UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No. 8:09-bk-10430-CED
Chapter 11

The Golf Club at Bridgewater, L.L.C.,

Debtor.
_____/

ORDER GRANTING MOTION TO COMPEL DEBTOR TO COMPLY WITH CONFIRMED CHAPTER 11 PLAN

THIS CASE came on for hearing before the Court on April 23 and 27, 2012, for consideration of the Motion to Compel Debtor to Comply with Confirmed Chapter 11 Plan (Doc. No. 399) (the "Motion to Compel") filed by Whitney Bank ("Whitney"), as well as: (1) the Response in Opposition (Doc. No. 403) and Supplement to Response in Opposition (Doc. No. 410) filed by the Debtor, The Golf Club at Bridgewater, L.L.C. (the "Debtor");[1] (2) Bridgewater Community Development District's Limited Objection to Motion to Compel Sale of Property and/or Motion for Clarification of Plan and Confirmation Order (Doc. No. 406); (3) Blue Mountain Capital, Inc.'s Limited Objection to Motion to Compel Debtor to Comply with Confirmed Chapter 11 Plan (Doc. No. 402); (4) the Response in Opposition to Whitney Bank's Motion to Compel Debtor to Comply with Confirmed Chapter 11 Plan filed by Henry C. Hardin III, John E. Hardin and Jacob H. Hardin (Doc. No. 405); and, (5) the October 14, 2011 Bid Procedures prepared by the Debtor (the "Bid Procedures") that were submitted to the Court at the hearing, attached hereto as Exhibit A.

The Court, having reviewed the Motion to Compel, together with the submissions in opposition and the record, and having heard argument of counsel, and being otherwise duly advised in the premises, finds that the provisions of the Debtor's confirmed Third Amended Plan are binding upon the Debtor, its equity holders, and its creditors; that the Debtor did not comply with the provisions of the Third Amended Plan with respect to the sale or auction of the Debtor's golf course located in Lakeland, Florida (the "Golf Course"); and, that the Debtor did not comply with its own Bid Procedures for the auction of the Golf Course (the "Auction"), thus depriving Whitney of the credit bid rights afforded to it under the Third Amended Plan.

It is therefore appropriate to require the Debtor, at its option, to either (a) conduct an auction pursuant to the Bid Procedures described herein, or (b) permit Whitney to credit bid for the purchase of the Golf Course. The Court orally made findings of fact and conclusions of law at the hearings conducted on April 23 and 27, 2012, and supplements those findings and conclusions as follows.

The Debtor's Loans with Whitney

As the Debtor outlined in its Case Management Summary, Whitney is the Debtor's primary secured lender, having provided construction financing for the Debtor's development of the Golf Course in the amount of $2,500,000 (the "Construction Loan"), secured by a mortgage on the Golf Course. In addition, Whitney loaned the Debtor $250,000 on a line of credit, also secured by the Golf Course (the "Line of Credit Loan"). Both loans were personally guaranteed by the Debtor's direct and indirect principals, Golf Strategies, LLC, John C. Greer, Henry C. Hardin, III, John E. Hardin, Tracy J. Harris, Jr., Bing Charles Kearney, Jr., Donald E. Phillips, Todd R. Taylor, and Thomas M. Wheary (the "Guarantors").[2]

From the inception of this bankruptcy case, the Debtor has claimed that Whitney represented that the Line of Credit Loan would be consolidated with the Construction Loan. However, in late 2008, Whitney advised the Debtor that the two loans would not be consolidated, and Whitney did not renew the Line of Credit Loan when it became due. When the Debtor did not pay the balance due on the Line of Credit Loan, Whitney declared the Construction Loan in default pursuant to a cross-collateralization agreement and accelerated the balance due, notwithstanding the fact that the Debtor had made all required payments on the Construction Loan. In February 2009, Whitney sued the Guarantors for the balances due under both the Construction Loan and the Line of Credit Loan in a case captioned *Whitney Bank, a Louisiana state chartered bank, f/k/a Hancock Bank of Louisiana, successor by merger to Whitney National Bank v. Golf Strategies, LLC, et al.*, Case No. 09-CA-002705, Thirteenth Judicial Circuit Court, Hillsborough County, Florida (the "Whitney State Court Action").[3] The

[1] The term "Debtor" includes the "Reorganized Debtor" as defined in the Third Amended Plan (Doc. No. 281). All capitalized terms utilized herein and not otherwise defined shall have the meanings ascribed to them in the Third Amended Plan, as modified and confirmed by the Order Confirming Debtor's Chapter 11 Plan (Doc. No. 327).

