

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

IN THE MATTER OF:

New Bern Riverfront Development, LLC

Debtor

Case No. 09-10340-8-JRL
Chapter 11

Amended Plan Of Reorganization Dated June 30, 2011

Now comes New Bern Riverfront Development, LLC (the "Debtor"), pursuant to 11 U.S.C. Section 1129 and Rule 3016 of the Federal Rules of Bankruptcy Procedure, and respectfully propose the following Amended Plan of Reorganization Dated June 30, 2011 (the "Amended Plan").

1. **INTRODUCTION.** On November 30, 2009 (the "Petition Date"), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code and an Order for relief was entered. The Debtor continues in possession of its assets as a debtor-in-possession. Pursuant to various orders entered by the Court in response to the Debtor's motions and after notice and hearing, the Debtor (i) obtained authority for use of cash collateral and post-petition financing, (ii) assumed, rejected, or extended the time to assume or reject executory contracts and leases, and (iii) otherwise complied with all requirements for operation and filing of necessary reports with the Court as mandated by the Bankruptcy Code, the Bankruptcy Rules, and Local Rules of the Court.

1.1. The Debtor previously filed a proposed Plan of Reorganization Dated December 30, 2010 (the "Initial Plan") and an accompanying Disclosure Statement (the "Disclosure Statement"), reference to which is hereby made for a discussion of the Debtor's history, business, results of operations, historical financial information and properties, the results of post-petition operations, and an analysis of the Initial Plan. The Amended Plan of Reorganization Dated June 30, 2011 amends certain provisions of the Initial Plan but, in the Debtor's opinion, such amendments do not necessitate the filing of an amended Disclosure Statement. All creditors entitled to vote on the Amended Plan should review the Disclosure Statement before voting to accept or reject the Amended Plan.

1.2. In addition, there may be other agreements and documents that have been filed which are referenced in the Amended Plan and/or the Disclosure Statement and which are available for review. No solicitation materials, other than the Disclosure Statement, have been authorized by the Court for use in soliciting acceptances or rejections of the Amended Plan.

2. **DEFINITIONS** For purposes of this Amended Plan and the Disclosure Statement, the following definitions shall apply and, unless otherwise indicated, the singular shall include the plural:

2.1. **Allowed Claim or Interest**: Any claim against or interest in the Debtor (a) for which a proof of claim or interest was filed on or before the date designated by the Court as the last day on which to file such proofs of claim or interest in this proceeding, or (b) which is listed in the Schedules filed by the Debtor (unless listed as unliquidated, disputed or contingent) and, in either case, to which (i) no objection has been filed within the applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or Order of this Court, or (ii) an objection has been timely filed and determined by Final Order, and then only to the extent the Order allows such claim or interest.

2.2. **Bankruptcy Administrator**: The United States Bankruptcy Administrator for the Eastern District of North Carolina.

2.3. **Bankruptcy Causes of Action**: Any claim or cause of action which may be asserted by a trustee or a debtor-in-possession under Sections 541, 542, 543, 544, 546, 547, 548, 549, 550, or 553 of the Bankruptcy Code.

2.4. **Bankruptcy Code**: Provisions of Title 11, United States Code, as amended from time to time and applicable to this case.

2.5. **Bankruptcy Rules**: The Federal Rules of Bankruptcy Procedure, as amended from time to time and applicable to this case.

2.6. **Claim**: Any right to payment, or any right to an equitable remedy for breach or performance if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

2.7. **Claims Bar Date**: The date by which a proof of claim must be filed with the Court, which shall be, as applicable, (i) April 11, 2010 with respect to all creditors

except a governmental unit, (ii) May 29, 2010 with respect to a governmental unit, and (iii) with respect to claims arising from the rejection of any lease or executory contract, sixty (60) days after the Confirmation Date, or such other (whether earlier or later) deadline as may be set by the Court generally or with respect to any specific lease or contract rejected.

