

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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 COMPLIANCE WITH
CONFIRMED CHAPTER 11 PLAN AND PRIOR
ORDER COMPELLING DEBTOR TO COMPLY
WITH CONFIRMED CHAPTER 11 PLAN**

THIS CASE came before the Court for hearing on August 20, 2012, of the *Motion to Compel Compliance with Confirmed Chapter 11 Plan and Prior Order Compelling Debtor to Comply with Confirmed Chapter 11 Plan* (Doc. No. 443) (the “**Motion**”) filed by Whitney National Bank, n/k/a Whitney Bank (“**Whitney**”). The Court, having reviewed the Motion, together with the record, having heard argument of counsel and being otherwise duly advised in the premises, finds that:¹

(i) on May 21, 2012, the Court entered its *Order Granting Motion to Compel Debtor to Comply with Confirmed Chapter 11 Plan* (Doc. No. 416) (the “**Compliance Order**”);

(ii) for the reasons set forth in the Compliance Order, which are incorporated herein as though set forth in full, the Debtor was obligated by the terms of its *Third Amended Chapter 11 Plan* (Doc. No. 281) (the “**Plan**”) and the *Order Confirming Debtor’s Chapter 11 Plan* (Doc. No. 327) (the “**Confirmation Order**”) to either (a) conduct an auction of the Golf Course Property (as defined in the Plan), or (b) permit Whitney to exercise its credit bid rights;

(iii) the Compliance Order required the Debtor to conduct an auction within 45 days of the date of the Compliance Order. If an auction was not conducted, the Compliance Order authorized Whitney to exercise its credit bid rights;

(iv) the Compliance Order required the Debtor to execute all necessary documents to effectuate the transfer of the Golf Course Property in connection with the auction, or if Whitney credit bid, to Whitney;

(v) although the Debtor timely filed a Notice of Appeal from the Compliance Order (Doc. No. 418), the Debtor has not sought a stay pending appeal from this Court or from the District Court pursuant to Fed. R. Bankr. P. 8005;

(vi) despite the fact that the Debtor has not sought a stay pending appeal, the Debtor did not conduct an auction of the Golf Course Property as required by the Compliance Order;

(vii) Whitney timely exercised its credit bid rights;

(viii) the Special Warranty Deed attached hereto as Exhibit “1” is a necessary and reasonable document to effectuate the transfer of the Golf Course Property to Whitney;

(ix) although the Debtor did not object to the provisions of the Special Warranty Deed, the Debtor has refused to execute the Special Warranty Deed;

(x) the Debtor should be compelled to execute and deliver the Special Warranty Deed to Whitney;

(xi) although the Debtor has not sought a stay pending appeal from this Court, if the Debtor were to do so, this Court would deny the request. “A motion for a stay pending appeal is an extraordinary remedy and requires a substantial showing on the part of the movant.” *Henkel v. Lickman (In re Lickman)*, 301 B.R. 739, 742 (Bankr. M.D. Fla. 2003) (citations omitted). In order to obtain a stay pending appeal, the movant must clearly establish (1) that the movant is likely to prevail on the merits of its appeal, (2) that the movant will suffer irreparable injury if a stay is not granted, (3) that other parties will suffer no hardship if a stay is granted, and (4) in cases where public interest is implicated, a stay will serve, rather than disserve, such public interest. *Jet 1 Ctr., Inc. v. City of Naples Airport Auth. (In re Jet 1 Center, Inc.)*, 2006 WL 449252, at *1 (M.D. Fla. Feb. 23, 2006) (quoting *Tooke v. Sunshine Trust Mortg. Trust*, 149 B.R. 687, 689 (M.D. Fla. 1992)). For the reasons set forth in the Compliance Order, this Court finds that the Debtor is not likely to prevail on the merits of its appeal.

Accordingly, it is ORDERED that:

1. The Motion is GRANTED.

¹ The Court made additional findings of fact and conclusions of law on the record at the hearing on August 20, 2012, and those findings and conclusions are incorporated herein by reference.

2. No later than ten days from the date of this Order, the Debtor shall execute and deliver to Whitney an original fully-executed Special Warranty Deed in the form attached hereto as Exhibit "1."

3. In the event the Debtor fails to timely comply with the requirements of this Order, the Court will consider contempt proceedings upon the filing of an appropriate motion.

4. In the event the Debtor moves for entry of a stay of the Compliance Order pending appeal, such request is DENIED.

5. The Court retains jurisdiction to enforce the terms of the Plan, the Confirmation Order, the Compliance Order, and this Order, including but not limited to consideration of any appropriate contempt remedies as provided herein.

DONE AND ORDERED in Chambers, at Tampa, Florida, on September 5, 2012.