[2] Doc. No. 28.

[3] Doc. No. 28.

Debtor was not named as a defendant in the Whitney State Court Action.

The Debtor Files Chapter 11 Bankruptcy

On May 20, 2009, the Debtor initiated this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.[4] In its Case Management Summary, the Debtor stated that its operating shortfalls had historically been covered by capital contributions from the Debtor's members, The Dirty Five, LLC, and Golf Strategies-Bridgewater, LLC, which they, in turn, obtained by making capital calls upon their own members, the Guarantors. The Debtor informed the Court that the Whitney State Court Action had negatively impacted upon the Guarantors' willingness and ability to fund the Debtor's operational deficits to the same extent as they had prior to the Whitney State Court Action. This resulted in the Debtor's belief that it had no choice but to seek relief under Chapter 11.[5] On the date of the bankruptcy petition, Whitney had not filed a foreclosure action against the Debtor, and as of the date of this Order, a foreclosure action has not been commenced. The Guarantors have been represented in this case, at least since September 8, 2009, by Paul Thanasides, Esq.[6]

Commencing in July 2009, notwithstanding the Debtor's representations that the Guarantors were unwilling or unable to continue to fund the Debtor's operational deficits, the Debtor filed a series of motions for authority to obtain post-petition financing of up to $200,000 from "affiliated non-debtor parties." These parties were described as "primarily, the members of The Dirty Five, LLC and Golf Strategies-Bridgewater, LLC, the members of the Debtor who, individually, guaranteed the Debtor's obligations to Whitney National Bank" – i.e., the Guarantors.[7] The Debtor's request to borrow up to $200,000 was granted.[8]

Whitney filed proofs of claim in the bankruptcy case, Claim No. 17 in the amount of $2,501,469.82, and Claim No. 18 in the amount of $256,423.60. The proofs of claim originally stated that the value of the Golf Course (the property securing the claims) was unknown, and were later amended to state that the Golf Course had a value of $760,000.

The Debtor Seeks to Enjoin Whitney from Pursuing the Guarantors

In July 2009, the Debtor filed an adversary proceeding captioned *The Golf Club at Bridgewater, LLC v. Whitney National Bank,* Adv. No. 8:09-ap-519-CED, seeking to enjoin Whitney's continuation of the Whitney State Court Action, or any other litigation or collection efforts against the Guarantors.[9] Although a hearing was scheduled on the Debtor's motion for preliminary injunction, the Debtor and Whitney stipulated to the cancellation of the hearing, subject to the parties' ability to request that the hearing be rescheduled.[10]

The Debtor Proposes Chapter 11 Plans of Reorganization

Commencing in August 2009, the Debtor filed a series of proposed Chapter 11 Plans of Reorganization. The Debtor's original Plan provided that if Whitney accepted the Plan, the full amount of Whitney's claim would be treated as an "Allowed Secured Claim," to be paid in monthly installments of principal and interest at one percent over the Prime Rate of Interest, amortized over twenty years, with a balloon payment in five years. If Whitney did not accept this treatment, the Plan provided that the Debtor would obtain a valuation of the Golf Course, and at the Debtor's election, either adjust the interest rate on the Allowed Secured Claim (the value of the Golf Course as determined by the Bankruptcy Court), or convey the property to Whitney in satisfaction of its Allowed Secured Claim. Whitney's deficiency claim, if any, was to be paid in full as a Class 11 Deficiency Claim over five years.[11] The Plan also provided for the injunction of any actions against the Guarantors as long as the Debtor was not in default in the payment of Allowed Claims under the Plan.[12]

When Whitney objected to the Debtor's Plan, the Debtor filed an Amended Plan.[13] The Amended Plan differed from the original Plan in that it provided only for the restructuring of Whitney's claim. Whitney again objected.[14] The Debtor then filed its Second Amended Plan of Reorganization.[15] This time, the Debtor proposed to transfer the Golf Course to Whitney as the "indubitable equivalent" of its Allowed Secured Claim. The Second Amended Plan also