- 2.8. Class: A group of Claims or Equity Interests which are substantially similar to each other, as classified under the Amended Plan.
- 2.9. Collateral: Property of the Debtors which has been duly and properly pledged to a creditor to secure indebtedness, and which pledge (of whatever nature) has not been avoided or subordinated.
- 2.10. Committee: An official committee of unsecured creditors, if duly formed and appointed.
- 2.11. Confirmation Date: The date on which the clerk enters on the Court's docket the Confirmation Order confirming the Amended Plan.
- 2.12. Confirmation Order: The Order of the Court confirming the Amended Plan pursuant to § 1129 of the Bankruptcy Code.
- 2.13. Construction Litigation. The litigation between Debtor and Weaver Cooke Construction, LLC, et al. in this Court at file number 10-0023-8-JRL.
- 2.14. Consummation, Final: The consummation of all things contained in or provided for in this Amended Plan, and the entry of a Final Decree finally dismissing this reorganization case.
- 2.15. Consummation, Substantial: The date on which the Debtor has substantially completed all requirements of this Amended Plan, as determined in accordance with § 1101(2) of the Bankruptcy Code or an Order of Substantial Consummation entered by this Court.
- 2.16. Court: The United States Bankruptcy Court for the Eastern District of North Carolina, and any appellate court that exercises jurisdiction over this case.
- 2.17. Debtor: New Bern Riverfront Development, LLC.
- 2.18. Debtor, Reorganized: The Debtor, after Substantial Consummation has occurred.
- 2.19. Disputed Claim: Any Claim which is not an Allowed Claim and with respect to which (i) an objection has been interposed and has not been resolved by agreement or

Final Order, (ii) the Debtor has scheduled as disputed, contingent or unliquidated, or (iii) the claim is set forth in an improper proof of claim or a proof of claim untimely filed.

2.20. Distribution Date: Any date on which distributions are to be made to creditors pursuant to terms and provisions of this Amended Plan or upon approval of this Court.

2.21. Effective Date: The first day of the month next following the Confirmation Date, unless the Confirmation Order has been stayed.

2.22. Equity Interest: Any ownership interest (common or preferred stock, options or warrants) in the Debtor.

2.23. Estate: The property belonging to the Debtor on the date this case was commenced and as defined by Section 541 of the Bankruptcy Code and other applicable law.

2.24. Final Decree: The final decree entered by the Court pursuant to Bankruptcy Rule 3022.

2.25. Final Order: An order (i) as to which the time to appeal or seek review or rehearing has expired and as to which no motion or petition for review or rehearing is pending, or (ii) if an appeal, motion or petition for review or rehearing is pending, the operation or effect of which order has not been stayed, reversed, or amended.

2.26. Final Report: A report to be filed by the Debtor with the Court upon and after completion of all acts required to achieve Final Consummation of the Amended Plan, which report shall include, but not be limited to, all information necessary to meet the reporting requirements of the Court, the Bankruptcy Administrator, and the Amended Plan .

2.27. Lien: A deed of trust, mortgage, judgment lien, materialman's lien, statutory lien, security interest, pledge, charging order, or other encumbrance on the Debtor's property, effective under applicable laws as of the Petition Date or thereafter as authorized by Order of the Court.

2.28. Net Sale Proceeds: The amount remaining from the gross sale proceeds arising from the sale of any of the Debtor's real property, after payment or provision for the purchaser's deposit; seller concessions as provided in the contract of sale; seller closing costs; and where applicable, the accrued sewer and water tap fees as provided below and any broker's commissions due with respect to such sale.

- 2.29. Notice and Hearing: Notice and hearing as defined by Section 102 of the Bankruptcy Code.
- 2.30. Petition Date: November 30, 2009.
- 2.31. Amended Plan: This Amended Plan of Reorganization and any modification thereof as approved by the Court.
- 2.32. Priority Claim: An allowed claim that is unsecured and is entitled to priority under Section 507 or Section 364 of the Bankruptcy Code, excluding Priority Tax Claims.
- 2.33. Priority Creditor: A creditor with a Priority Claim.
- 2.34. Priority Tax Claim: An allowed claim for federal, state or local taxes that is unsecured and is entitled to priority under Section 507 or Section 364 of the Bankruptcy Code.
- 2.35. Priority Tax Creditor: A creditor with a Priority Tax Claim.
- 2.36. Pro Rata: The proportion that each allowed claim in a particular class of creditors or interests bears to the aggregate of all allowed claims or interests in that Class on the relevant date.
- 2.37. Sale Properties: The condominium units in SkySail Condominium located on Middle Street, New Bern, NC, and vested in the Debtor as of the Effective Date.
- 2.38. Secured Claim: An allowed claim that is secured by a Lien which has not been or is not subsequently avoided, but only to the extent of the value of the Collateral subject to such Lien as determined under Section 506 of the Bankruptcy Code.
- 2.39. Secured Creditor: A creditor with a Secured Claim.
- 2.40. Unsecured Claim: An allowed claim that is unsecured and is not entitled to be treated as a Priority Claim.
- 2.41. Unsecured Creditor: A creditor with an Unsecured Claim.