/s/
CARYL E. DELANO
United States Bankruptcy Judge

This Instrument Prepared By
and should be returned to:

Gail Martin Abercrombie, Esq.
Sivyer Barlow & Watson, P.A.
401 E. Jackson Street, Suite 2225
SunTrust Financial Centre
Tampa, FL 33602

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made and entered into as of the ____ day of July, 2012, by and between THE GOLF CLUB AT BRIDGEWATER, L.L.C., a Florida limited liability company, whose address is 142 West Platt Street, Tampa, Florida 33606 (hereinafter referred to as the "Grantor"), and WHITNEY BANK, a Louisiana state chartered bank, formerly known as HANCOCK BANK OF LOUISIANA, successor by merger to WHITNEY NATIONAL BANK, a national banking association, whose address is PO Box 61260, New Orleans, LA 70161 (hereinafter referred to as the "Grantee").

WITNESSETH:

The Grantor, for and in consideration of the sum of Ten and No/100ths Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, sells, conveys, remises, releases and transfers unto the Grantee all that certain land situated in Polk County, Florida (the "Property"), more fully described as follows:

See Exhibit A attached hereto and incorporated by reference herein, which land is subject to those matters set forth on Exhibit B attached hereto and incorporated by reference herein.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging on or in any ways appertaining.

TO HAVE AND TO HOLD the same unto the Grantee in fee simple forever.

The Grantor does hereby covenant that (i) it is lawfully seized of the above-described land in fee simple; (ii) that it has good, right and lawful authority to sell and convey said land; (iii) that it hereby fully warrants the title to said land, except for those matters listed on Exhibit B; and will defend the same against the lawful claims of all persons whomsoever claiming by, through or under the Grantor but against none other.

EXHIBIT "1"

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed the day and year first above written.

WITNESSES:

GRANTOR:

THE GOLF CLUB AT BRIDGEWATER,
L.L.C., a Florida limited liability company

Print Name: _____

By: _____
Name: _____
Title: _____

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, as _____ of THE GOLF CLUB AT BRIDGEWATER, L.L.C., a Florida limited liability company, on behalf of the company. He/She is personally known to me or produced _____ as identification.

Notary Public

(Type, Print or Stamp Name)

My Commission Expires:

EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land lying in Sections 15, 16, 21 & 22, Township 27 South, Range 24 East, Polk County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the SE 1/4 of the SW 1/4 of said Section 16, thence N00°20'09"W along the North line of said SE 1/4 of the SW 1/4, a distance of 263.42 feet to the POINT OF BEGINNING, thence continue N00°20'09"W, still along said West line 475.91 feet to the Southeasterly Right-of-Way line of the City of Orlando, Utilities Commission Right-of-Way, as recorded in OR Book 2070, Page 1834 of the Public Records of Polk County, Florida, thence N47°23'12"E along said Southeasterly Right-of-Way line 339.82 feet to the Point of Curvature of a curve to the right having a Radius of 11,144.16 feet, a Central Angle of 06°30'35", thence along said curve 1,266.17 feet, thence S36°06'09"E 890.28 feet, thence S62°43'51"E 1,157.75 feet, thence N60°42'36"E 903.46 feet, thence S29°52'55"E 407.30 feet to the Point of Curvature of a curve to the left having a Radius of 222.50 feet, a Central Angle of 39°34'56". A Chord Bearing of S49°40'23"E and a Chord Distance of 150.67 feet, thence along said curve 153.71 feet to the Point of Tangency, thence S69°27'51"E 724.12 feet to the Westerly Right-of-Way line of State Road #33, thence S20°31'55"W along said Westerly Right-of-Way line 2,640.11 feet, thence N69°28'05"W 140.00 feet, thence S20°31'55"W 58.42 feet, thence N85°37'30"W 140.55 feet, thence S20°31'55"W 46.49 feet, thence S69°28'05"E 275.00 feet again to said Westerly Right-of-Way line, thence S20°31'55"W along said Westerly Right of way line 320.52 feet to the City of Lakeland Lift Station property as recorded in OR Book 3237, Page 0435 of the Public Records of Polk County, Florida, thence N69°28'05"W, along said property, 85.00 feet, thence S20°31'55"W, still along said property, 44.89 feet, thence S22°27'04"E, still along said property, 102.67 feet, thence S69°28'05"E, still along said property, 15.00 feet, again to the said Westerly Right-of-Way line of State Road #33, thence S20°31'55"W, along said Westerly Right-of-Way line, 713.84 feet, thence S58°57'06"W 183.38 feet, thence N83°16'28"W 253.26 feet, thence N09°14'00"E 639.67 feet, thence N12°40'03"W 224.77 feet, thence N08°36'21"E 334.88 feet, thence N13°24'24"E 284.85 feet, thence N31°56'40"E 72.84 feet, thence N74°25'51"W 113.40 feet, thence N88°33'41"W 122.48 feet, thence N65°39'29"W 164.86 feet to the Point of Curvature of a curve to the right having a Radius of 270.00 feet, a Central Angle of 50°46'31", thence along said curve 239.27 feet to the Point of Tangency, thence N14°52'58"W 251.77 feet to the Point of Curvature of a curve to the left having a Radius of 224.00 feet, a Central Angle of 32°35'08", thence along said curve 127.39 feet to the Point of Tangency, thence N47°28'05"W 247.71 feet to the Point of Curvature of a curve to the right having a Radius of 275.00 feet, a Central Angle of 25°26'28", thence along said curve 122.11 feet to a point on a curve concaved to the Southwesterly having a Radius of 54.00 feet, a Central Angle of 120°10'03", a Chord Bearing of N14°48'21"W and a Chord Distance of 93.61 feet, thence along said curve 113.26 feet, thence N12°28'05"W 706.95 feet, thence N33°13'45"W 1,281.61 feet, thence N80°36'48"W 407.65 feet, thence S53°58'24"W 232.89 feet, thence S05°20'28"W 26.83 feet, thence S37°12'03"W 519.08 feet, thence S89°39'51"W 282.80 feet to the POINT OF BEGINNING.

