbrances (the "Hampton Park Motion")**

By the Hampton Park Motion, the Debtors seek entry of an order approving (i) the Acquisition and Reimbursement Agreement (the "Agreement"), among Debtor Bay Colony-Gateway, Inc. ("Bay Colony"), Debtor WCI Communities, Inc. ("WCI") and the community development district Gateway Services Community Development District (the "CDD" and, together with Bay Colony and WCI, the "Parties") with respect to the construction of water mains in the Hampton Park at Gateway community (the "Community"), (ii) the assumption and assignment of an executory contract in connection therewith, and (iii) the conveyance of certain facilities free and clear of liens, claims and encumbrances.

*Background.* As of August 4, 2008 (the "Petition Date"), the Debtors had built and sold 112 of the 656 homes that they planned to develop into the Community, which is located in Fort Meyers, Florida, within the jurisdictional boundaries of the CDD.

According to the Hampton Park Motion, as part of the development of the Community, Bay-Colony initially planned to construct underground water mains to serve its residents. Prior to Bay-Colony beginning construction of the water mains, however, the CDD approached Bay-Colony and requested that Bay-Colony instead construct oversized water mains capable of serving other areas within the CDD, as well as the Community. Accordingly, pursuant to an oral agreement, Bay-Colony agreed to oversize the planned water mains and in exchange, the CDD agreed to pay all costs associated with oversizing the lines (the "Oversizing Costs").

The Debtors further maintain that in 2005, WCI contracted with contractor Mitchell and Stark Construction Company, Inc. (the "Contractor") to complete the initial phase of the water main construction (the "Existing Facilities"). The Debtors represent that the Parties agree that the CDD owes the Debtors \$128,762.50 for the Oversizing Costs associated with the construction of the Existing Facilities (the "Existing Facilities Oversizing Costs").

The Debtors assert that on June 10, 2008, WCI entered into a second agreement with the Contractor (the "Work Contract") to complete the remaining construction of the oversized water mains in the Community (the "Future Facilities"), at an estimated cost of \$366,004.92 (the "Future Facilities Estimated Cost"). The Debtors estimate that \$119,088.51 of the Future Facilities Estimated Cost is attributable to that portion of the Future Facilities servicing the Community, and the remaining \$246,916.41 is attributable to Oversizing Costs.

*The Agreement.* As a result of the commencement of the Debtors' chapter 11 cases, the Contractor has suspended construction of the Future Facilities. Because of the importance of the oversized water lines to the larger Gateway community, on January 14, 2009, the Parties entered into the Agreement, whereby the CDD agreed to take assignment of the Work Contract in exchange for the Debtors' agreement to reimburse the CDD for the Debtors' portion of the Future Facilities Estimated Costs. Additionally, the CDD agreed to pay the unreimbursed Existing Facilities Oversizing Costs to the Debtors.

The key terms of the proposed Agreement are summarized as follows:

Conveyance of Water Distribution Facilities. WCI and Bay Colony (collectively, the “Developer”) will convey to the CDD (a) its interest in the Existing Facilities, together with necessary unencumbered easements in the lands upon which the Existing Facilities have been constructed and (b) a temporary construction easement and permanent utility easement for the construction and operation of the Future Facilities.

Assignment of Work Contract. Developer will assume the Work Contract and assign it to the CDD. There are no cure costs associated with the assumption and assignment.

Existing Facilities Oversizing Costs. The CDD will execute a promissory note in the amount of the Existing Facilities Oversizing Costs and deliver such note in escrow to the Developer.

Construction of Future Facilities. The CDD will construct the Future Facilities and determine the actual cost of construction (the “Developer’s Actual Obligation”). If the Developer’s Actual Obligation is less than the amount of the Existing Facilities Oversizing Costs, the CDD will pay the difference to the Developer. If the Developer’s Actual Obligation is more than the amount of the Existing Facilities Oversizing Costs, the Developer will pay the difference to the CDD.

Warranty. Upon closing, the Developer will provide the CDD with a one-year warranty guaranteeing the Existing Facilities against defects.

Specific Performance. In the event of the Developer’s default under the Agreement, the CDD will have, in addition to its general legal rights, the right to obtain specific performance of the Developer’s obligations under the Agreement.