[4] Doc. No. 1.
[5] Doc. No. 28, p. 4.
[6] Doc. No. 125. Ken Mather, Esq., has also appeared on behalf of Guarantor, Henry C. Hardin (Doc. No. 405).
[7] Doc. Nos. 75, p. 1, 77, 93.
[8] Doc. No. 138.
[9] Adv. No. 8:09-ap-519-CED, Doc. Nos. 14, 17.
[10] Adv. No. 8:09-ap-519-CED, Doc. Nos. 22, 23.
[11] Doc. No. 84, pp. 11, 12, 14.
[12] Doc. No. 84, pp. 18-19.
[13] Doc. No. 115.
[14] Doc. No. 119.
[15] Doc. No. 211.

provided for the payment of 30% of Allowed Deficiency Claims.

The Debtor Seeks to Value the Golf Course and Objects to Whitney's Claims

On August 26, 2009, the Debtor filed a motion to determine the value of the Golf Course, alleging that the value of the Golf Course exceeded the amount of Whitney's debt.[16] Thereafter, the Debtor filed an amended motion, asserting that the value of the Golf Course was $2,900,000, which the Debtor alleged exceeded the amount of Whitney's claims.[17] The Debtor also filed an objection and a renewed objection to Whitney's proofs of claim based upon the Debtor's valuation of the Golf Course.[18]

At a November 30, 2009 hearing, the Court ruled that, in light of the Debtor's plan to surrender the Golf Course to Whitney and Whitney's stated intention to terminate the Golf Course operations once it acquired the Golf Course, the Court would value the Golf Course at its liquidation value. The Court suggested that if the Debtor wished to maximize the value of the Golf Course, the Debtor could have proposed a plan to market and sell the Golf Course. Based upon the Court's ruling, the Debtor withdrew its request for confirmation of the Second Amended Plan.[19]

The Debtor Obtains Confirmation of its Third Amended Plan and Abates its Objection to Whitney's Claims

On March 1, 2010, the Debtor filed its Third Amended Plan of Reorganization.[20] This time, the Debtor proposed to market the property for a period of 15 months, and if the Golf Course was not sold within that time period, to auction the Golf Course at an absolute sealed bid auction (the "Auction"), with Whitney retaining its right to credit bid its claims. The Third Amended Plan provided that Whitney would be permitted to exercise its credit bid rights upon ten days' written notice from the Debtor of a proposed private sale, or of the Debtor's selection of the highest and best offer at an Auction.[21] As Debtor's counsel stated at the confirmation hearing held on April 5, 2010:

> Mr. Jennis: . . . Whitney is protected in that if it does not like the sales proceeds or the sale offer, it again has all of its rights under Section 363(k) to credit bid. Almost it's essentially a short-sale process. In the event that it is, we all hope that the value of the golf course will well exceed the amount of Whitney's debt, but we put those measures in place.[22]

And, addressing the pending motions to value, Debtor's counsel stated:

> Mr. Jennis: Hopefully no one will ask you ever to value or opine on this [the value of the Golf Course], and it would be my intention to simply ask you to either defer ruling or indicate that the amount of the *unsecured claim of Whitney, if any, will be determined at the sale process* or in State Court . . . .
>
> The Court: Right. . . . It seems to me that it is going to be resolved by the sale process. *If there's a sale that sets - - you know, that determines what the secured value is*, that's going to determine what the unsecured claim is.
>
> Mr. Jennis: Absolutely, Your Honor. . . .[23]

The Third Amended Plan also provided for the Bankruptcy Court's retention of jurisdiction to enforce and interpret the terms and conditions of the Plan.[24] On May 28, 2010, pursuant to the Debtor's agreement with Whitney, the Court entered an order confirming the Third Amended Plan (the "Confirmation Order").[25] The Confirmation Order specifically provided that the Court's retention of jurisdiction as set forth in Article 9 of the Third Amended Plan was to be interpreted as broadly as possible.[26]

Whitney and the Debtor also agreed to abate the Debtor's objections to Whitney's claims, pending resolution of the Whitney State Court Action or the disposition of the Golf Course.[27] On June 28, 2010, the Debtor, having made all required distributions under the Third Amended Plan, filed a motion for entry of final decree.[28] On June 30, 2010, the Court entered a Final Decree, closing the bankruptcy case.[29]