3. **PROVISION FOR PAYMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS**

- 3.1. Administrative Claims shall be allowed upon due request or application and in such amounts as may be determined by the Court after notice and hearing.
 - 3.1.1. Attorneys, accountants and other professionals retained by or on behalf of the Debtor or by an official committee shall be compensated for services rendered in

such capacity and reasonably necessary to the administration of this estate, upon an hourly basis and at their customary hourly rates or in such amounts as may be determined by the Court, but not to exceed reasonable compensation for such services.

3.1.2. The holders of Allowed Administrative Claims shall be paid in cash on the Effective Date or within thirty days after the same can be determined and, if necessary, allowed by the Court.

3.2. The holders of Allowed Priority Tax Claims shall be paid in cash, with interest at the applicable statutory rate, and either (i) in quarterly or more frequent installments over a period not exceeding five (5) years from and after the Petition Date, or (ii) with respect to ad valorem property taxes, on or before the date such taxes are due and payable without penalty; provided however, any outstanding ad valorem taxes for the calendar year 2009 shall be paid within thirty (30) days after the Confirmation Date, and any outstanding ad valorem taxes for the calendar year 2010 shall be paid within thirty (30) days after the appeal thereof is finally determined, and any penalties shall be treated as unsecured claims.

4. **DESIGNATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS** For purposes of the Amended Plan, Claims and Equity Interests are classified as follows:

4.1. **Class 1** shall consist of the Secured Claim of Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A. (“Wells Fargo”) of approximately \$21 million (the “Wells Fargo Indebtedness”) secured by a first lien upon the Sale Properties, as evidenced by a proof of claim filed by Wells Fargo (Claim No. 32) to which the relevant loan documentation is attached (the “Wells Fargo Loan Documents”).

4.2. **Class 2** shall consist of the Secured Claim of Weaver Cooke Construction, LLC of approximately \$2.4 million (the “Weaver Cooke Claim”) arising from the contract for design and/or construction of the Sale Properties, and secured by a second lien on the Sale Properties, as evidenced by a proof of claim filed by Weaver Cooke (Claim No. 29).

4.3. **Class 3** shall consist of the Allowed Unsecured Claims, including the unsecured portion of any claims listed herein as secured but which are determined to be unsecured

by order of the Court or applicable law after (a) valuation or liquidation of property serving as Collateral to said claimant, or (b) avoidance of any Lien securing such claim.

4.4. Class 4 shall consist of Claims arising from an alleged breach by the Debtor of a prepetition contract to sell one or more Sale Properties.

4.5. Class 5 shall consist of Equity Interests.

5. **TREATMENT OF CLASSES IMPAIRED UNDER THE PLAN** Claims and Interests shall receive the following treatment under the Amended Plan; provided however, the Reorganized Debtor may prepay any Allowed Claim, in part or in full, at any time and without penalty:

5.1. **Class 1: Secured Claim of Wells Fargo.** The Secured Claim of Wells Fargo shall be treated as follows:

5.1.1. From and after the Effective Date, the outstanding principal amount of the Wells Fargo Indebtedness shall bear interest at the rate of LIBOR + 2.5%, with a floor of 4%. Principal, interest accrued and outstanding as of the Effective Date, interest accruing after the Effective Date, and the reasonable attorneys' fees and costs incurred by Wells Fargo, in an amount agreed to by the parties or as may be determined by the Court pursuant to Section 506, shall be paid as set forth below.