EXHIBIT "B"

PERMITTED EXCEPTIONS

1. Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the property described herein, including submerged, filled and artificially exposed lands, and lands accreted to such lands.
2. Federal liens and judgment liens, if any, filed with the Florida Department of State pursuant to Sec. 713.901, et seq., F.S., and Sec. 55.201, et seq., F.S., respectively, which designate the Florida Department of State as the place for filing federal liens and judgment liens against personal property.
3. General or special taxes and assessments for the year 2012 and subsequent years.
4. Agreement recorded in O.R. Book 2211, Page 836, Public Records of Polk County, Florida.
5. Development Agreement recorded in O.R. Book 3548, Page 958, Public Records of Polk County, Florida.
6. Notice of Preliminary Development Agreement for a Redevelopment of Regional Impact known as Villages of Lake Parker recorded in O.R. Book 3216, Page 790, Public Records of Polk County, Florida.
7. Development Order reflected in Ordinance recorded in O.R. Book 3548, Page 2238, as amended by Ordinances recorded in O.R. Book 4397, Page 842 and O.R. Book 4553, Page 1806, Public Records of Polk County, Florida.
8. Drainage Easements, Covenants, conditions, and restrictions recorded in O.R. Book 4575, Page 2061; together with Amendments recorded in O.R. Book 4575, Page 2134, O.R. Book 4649, Page 341, O.R. Book 4651, Page 1269, O.R. Book 4691, Page 1724, O.R. Book 5291, Page 495, O.R. Book 5528, Page 1452 and O.R. Book 5528, Page 1477; and Assignments of Declarants Interest recorded in O.R. Book 5528, Page 1465, O.R. Book 5528, Page 1471, O.R. Book 5725, Page 2151, O.R. Book 6084, Page 1444, O.R. Book 6084, Page 1448 and O.R. Book 7014, Page 1182, Public Records of Polk County, Florida, which contain provisions creating easements and/or assessments.
9. Sewer Easement Agreement recorded in O.R. Book 3237, Page 439, Public Records of Polk County, Florida.
10. Grant of Easements for Sanitary Sewer, Water and Electric Transmission Facilities recorded in O.R. Book 4488, Page 1441, Public Records of Polk County, Florida.
11. Grant of Easements for Sanitary Sewer and Water Facilities recorded in O.R. Book 4585, Page 1547, Public Records of Polk County, Florida.
12. Grant of Easements for Sanitary Sewer and Water Facilities recorded in O.R. Book 4797, Page 2072, Public Records of Polk County, Florida.

13. Restrictive Covenant Agreement recorded in O.R. Book 4649, Page 375, Public Records of Polk County, Florida.
14. Declaration of Easements recorded in O.R. Book 4649, Page 349, Public Records of Polk County, Florida.
15. Declaration of Reservation recorded in O.R. Book 7014, Page 1131, Public Records of Polk County, Florida.
16. Memorandum of Agreement recorded in O.R. Book 6084, Page 1459; together with Assignment of Memorandum recorded in O.R. Book 7014, Page 1174, Public Records of Polk County, Florida.
17. Declaration of Covenants and Restrictions recorded in O.R. Book 6084, Page 1477; together with Assignment of Declaration of Covenants and Restrictions recorded in O.R. Book 7014, Page 1178, Public Records of Polk County, Florida.
18. Declaration of Consent to Imposition of Special Assessments recorded in O.R. Book 6068, Page 366, Public Records of Polk County, Florida.
19. Allocation of Membership Percentages recorded in O.R. Book 6084, Page 1454, Public Records of Polk County, Florida.
20. Permanent Easement Agreement recorded in O.R. Book 6053, Page 1782, Public Records of Polk County, Florida.
21. Ordinance recorded in O.R. Book 7194, Page 614, Public Records of Polk County, Florida.
22. Drainage Easement Agreement recorded in O.R. Book 7014, Page 1160, Public Records of Polk County, Florida.
23. Bridgewater DRI Development Agreement recorded in O.R. Book 7769, Page 1564; together with First Amendment recorded in O.R. Book 8050, Page 1083, Public Records of Polk County, Florida.
24. Easement in favor of the City of Lakeland recorded in O.R. Book 7216, Page 1154, Public Records of Polk County, Florida.