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[16] Doc. No. 112.
[17] Doc. No. 204.
[18] Doc. Nos. 249, 307.
[19] Transcript, Doc. No. 345, pp. 74-80.
[20] Doc. No. 281.
[21] Doc. No. 281, Art. 5.1(c)(vii) and (viii).
[22] Transcript, Doc. No. 372, p. 9.
[23] Transcript, Doc. No. 372, p. 22 (emphasis added).
[24] Doc. No. 281, Art. 9.3(d).
[25] Doc. No. 327.
[26] Doc. No. 327, para. 11.
[27] Doc. No. 323.
[28] Doc. No. 338.
[29] Doc. No. 341.

Whitney Seeks Clarification of the Third Amended Plan and Confirmation Order

In June 2011, a year after the entry of the Confirmation Order, Whitney filed a motion to reopen the Chapter 11 case.[30] Whitney requested that the Court clarify the Confirmation Order in order to address arguments allegedly being made by some of the Guarantors in the Whitney State Court Action that Whitney's claims had been extinguished in the Debtor's bankruptcy.[31] Whitney also filed an objection to a proposed sale of the Golf Course for $3,100,000, because the terms of the sale provided for $250,000 to be paid in cash, with the balance of the purchase price being paid over time. Whitney argued that the Third Amended Plan and the Confirmation Order required an all cash sale.[32] The Debtor, having retained new counsel, objected to Whitney's motion to reopen.[33]

At a July 15, 2011 hearing on Whitney's motion and the objection, the Court declined to make any ruling that would affect the Guarantors without their being present before the Court. However, the Court reopened the case in order to permit Whitney, if it desired, to bring an adversary proceeding against the Guarantors. Whitney did not file an adversary proceeding. Whitney's objection to the proposed sale was overruled as moot because the purported offer had been withdrawn.[34]

On August 4, 2011, Whitney filed a second motion to reopen the Chapter 11 case, seeking a determination from the Court as to whether a non-binding commitment letter offering to purchase the Golf Course was sufficient to trigger Whitney's credit bid rights.[35] The motion referenced a non-binding offer to purchase the Golf Course for $800,000. In its response, the Debtor contended that Whitney's Allowed Secured Claim was limited to $760,000, the value of the Golf Course stated in Whitney's amended proofs of claim, and that Whitney should not be permitted to credit bid any amount in excess of $760,000.[36] The Debtor also stated in its response, and reiterated through counsel at the hearing on the motion, that the Debtor did not intend to continue funding the operational deficits of the Golf Course and planned to shut down the Golf Course. At the conclusion of the hearing, the Court ruled that, as contemplated at the confirmation hearing, Whitney was permitted to credit bid up to the full amount of its claim against any proposed private sale or auction of the Golf Course.[37]

The 15-month time period for the Debtor to market the Golf Course pursuant to its Third Amended Plan expired in September 2011. On September 15, 2011, Whitney filed a third motion seeking clarification of the Confirmation Order in which Whitney asked the Court to appoint a sales agent and establish sale procedures.[38] The Debtor opposed the motion.[39] At a hearing on the motion, the Court granted Whitney's motion in part, and ruled that the consideration for any sale of the Golf Course, whether by private sale or by auction, must be all cash. The Court declined to prescribe bidding procedures other than as stated in the Third Amended Plan.[40]

The Debtor Sues Whitney in State Court

Meanwhile, in April 2011, certain of the Guarantors caused the Debtor to file its own lawsuit against Whitney captioned *The Golf Club at Bridgewater, LLC v. Whitney National Bank, a national banking association, Biel LoanCo III-A, LLC, also known as Biel Loan Co., III-A, LLC, and Capital Crossing Servicing Company, LLC*, Case No. 11 CA 004446, Thirteenth Judicial Circuit Court, Hillsborough County, Florida (the "Debtor's State Court Action").[41] The Debtor's complaint sought damages for Whitney's alleged failure to provide a payoff demand in connection with the purported $3,100,000 sale of the Golf Course, and to enjoin Whitney from continuing with any action, including the Whitney State Court Action, against the Debtor or parties affiliated with the Debtor, i.e., the Guarantors. Whitney removed the Debtor's State Court Action to this Court when the Debtor amended its complaint to include a count for damages for Whitney's alleged "torpedoing" the purported $3,100,000 sale of the Golf Course. In its new count, the Debtor alleged that payment to Whitney of $705,000 (the alleged Allowed Secured Claim of $760,000, less credit for payments made after confirmation of the Third Amended Plan) would satisfy the Debtor's obligations to Whitney under the Third Amended Plan.[42]

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[30] After the Third Amended Plan was confirmed, Whitney assigned its loans to Biel Bank Loan Co. III-A ("Biel"). Whitney's attorneys also represented Biel, and the loans have since been reassigned back to Whitney. For ease of reference, actions taken by Biel during the time that it held the loans are ascribed to Whitney.