5.1.2. Wells Fargo will fund all costs of administration incurred in the ordinary course of business or as approved by the Court where applicable, including, without limitation, (i) allowed attorneys' fees and costs, (ii) ad valorem taxes, excluding penalties on taxes due prior to the Confirmation Date, (iii) utility charges, excluding late fees, penalties or interest on amounts due prior to the Confirmation Date, (iv) condo association operating deficits, and (v) maintenance costs, with all such costs being treated as post-petition financing and a protective advance under the Note. Such funding shall continue from the Confirmation Date until such time as Wells Fargo concludes, in its sole discretion, that such funding no longer benefits the Collateral or Sale Properties or until Wells Fargo forecloses on its Deed of Trust.

5.1.3. Wells Fargo will fund all post-confirmation carrying costs, including, without limitation, allowed attorneys' fees and costs, taxes, condo association operating deficits, and maintenance costs, with all costs being a protective advance under the Note. Such funding shall continue from the Confirmation Date until such time as

Wells Fargo concludes, in its sole discretion, that such funding no longer benefits the Collateral or Sale Properties or until Wells Fargo forecloses on its Deed of Trust.

- 5.1.4.** Wells Fargo shall pay the Debtor's litigation costs, with all costs being a protective advance under the Note, and shall have the sole authority to retain counsel to prosecute and defend the litigation. Any proceeds from the litigation (by settlement or otherwise), shall be paid to Wells Fargo up to and until the Note is paid in full. Such funding shall continue from the Confirmation Date until such time as Wells Fargo concludes, in its sole discretion, that such funding no longer benefits the Collateral or Sale Properties or until Wells Fargo forecloses on its Deed of Trust.
- 5.1.5.** For a period of two years following the Effective Date, upon the sale of each unit (excluding sales to Lender pursuant to credit-bid at foreclosure), ninety percent (90%) of the Net Sale Proceeds shall be paid to Wells Fargo. Wells Fargo shall be permitted to either (a) apply the funds to the Note, in its sole discretion or (b) use the funds to pay monthly expenses as set forth above.
- 5.1.6.** Ten percent (10%) of the Net Sale Proceeds of all sales (excluding sales to Lender pursuant to credit-bid at foreclosure) shall be set aside in an interest-bearing account, subject to Wells Fargo's first-priority lien. Once Wells Fargo is paid in full and reimbursed for all protective advances, unless otherwise agreed by Lender or as otherwise ordered by the Court, these funds together with any Net Sale Proceeds from unsold units will be used to pay other creditors. In the event Wells Fargo is not paid in full and reimbursed for all protective advances by the two (2) year anniversary from the Effective Date, these funds shall be paid to Wells Fargo.
- 5.1.7.** Upon the earlier of two (2) years from the Effective Date, completion of the Construction Litigation, or Wells Fargo's decision to cease funding under Paragraphs 5.1.2, 5.1.3 and 5.1.4, unless otherwise extended by Wells Fargo in its sole discretion, and to the extent the Note is not paid in full, Wells Fargo shall be permitted to foreclose on its Deed of Trust. On such date, Wells Fargo's obligations under Paragraphs 5.1.2, 5.1.3 and 5.1.4 shall cease.

5.2. **Class 2: Secured Claim of Weaver Cooke.** The Secured Claim of Weaver Cooke shall be treated as follows:

5.2.1. The Weaver Cooke Claim is disputed and shall be allowed, if at all, in such amount as shall be determined (i) by Final Order of the Court, or (ii) as agreed by the parties subject to approval by the Court after notice and hearing.

5.2.2. From and after the date of an Order allowing such claim, the outstanding principal amount of such claim shall bear interest at the federal judgment rate in effect as of the date of such Order.

5.2.3. Until such time as the Weaver Cooke Claim is determined by Final Order, no payments shall be made on such claim. Weaver Cooke's claim of lien upon the Sale Properties shall be transferred to the Net Sale Proceeds and shall be cancelled of record within thirty (30) days after the Effective Date.

5.2.4. Commencing with closings which occur after the Effective Date, ten percent (10%) of the Net Sale Proceeds shall be held in escrow to secure payment of such claim to the extent allowed but only after payment of the senior lien of Wells Fargo.

