

Motion to Compel Rejection of Executory Contract (the “Motion to Compel”)

On September 23, 2008, the Court entered an order approving the Debtors’ rejection of the Management Agreement, the Deficiency Agreement, and the Line of Credit (each as defined below, and collectively, the “Golf Course Agreements”) entered into on March 1, 2001 in connection with the sale of the Waterlefe Community Golf Club by WCI Communities, Inc. (“WCI”) to the Waterlefe Community Development District (the “CDD”) as of September 5, 2008.¹ By the Motion to Compel, the CDD requests that the Court compel the Debtors to reject the Golf Course Purchase Agreement between Debtor Bay Colony Gateway, Inc. and the CDD (the “Purchase Agreement”).

The Golf Course. In 2000, the Debtors completed construction of the Waterlefe Golf & River Club development in Bradenton, Florida (the “Development”), which consists of 588 residential homes, the Waterlefe Community Golf Club (the “Club”), and a number of other amenities. The Club, originally developed by WCI, is an 18-hole championship golf course, including a club house, pro shop, dining room, kitchen facilities, cart barn, maintenance facility, and rest shelters (collectively, the “Golf Course”). In March 2001, WCI sold the Golf Course to the CDD for \$10.1 million. WCI recently completed the sale of all homes in the Development.

The CDD Bonds. In order to fund a portion of the purchase of the Golf Course, the CDD issued Waterlefe Community Development District Golf Course Revenue Bonds (the “Bonds”) in the principal amount of approximately \$9.5 million. The indenture for the Bonds (the “Indenture”) requires that a portion of the proceeds from the Bonds be allocated to fund the creation of a “Debt Service Reserve Fund,” which would be used to pay interest on the Bonds. Future funding of the Debt Service Reserve Fund is to come from Golf Course revenues.

The Surplus Note. Because the net Bond proceeds were not sufficient to fund the entire purchase price of the Golf Course, the CDD delivered a promissory note to WCI in the original principal amount of \$2.365 million with semi-annual interest at the rate of 8.52% per annum (the “Surplus Note”).

WCI and the CDD entered the following agreements on March 1, 2001 in connection with the CDD’s purchase of the Golf Course:

The Deficiency Agreement. In order to provide the CDD with another source of funds to repay the Bonds, prior to its rejection, the Debt Service Reserve Fund Deficiency Agreement (the “Deficiency Agreement”) obligated WCI to pay interest and/or principal in respect of the Bonds if the revenue from Golf Course operations is insufficient to fully fund the debt service or meet the Indenture’s reserve fund requirements. WCI was entitled to be repaid by the CDD for any amounts advanced by WCI under the Deficiency Agreement, together with interest. The CDD was only required to make such reimbursements from Golf Course revenues, which obligation was subordinate to payment of the Bonds.

¹ A summary of the Debtors’ request to reject the Golf Course Agreements (the “Rejection Motion”) was posted on the Committee website in December 2008.

The Management Agreement. Pursuant to the Club Facilities Management Agreement (the “Management Agreement”), prior to its rejection, WCI (i) acted as the manager of the Golf Course, (ii) employed the Golf Course employees, and (iii) paid expenses incurred in connection with the operation of the Golf Course, including salaries, wages, fringe benefits, payroll, administrative and general expenses for sales, advertising, business promotion, and utilities (collectively, the “Operating Expenses”).

The Line of Credit. Pursuant to the Working Capital Line of Credit (the “Line of Credit”), prior to its rejection, WCI agreed to furnish the CDD with a revolving credit line in the maximum amount of \$1.1 million to cover any operating shortfalls resulting from Golf Course operations.

The Purchase Agreement. Pursuant to the Purchase Agreement, at any time prior to March 2011 or as long as the CDD is obligated to pay the Debtors for amounts owed under the Line of Credit, Deficiency Agreement, or Surplus Note, WCI has the option (the “Option”) of repurchasing the Golf Course for a purchase price equal to the greater of fair market value and the outstanding amount owed by the CDD in respect of the Bonds plus 3%.

The CDD asserts that (i) with the rejection of the Golf Course Agreements, the business relationship between the Debtors and the CDD has effectively ended with respect to the Golf Course, (ii) the CDD must seek additional financial support from another source due to the Debtors’ decision to reject the Golf Course Agreements, and (iii) while the Option remains outstanding, the CDD is left with little leverage in finding replacement financing for the Golf Course and payment of the Bonds.

The CDD acknowledges that the Debtors control the decision of whether to assume or reject executory contracts. However, the CDD asserts that the Debtors’ prior rejection of the Golf Course Agreements and the statements made by the Debtors like, “unless WCI promptly rejects the [Golf Course Agreements], it will be faced with the possibility of incurring substantial cash losses in the near future” indicate that the Debtors have concluded that their involvement with the Golf Course is a losing proposition. Therefore, the CDD believes that it is clear that (i) owning the Golf Course is of no interest to the Debtors and would not be valuable to their estates, and (ii) making a prompt determination to reject the Purchase Agreement would have no impact on the Debtors.