[31] Doc. No. 350.

[32] Doc. No. 351.

[33] Doc. Nos. 362, 364.

[34] Doc. No. 366, Transcript, Doc. No. 380, p. 46.

[35] Doc. No. 368.

[36] Doc. No. 371.

[37] Doc. No. 382.

[38] Doc. No. 384.

[39] Doc. No. 388.

[40] Doc. No. 394.

[41] Adv. No. 8:11-ap-1176-CED, Doc. No. 2-1. To avoid confusion, the defendants in the Debtor's State Court Action are collectively referred to as "Whitney."

[42] Adv. No. 8:11-ap-1176-CED, Doc. No. 2-4.

In March 2012, after having denied the Debtor's motion to remand the Debtor's State Court Action back to state court, this Court granted summary judgment to Whitney on its counterclaim for declaratory relief, finding that Whitney's Allowed Secured Claim is not capped at $760,000, and that Whitney is not obligated to release or transfer its mortgage on the Golf Course in exchange for a promissory note or other non-cash consideration.[43] And, the Court granted the Debtor's own motion to dismiss its complaint, dismissing with prejudice.[44]

The Debtor's "Auction" and Whitney's Motion to Compel

On Wednesday, November 2, 2011, Debtor's counsel advised Whitney's counsel that the Debtor had received an offer for the purchase of the Golf Course in the amount of $1,250,000. Debtor's counsel inquired whether Whitney intended to credit bid against that offer, asking for a response by Friday, just two days later. Whitney declined to overbid, reserving all rights and objections to apparent defects in the bidding process and the bid.[45] The $1,250,000 offer did not result in a sale. On April 4, 2012, Whitney filed the present Motion to Compel, seeking an order requiring the Debtor to either conduct an auction or permitting Whitney to make a credit bid for the Golf Course.

At the April 23, 2012 hearing on the Motion to Compel, the Court was presented, for the first time, with a letter outlining bidding procedures dated October 14, 2011 (the "Bid Procedures"), attached hereto as Exhibit A. Debtor's counsel represented to the Court that he had drafted the Bid Procedures at the Debtor's request and had sent it to the Debtor. Debtor's counsel further represented that he did not know to whom the Debtor had forwarded the Bid Procedures, or what steps the Debtor had taken to market the Golf Course. Although Debtor's counsel informed the Court that "a sealed bid Auction was conducted by management, but it did not result in the closing of a sale because the only bidder withdrew its bid,"[46] Debtor's counsel had no information regarding the bids received, or why the $1,250,000 offer had not closed.

The Debtor did not proffer evidence on the issue of its compliance with the provisions of the Third Amended Plan and the Bid Procedures. Based upon the record before the Court, it appears that:

(a) Whitney was not given ten days' notice of its credit bid rights, as required by both the Bid Procedures and the Third Amended Plan.

(b) The sole bidder did not qualify as a "Qualified Bidder" as defined in the Bid Procedures by, *inter alia*, having deposited $50,000 with Debtor's counsel.

(c) Whitney was not notified that the sale had not closed and was not afforded an additional opportunity to credit bid.

Prior to the April 27, 2012 hearing, the Court was advised that the state court had entered judgment in the Whitney State Court Action, ruling that Whitney had improperly accelerated the obligations on its two loans. The state court's ruling also restructured the payment obligations of the Guarantors on their guarantees.[47] The Debtor was not a party to the Whitney State Court Action, and Whitney had not sought the foreclosure of the Golf Course in the Whitney State Court Action.