5.3. **Class 3: Unsecured Claims:** Holders of Allowed Unsecured Claims will be paid from any Net Sale Proceeds remaining after payment in full of (i) the secured claim of Wells Fargo and (ii) the secured claim of Weaver Cooke.

5.4. **Class 4: Purchase Contract Claims:** Persons who are (i) parties to prepetition contracts to purchase one or more Sale Properties ("Contract Purchasers"), and (ii) asserting claims based upon an alleged breach by the Debtor of such contracts, may elect one of the following treatment options:

5.4.1. The contract will be assumed by the Debtor with the express consent of the Contract Purchaser, in which event the parties shall proceed with closing in accordance with the contract terms within thirty (30) days after the Effective Date. In such event, the Contract Purchaser waives and releases Debtor and Wells Fargo from any and all alleged construction defects.

5.4.2. The contract will be rejected by the Debtor with the express consent of the Contract Purchaser, in which event the Debtor shall retain the earnest money deposit and each party shall release the other from any and all claims, including but not

limited to a waiver and release of any claim arising from the rejection of the contract.

5.4.3. In the absence of an election by the Contract Purchaser of either Option A or Option B, the contract shall remain in place subject to assumption or rejection by the Debtor pursuant to Section 365 of the Bankruptcy Code and each party shall retain all legal and equitable rights and remedies subject to the provisions of the Bankruptcy Code and the Amended Plan. In the event the contract is rejected and the Contract Purchaser has a claim allowed by Final Order, such claim shall be treated as a Class 3 Allowed Unsecured Claim.

5.5. **Class 5: Equity Interests:** The Equity Interests shall be unimpaired; provided however, the Debtor's operating agreement shall be amended to provide that the issuance of non-voting equity securities is prohibited.

6. **MEANS FOR EXECUTION OF THE PLAN** The Debtor shall execute and consummate the Amended Plan as follows:

6.1. **Vesting of Assets:** All tangible and intangible assets of the Debtor shall vest in the Reorganized Debtor as of the Effective Date.

6.2. **Funding on and after the Effective Date:**

6.2.1. Wells Fargo will advance funds necessary to pay costs of administration, and to pay for operations and litigation costs after the Effective Date, including but not limited to any amount outstanding for the Debtor's utility obligations or other than interest or penalties, all as a protective advance under the Note.

6.2.2. The Sale Properties will be marketed and sold at the direction of the Consultant as set forth below. The project originally consisted of one hundred nineteen (119) residential condominium units, of which forty-two (42) were sold and conveyed prior to the Petition Date. Once an additional nineteen (19) units are sold so that sixty-one (61) units have been sold both prepetition and post-petition, then from the sale proceeds of the next sixty (60) units sold, whether by sale to third parties or transfer pursuant to a sale at foreclosure, the outstanding water and sewer tap fees of approximately \$145,580 shall be paid in equal installments of approximately \$2.427 per unit.

6.2.3. The Net Sale Proceeds derived from the Sale Properties, together with any recoveries from the pending civil action by the Debtor against Weaver Cooke and other parties (the “Construction Litigation”), will be the sole means to repay Wells Fargo for the protective advances and to fund the payment of Allowed Claims under the Amended Plan.

6.3. **Consultant:** The Reorganized Debtor will retain a consultant, approved by Wells Fargo (the “Consultant”), to manage post-confirmation operations in accordance with the rights and duties set forth in Exhibit A and to sell and convey the Sale Properties.

6.3.1. The Consultant shall manage post-confirmation operations in accordance with the rights and duties set forth in Exhibit A. The Debtor and its managers shall fully cooperate with Wells Fargo and the Consultant in the management of the property and the litigation and be available to Wells Fargo and the Consultant as may reasonably be requested by Wells Fargo and/or the Consultant.

