

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

IN RE:	)	
	)	
TELLICO LANDING, LLC,	)	No. 3:11-bk-33018
	)	Chapter 11
Debtor.	)	

WINDRIVER INVESTMENTS, LLC’S OBJECTIONS TO THE  
ADEQUACY OF THE DEBTOR’S DISCLOSURE STATEMENT

Comes now WindRiver Investments, LLC (“WindRiver”), and files the following objections to the adequacy of the debtor’s disclosure statement:

1. The disclosure statement fails to disclose that over \$4,000,000.00 of the \$12,700,000.00 LTR Properties, Inc. (“LTR”) claims to have expended for the construction of the golf course, as stated on page 5 of the disclosure statement, was derived from the social membership initiation deposits. Specifically, the disclosure statement fails to explain why these deposits are not property of the debtor, particularly in light of the documentation requiring LTR to be solely responsible for costs of design and construction of the golf course.

2. The disclosure statement fails to disclose the current status of the litigation pending against Michael L. Ross in the Blount County Chancery Court and the United States District Court, as referenced on pages 16-17 of the disclosure statement. The importance of this disclosure is based upon Mr. Ross’ apparent continued involvement, through LTR in the operations of the debtor, as disclosed in the disclosure statement.

3. The disclosure statement fails to disclose how LTR is entitled to a fee of \$20,000.00 per lot, as it alleges on page 23 of the disclosure statement. These fees are social membership initiation deposits for the benefit of the Rarity Point Club which was to operate amenities of the

development; none of which have been constructed. The disclosure statement fails to explain why these funds are not property of the debtor and why LTR and not the debtor, should have use of such funds.

4. The disclosure statement does not adequately explain how the debtor can generate the Gross Sales Revenue, which is shown on Exhibit 8 to the disclosure statement (“Exhibit 8”), in view of the fact that the debtor has not sold any lots in the past three years.

5. Exhibit 8 incorrectly states that the balance owed to WindRiver is \$6,738,160.00. In actuality, the amount owed to WindRiver as of the date of the petition is \$7,685,139.99, and interest has accrued thereafter in the per diem amount of \$ 1,684.41. Moreover, WindRiver has incurred attorney’s fees and other expenses as a result of the debtor’s default and bankruptcy case, which are also recoverable under the terms of the debtor’s promissory notes and loan documents held by WindRiver.

6. Exhibit 8 incorrectly states the interest rates of WindRiver’s promissory notes as 4.25% when the true default rate is 8%.

7. Exhibit 8 does not correctly project cash flows, given the fact that the balance owed to WindRiver and the interest rates on its promissory notes are incorrectly stated in Exhibit 8.

8. The quarterly “Sales, Marketing & Advertising” expense shown on Exhibit 8 is not authorized to the extent stated inasmuch as, under Section 8.5 (c)(i) of the debtor’s Second Amended and Restated Operating Agreement (Exhibit 4 to the disclosure statement), such expenses are subject to a maximum expenditure of 4% of the gross sales, and under Exhibit 8, such expenses range from 27% to 30% of gross sales. Consequently the “Sales, Marketing & Advertising” expense on Exhibit 8 should be revised on Exhibit 8.

9. The disclosure statement does not explain the reason for the payment of \$90,000.00 to Oliver Smith in the first quarter of 2012, as shown on Exhibit 8. This would appear to be a fee unrelated to the proposed debtor in possession financing.

10. Exhibit 8 discloses a proposed interest rate in the amount of 8% on the proposed DIP financing, but the disclosure statement does not explain the reason for the "DIP Fee" shown on Exhibit 8, and the disclosure statement does not explain how the proposed DIP financing is not usurious, given the interest rate of 8% and the DIP Fee in the amount of \$50,000.00 per quarter during 2012, \$62,500.00 per quarter during 2013, \$68,750.00 per quarter during 2014, \$62,500.00 per quarter during 2015, and \$38,495.00 during 2016. Such fee results in an annual interest rate in excess of 14% which is usurious under Tennessee law.

11. The disclosure statement does not address what will happen to the plan of reorganization in the event the debtor does not achieve the Gross Sales Revenue shown on Exhibit 8.

12. The disclosure statement does not address how creditors' claims will be treated in the event of a default under the terms of the plan of reorganization, and what remedies are available to creditors in that event.

13. The disclosure statement fails to evidence a binding commitment for the proposed financing in violation of T.C.A. § 29-2-101 et. seq., the Tennessee Statute of Frauds, and is therefore avoidable by the proposed DIP financing lender.

14. The disclosure statement fails to address revenues of the golf course which is situated on real property of the debtor, but operated by LTR in the absence of any written lease or operating agreement.

15. The disclosure statement fails to explain or verify the purported value of the debtor's real property and how WindRiver is adequately protected by increasing the existing debt on the property and subordinating WindRiver's first deed of trust to the proposed DIP financing.

16. The disclosure statement fails to advise creditors that under Section 8.6(c) of the debtor's Second Amended and Restated Operating Agreement (Exhibit 4 to the disclosure statement), any refinancing of the existing debt of the debtor, or any plan of financing that would require the grant of a security interest in the assets of the debtor, whether in the form of a mortgage or otherwise, requires the approval by a vote of not less than 75% of the membership interests in the debtor. The disclosure statement fails to state whether the proposed DIP financing has obtained the requisite approval of the members.

17. The disclosure statement fails to address the claims of the property owners, who have now filed an adversary proceeding, seeking class certification, and also seeking to impose a constructive trust or equitable lien against the debtor's real estate. While the debtor has objected to these claims, the disclosure statement nevertheless fails to address how the claims, if allowed, and the constructive trust or equitable lien, if imposed by the Court, would impact the plan of reorganization and the feasibility thereof.

WHEREFORE, WindRiver Investments, LLC objects to the disclosure statement on the basis that it does not contain adequate information as required by 11 U.S.C. § 1125(a), which would permit a party in interest to reach an informed judgment concerning the plan of reorganization.

Continued on the following page

Respectfully submitted, this 28th day of October, 2011.

/s/ Lewis S. Howard, Jr.  
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#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 28, 2011, the foregoing document was filed electronically and will be served electronically by operation of the Court's electronic case filing system on the United States Trustee, Thomas Lynn Tarpy, Thomas M. Leveille, Jesse D. Overbay, William F. McCormick and James R. Moore. Additionally, the foregoing document has been served upon the following by mailing a copy thereof by first class mail, in envelopes addressed as follows, this 28th day of October, 2011:

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/s/ W. Morris Kizer  
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