The Confirmed Third Amended Plan is Binding upon the Debtor, its Equity Holders, and its Creditors

After this lengthy history, the Court concludes that the Debtor, controlled by its principals, the Guarantors, chose to file a voluntary Chapter 11 petition. The Debtor and the Guarantors chose to file the Third Amended Plan, and they chose to commit to conducting an Auction if they were unsuccessful in obtaining a buyer for the Golf Course during a 15-month time period. The Debtor and the Guarantors are bound by their actions. 11 U.S.C. § 1141(a) provides that:

> . . . the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan."

See In re Celotex Corp., 613 F.3d 1318, 1322 (11th Cir. 2010) (a confirmed plan's provisions are binding on the debtor as well as its creditors).

[43] Adv. No. 8:11-ap-1176-CED, Doc. No. 55.
[44] Adv. No. 8:11-ap-1176-CED, Doc. No. 56.
[45] Doc. No. 403-2.
[46] Doc. No. 403, para. 12.
[47] Doc. No. 410.

For reasons known only to them, the Debtor and the Guarantors do not appear to have taken, and have not presented evidence of, any steps to market the Golf Course. And, although it would appear to be in their best interest to conduct an auction in a manner that would generate the highest purchase price, they do not appear to have done that either. Under these circumstances, it is appropriate to compel the Debtor to comply with the Third Amended Plan by either conducting an auction of the Golf Course in compliance with the Bid Procedures, or allowing Whitney to credit bid. This ruling does not affect the state court's determination of the Guarantors' payment obligations in the Whitney State Court Action, although the Guarantors will be entitled to a credit for the sale proceeds paid to Whitney.

Accordingly, it is **ORDERED**:

1. The Motion to Compel is GRANTED.

2. Within 45 days from the date of this Order, the Debtor shall conduct the Auction with prior, commercially reasonable notice and in accordance with the Bid Procedures attached hereto as Exhibit A, with all credit bid rights preserved; provided, however, that the "reserve price" and other minimum bid requirements shall be excluded from the Bid Procedures.

3. If the Auction is not conducted within 45 days from the date of this Order, Whitney shall have ten additional days from the expiration of the 45-day period, or ten days from the date on which the Debtor advises Whitney that it does not intend to conduct the Auction, whichever is sooner, to exercise its credit bid rights as if the Auction had been conducted.

4. The Debtor shall execute all necessary documents to effectuate the transfer of the Golf Course in connection with the Auction, or if Whitney credit bids, to Whitney.

5. The Golf Course shall continue to be subject to any special assessment liens of the Bridgewater Community Development District, which liens, to the extent authorized by Florida law and pursuant to Chapter 190 of the Florida Statutes, shall continue to constitute liens on the Golf Course from the date of imposition thereof until paid, coequal with the lien of state, county, municipal, and school board taxes, and payable in accordance with the terms of the District's applicable assessment resolutions.

6. Unless Blue Mountain Capital, Inc. ("Blue Mountain") is paid in accordance with the Plan within 45 days from the date of this Order, Blue Mountain is authorized to exercise any and all of its remedies available at law. Any transfer or other disposition of the Debtor's assets will be subject to any applicable lien/leasehold interest in favor of Blue Mountain. The Debtor shall give Blue Mountain commercially reasonable prior notice in writing via its counsel of record of any transfer or other disposition of the Debtor's assets.

DONE and **ORDERED** in Chambers at Tampa, Florida on May 21, 2012.

/s/
Caryl E. Delano
United States Bankruptcy Judge

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October 14, 2011

Sent Via Email and Regular Mail

Parties in Interest

Re: Bid Procedures for Sealed Bid Auction Sale of the Golf Course Property of The Golf Club at Bridgewater, L.L.C.

The following procedures outlined in this letter (hereafter, the "**Bid Procedures**") shall govern the absolute sealed bid auction (the "**Sale**") to be conducted of the golf course property (the "**Property**") of The Golf Club at Bridgewater, L.L.C. (the "**Seller**").

1. **The Sealed Bid Auction**. The Sealed Bid auction shall be held at the offices of the Seller, **Stichter Riedel Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602,** by review of sealed written bids (a "**Sealed Bid**", defined below) provided no later than **October 31, 2011 at 5:00 p.m. Eastern Standard Time** (the "**Auction**").

2. **Reserve Price**. The reserve price for the Seller's Property to be sold at the Auction is Seven Hundred and Sixty Thousand Dollars ($760,000.00) (the "**Purchase Price**").