6.3.2. The Consultant on behalf of the Debtor shall have the ability and authority to, and shall negotiate and enter into an amended conditional use permit and/or separate agreements with the City of New Bern so as to (i) eliminate any historical claim (prepetition or post-petition) by the City for lease payments with respect to off-site parking spaces, (ii) confirm that the Debtor’s on-site parking is adequate for the SkySail project, provided that Trent-Neuse Hotel, LLC (the owner of the adjacent hotel/marina property) agrees to lease spaces from the City at some point in the future as and when needed to insure compliance of such adjacent property with its conditional use permit, and until that time the owner of the adjacent property may use surplus parking spaces on the Debtor’s property until such spaces are needed by the Debtor, and (iii) in lieu of completing the concrete walkway and lighting, pay the sum of \$67,000 to the City within five (5) years after the Confirmation Date provided the City agrees to complete such improvements within a reasonable time after receiving such payment.

6.3.3. The Consultant shall have the ability and authority to sell units, and shall have sole control over the asking price and sale price for each unit. The Debtor and its managers shall execute any documents reasonably necessary for the Consultant to manage the property and the litigation and to sell and convey the Sale Properties.

including, without limitation, deeds and other closing documents necessary to convey any units. The Consultant has the authority with respect to the sale of the Sale Properties to perform all and every act desirable, proper or necessary with respect to the sale including, without limitation, the authority to execute and deliver deeds and all other documents necessary to transfer title, and direct the disbursement of funds in accordance with the Amended Plan .

6.3.4. The Consultant will invoice Wells Fargo for its services and Wells Fargo will pay all invoices, with such amounts being a protective advance under the Note.

6.3.5. The Consultant and its attorneys and agents: (a) may rely on the Amended Plan and Confirmation Order, and shall not be liable to anyone for its own good faith compliance with the Amended Plan and Confirmation Order; (b) may rely on, and shall be protected in any action upon, any resolution, certificate, statement, opinion, report, notice, consent or other document believed by the Consultant to be genuine and to have been signed or presented by the proper parties; (c) shall not be liable to anyone for its good faith compliance with Exhibit A; (d) shall not be considered nor have liability as a "successor developer" and (e) shall not be liable to anyone for its acts or omissions, except upon a finding by the Court that such acts or omissions were outside the scope of its duties or were grossly negligent or constituted malfeasance.

6.4. Post-Confirmation Litigation:

6.4.1. The Construction Litigation shall be pursued to its conclusion, by final judgment or settlement, in the Court, or until such time as Wells Fargo decides to abandon the Construction Litigation. Wells Fargo shall oversee and manage the pending litigation involving the Debtor. Wells Fargo shall pay the Debtor's litigation costs, with all costs being a protective advance under the Note, and shall have the sole authority to retain counsel to prosecute and defend the litigation and settle the litigation.

6.4.2. The Debtor shall retain the right to bring any other cause of action. All Bankruptcy Causes of Action shall be brought in the Court and shall be governed by Bankruptcy Rules 7001 et seq. Any compromise or other settlement of a

controversy by the Debtor shall be approved in accordance with the Bankruptcy Rules.

6.5. Executory Contracts and Leases:

6.5.1. All executory contracts or leases which are existing on the Effective Date, which have not been rejected or which are subject to a pending motion to reject, are and shall be deemed assumed by the Reorganized Debtor as of the Effective Date and any defaults shall be promptly cured as and to the extent required by Section 365 of the Bankruptcy Code.

6.5.2. In the event the Debtor has not paid the amount necessary to cure any such default within thirty (30) days after the Effective Date, or in the event the parties to any such contract or lease are in disagreement as to the amount to be paid, either party may request and shall be provided a hearing to resolve such dispute on an expedited basis.

6.5.3. A Claim for damages arising from the rejection of a executory lease or contract shall be forever barred and shall not be enforceable against the Estate and no holder of any such Claim shall participate in any distribution under the Amended Plan with respect to that Claim unless a Proof of Claim is served on the Debtor and filed with the Court within sixty (60) days from the Confirmation Date, or such other (whether earlier or later) deadline as may be set by the Court generally or with respect to any lease or contract rejected, and said Proof of Claim is determined to be an Allowed Claim, either because no timely objection is filed or because the Court allows the Claim after a timely filed objection.

7. PROVISIONS FOR IMPAIRED CREDITORS NOT ACCEPTING PLAN

7.1. With respect to any Class of Claims impaired by and not accepting this Amended Plan by the requisite majority in number and two-thirds (2/3) in dollar amount of those casting ballots, adequate protection for the realization by them of the value of their claim shall be provided in the Order confirming the Amended Plan by such method as will, in the opinion of the Bankruptcy Judge and consistent with the circumstances of the case, fairly and equitably provide such protection in accordance with the applicable provisions of the Bankruptcy Code.

7.2. To the extent confirmation by “cramdown” is necessary or required, the Debtor by the filing of the Amended Plan requests confirmation thereof pursuant to Section 1129(b) without further motion or notice, which request shall be considered at the Confirmation Hearing.

8. **DISCHARGE AND RELEASE.** Except for the liens preserved and obligations imposed by the Amended Plan:

8.1. The distributions and rights that are provided in the Amended Plan shall be in complete satisfaction, discharge and release of all (i) claims against, liabilities of, liens on, and obligations of the Debtor, or the assets and properties of the Debtor and the Reorganized Debtor, whether known or unknown, and (ii) causes of action, directly or derivatively through the Debtor, based on the same subject matter as any Claim.

8.2. All proceedings and court actions seeking to establish or enforce pre-petition liabilities and claims of any nature against property of the estate or priorities received or retained by any creditor with respect to debts and obligations of the Debtor shall be permanently stayed and treated as specifically provided for in this Amended Plan.

9. **PROVISIONS FOR RETENTION OF JURISDICTION AND PROSECUTION**

AND DEFENSE OF CLAIMS AND CAUSES OF ACTION The Court shall retain and may exercise its jurisdiction for determination in this proceeding of any objections to claims not disposed of prior to the entry of the Order of confirmation of the Amended Plan, the final determination of any causes of action (including Bankruptcy Causes of Action) belonging to the Debtor, and any other matters which might affect the Debtor, the Reorganized Debtor, or the consummation of this Amended Plan.

9.1. **General Jurisdiction:** Until the entry of a Final Decree, the Court shall retain jurisdiction to ensure that the purpose and intent of the Amended Plan is carried out; to hear and determine all claims against the Debtor; to hear, determine, and enforce all causes of action (including all Bankruptcy Causes of Action and the Construction Litigation) arising in, arising under, or related to this case and which may exist on behalf of the Debtor; and, to confirm after notice and hearing (except as otherwise provided herein) any proposed compromise of any cause of action (including all Bankruptcy Causes of Action and the Construction Litigation). Nothing contained herein shall prevent the Debtor from taking such action as may be necessary in the enforcement of

any cause of action which may exist on its behalf, and nothing contained herein shall prevent any creditor from enforcing any claim it may have against third parties who may be liable as a result of the Debtor's obligations to such creditor. To the extent the Debtor elects to pursue a claim, the proceeds of which do not secure Wells Fargo's claim, the Debtor shall be solely responsible for the costs associated with pursuing such claim.

9.2. Causes of Action: Notwithstanding the vesting of assets in the Reorganized Debtor upon confirmation and consummation of the Amended Plan, the Debtor shall retain the right and standing to assert and shall have the right, along with Wells Fargo, to commence, pursue, settle, compromise, abandon, waive, or release any claim or cause of action which may exist on behalf of the Debtor (including Bankruptcy Causes of Action but excluding the Construction Litigation) which accrued and were asserted or capable of assertion by the Debtor as a debtor-in-possession as of the Petition Date.

9.3. Specific Retention of Powers: In addition to the general provisions set forth above, the Court shall retain sole jurisdiction of this case pursuant to the provisions of Chapter 11 of the Bankruptcy Code for the following purposes, *inter alia*:

9.3.1. To classify, allow or disallow Claims and Interests, to direct distributions of funds under the Amended Plan, and to hear and determine any controversies pertaining thereto.

9.3.2. To hear and determine any and all applications, adversary proceedings or other matters arising out of or related to the Amended Plan.

9.3.3. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated.

9.3.4. To liquidate or estimate the amount of any claim, or to determine the manner and time for such liquidation or estimation in connection with any contingent or unliquidated claim.