3. **Bidding Qualifications**. The Seller shall determine whether a bidder is a **"Qualified Bidder."** To be eligible to be considered a Qualified Bidder, a prospective bidder must comply with the following terms and conditions, as well as the terms and conditions set forth in Paragraph 5 below (the "**Bidding Qualifications**"):

A. Deposit. As detailed in paragraph 6, below, along with its Sealed Bid, as defined below, a prospective bidder must deliver an earnest money deposit in the amount of $50,000.00 (the "**Deposit**") in the form of a certified check or wire transfer payable to Stichter Riedel Blain & Prosser, P. A. as escrow agent, 110 East Madison Street, Suite 200, Tampa, Florida 33602, Attention: Stephen R. Leslie; by October 31, 2011, at 5:00 p.

EXHIBIT A

m. Eastern Standard Time (the "**Sealed Bid Deadline**"). As to any bids which are not accepted, the deposits will be returned within fourteen [14] days of the sealed bid opening.

B. Financial Information. By the Sealed Bid Deadline, a prospective bidder must also provide evidence to the Seller of the ability to pay at least the Purchase Price, and any other customary financial information which may be necessary. The sufficiency of such evidence requirement will be in the sole discretion of the Seller. Moreover, each bidder must provide evidence reasonably satisfactory to the Seller demonstrating the bidder's financial ability to close and to consummate an acquisition of the Property.

C. Offer for Purchase and Sale. By the Sealed Bid Deadline, a prospective bidder must provide a sealed hard copy of its initial written purchase offer (the "**Sealed Bid**") to: (i) Seller's representative, Donald E. Phillips, Phillips Development & Realty, 142 W. Platt Street, Tampa, Florida 33606, and (ii) Seller's counsel, Stichter Riedel Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602, Attention: Stephen R. Leslie, Esq.;

4. **Identification of Qualified Bidders**. No prospective bidder's Sealed Bid shall be considered at the Sealed Bid Auction unless such bidder is a Qualified Bidder. No later than three (3) business days prior to the Sealed Bid Auction, the Seller and its professionals shall have the right to determine which prospective bidders, if any, constitute Qualified Bidders. The Seller may specify and request additional information from any or all prospective bidder(s) in order to evaluate the bidder's ability to consummate a transaction and to fulfill its obligations in connection therewith, and such bidder shall be obligated to provide such information as a precondition to participating further in the Sealed Bid Auction. Only the Seller will have standing to seek a determination of whether a bidder is a Qualified Bidder. Biel, or its respective assignees, is automatically a Qualified Bidder pursuant to their credit bid.

5. **Bid Procedures**. A "**Qualified Bid**" must: (i) exceed the existing Reserve Price by at least $70,000.00 (the "**Overbid Amount**"); (ii) provide sufficient indicia that any representative of a Qualified Bidder is legally authorized and empowered, by power of attorney or otherwise, to (a) bid on behalf of the Qualified Bidder and (b) complete and sign, on behalf of the Qualified Bidder, a binding and enforceable purchase agreement; (iii) not contain any contingencies to the validity, effectiveness, and/or binding nature of the bid, including, without limitation, contingencies for financing, due diligence, or inspection; (iv) provide for post-closing cooperation and assistance to the Seller, as determined by the Seller; (v) provide proof of ability, financial or otherwise, to perform to the satisfaction of the seller; (vi) be valid and enforceable through the closing date; and (vii) be submitted by certified mail, ***so that it is actually received*** by no later than the Sealed Bid Deadline. Each Qualified Bidder should be prepared to make its best and final offer at the Auction if requested by the Seller. The Property will be sold "**AS IS – WHERE IS**", with no warranties or representations.

6. **Bidding Process**. The Sealed Bid Auction will be conducted in accordance with the following sealed bidding process:

A. Commencing on October 31, 2011 on or about 5:00 p.m., or the following business day, the Seller's counsel would open the sealed bid phase;

B. All sealed bids (the "**Sealed Bids**") must be submitted by the Sealed Bid Deadline of 5 p.m. on October 31, 2011. All Sealed Bids would require (i) that the Sealed Bid would not be subject to any contingencies; and (ii) that the Sealed Bid will remain in full force and effect for fifteen (15) business days. The Sealed Bids would be held by the Seller' attorney Stephen Leslie, as escrow agent.

C. After the expiration of the Sealed Bid Deadline and at the Sealed Bid Auction, the Seller shall have the option of selecting a Sealed Bid or any higher bid received prior to award of sale, provided that the highest and best bid as determined by the Seller (the "**Winning Bidder**"). Any Winning Bidder will be selected by the Seller and notified no later than November 2, 2011 at 5 p.m. The Sealed Bid Auction will conclude at such time.

D. The Seller will execute a Purchase and Sale Agreement (the "**Agreement**") with the Winning Bidder in a form to be provided by the Seller to the Winning Bidder.

E. The Seller shall be authorized to accept the second highest and best bid (the "**Back-up Bidder**") as a back-up bid (the "**Back-up Bid**") to the Winning Bidder's bid, provided, however, that the proposed Back-Up Bidder consents to serve as such.

F. The Winning Bidder shall be required to close no later than November 10, 2011, or such earlier date as the Winning Bidder elects to close. The Purchase Price shall be paid in cash at the closing unless Biel, or its respective assignees, is the Winning Bidder by virtue of its credit bid. The credit bid must exceed the highest sealed bid received. The Back-Up Bidder shall be obligated to close on the Back-Up Bid if the Winning Bidder does not timely close within five (5) days after the Winning Bidder's failure to close.

G. If Biel, or its respective assignees, submits a Sealed Bid and is the second highest bidder, Biel, or its respective assignees, must close on the transaction by taking the property at the amount of their sealed bid if the Winning Bidder does not close for any reason.

7. **Disposition of Deposit**. The Deposit will only be refunded to the Qualified Bidder if the Qualified Bidder is not in breach and if: (i) the Qualified Bidder is not the Winning Bidder or the Back-Up Bidder; (ii) the Winning Bidder is the Back-Up Bidder and the Winning Bidder closes on the transaction; or (iv) the Winning Bidder's or the Back-Up Bidder's obligation to close is excused by Seller's breach or otherwise. Any Deposits retained pursuant to this paragraph are deemed forfeited and immediately become property of the Seller. Any Deposits received by parties not determined to be Qualified Bidders shall be returned, without any accrued interest, to the party making the deposit within five (5) business days of the

determination that the party was not a Qualified Bidder. Unless it is the failure of the buyer to perform, the buyer will receive their earnest money deposit within 24 hours of selection of the highest bidder, but in no event later than 14 calendar days.

8. **Seller's Business Judgment**. The Seller: (a) may exercise its sole and absolute business judgment to sell the Property to any Qualified Bidders whose bid the Seller determines, in its reasonable discretion, to be the highest and best and in the best interests of the Seller; and (b) shall consult with any significant constituent that they deem necessary in connection with the bidding process and the selection of the highest or otherwise best bid. The Seller reserves the right to cancel the Sealed Bid Auction for any reason.

9. **No Representation**. Each Qualified Bidder shall be deemed to acknowledge that it is not relying upon any oral or written statement, representations, or warranties of the Seller, or any of their agents, or representatives, and that the Property is being sold "AS IS – WHERE IS".

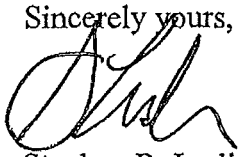
10. **Additional Terms**. The Seller may, at or before the Sealed Bid Auction, impose such other and additional terms and conditions not inconsistent with these Bid Procedures as it determines to be in the best interests of the Seller or other parties in interest.

11. **Governing law and Consent to Jurisdiction**: These procedures and the Auction shall be governed solely by Florida law. Any disputes involving any party concerning the Auction or the procedures set forth herein shall be subject to the sole and exclusive jurisdiction of the Circuit Courts in and for the State of Florida. Any party who participates in the Auction or contests the Auction or any part of these procedures shall be deemed to consent to the sole and exclusive jurisdiction of the Circuit Courts in and for the State of Florida to resolve any dispute hereunder.

12. **Brokers**: Any party submitting a Sealed Bid represents and warrants that they are solely and exclusively responsible for any brokerage commission, real estate commissions, or similar sales costs associated with their Sealed Bid, and agrees to hold the Seller harmless from any such cost, expense, or liability.

Please do not hesitate to contact me should you have any questions.

Sincerely yours,



Stephen R. Leslie