9.3.5. To adjudicate all disputes with respect to claims or any lien on any property of the Debtor or proceeds thereof.

9.3.6. To adjudicate all claims or controversies arising during the pendency of this case.

9.3.7. To recover all assets and properties of the Debtor, wherever located, including recoveries on all claims and causes of action brought by the Debtor prior or subsequent to the Effective Date or capable of being brought by the Debtor prior or

subsequent to the Effective Date which are not released, settled or otherwise compromised by the terms of this Amended Plan.

- 9.3.8. To hear and determine matters covering federal, state, and local taxes pursuant to Sections 346, 1146, 505 and 525 of the Bankruptcy Code.
- 9.3.9. To allow fees and reimbursement of the expenses of professional persons employed during this case or any other person or entity applying for compensation.
- 9.3.10. To construe or enforce the Amended Plan so as to effectuate payments or to compel performance by any person reasonably necessary to achieve Final Consummation in accordance with the provisions hereof.
- 9.3.11. To make and enforce such orders as are necessary or appropriate to carry out the provisions of the Amended Plan.
- 9.3.12. To enter such orders as may be necessary and proper for the orderly administration of the Debtor's affairs.
- 9.3.13. To protect and preserve the leases and other executory agreements between various third parties and the Debtor or its affiliates or subsidiaries, and to assure that all terms of those agreements are honored to the extent and in the event that such agreements are assumed under this Amended Plan.
- 9.3.14. To decide such other matters and for such other purposes as may be provided for in the Confirmation Order.

10. **PROVISIONS FOR AMENDMENT OF THE PLAN** The Amended Plan may be modified as follows:

- 10.1. **Non-material Amendment:** This Amended Plan may be altered or modified by the Debtor after its submission for acceptance and before or after its confirmation, without notice and hearing, if the alteration or modification does not adversely change the treatment of the claim of any creditor as provided in Section 1127 of the Bankruptcy Code and in Bankruptcy Rule 3019.
- 10.2. **Material Amendment:** This Amended Plan may be altered or modified by the Debtor after submission for acceptance and before or after confirmation in a manner which adversely affects the interests of creditors, only (i) after notice and hearing before the Court for the confirmation of such alteration or modification, as provided in Section

1127 of the Bankruptcy Code, or (ii) with the written consent of the creditors who are adversely affected.

11. OBJECTIONS TO CLAIMS, RESERVES AND DISTRIBUTIONS

11.1. Claims: The Debtor or any party in interest may file an objection to any claim other than the claim of Wells Fargo within ninety (90) days after entry of the Order confirming the Amended Plan. Objections not filed within such time shall be deemed waived unless the period within which to file objections to claims is extended by Order of this Court in response to one or more motions for such extension filed prior to the expiration of the then existing period for such objections to be filed. The absence of an objection prior to the Confirmation Date, whether as to a scheduled or filed claim, shall not be deemed an acceptance of any Claim nor a waiver of the right to object to any Claim, and the holder of any such Claim shall not be entitled to assert reliance upon any implied acceptance of such Claim when voting to accept or reject the Amended Plan. To the extent the Debtor elects to pursue a claim, the proceeds of which do not secure Wells Fargo's claim, the Debtor shall be solely responsible for the costs associated with pursuing such claim.

11.2. Reserves: Any claim, or portion thereof, which is to be paid in cash under the Amended Plan and which is challenged, shall be protected by requiring the Reorganized Debtor to segregate and set aside in an escrow account a reserve based on the Court's estimate of such claim and sufficient to treat said claim in the same fashion as though the objection were denied. The reserve so segregated shall be distributed in accordance with the Amended Plan in the event the objection is overruled or a dispute is resolved in favor of the party asserting the claim. In the event the disputed claim is disallowed, the retained cash so segregated shall be retained by the Reorganized Debtor and available for distribution in accordance with the provisions of this Amended Plan, with the disallowed claimant being excluded from the appropriate Class.

11.3. Distributions: Distributions to holders of Allowed Claims shall be made at the address of each such holder as set forth on the Schedules filed with the Bankruptcy Court unless superseded by the address as set forth on the proof of claim filed by such holders or other subsequent writing notifying the Debtor of a change of address.

11.3.1. No interim or final distribution shall be made in an amount less than \$5.00, and any such distributions shall instead be paid over to the U.S. Treasury as provided in

Section 347 and Bankruptcy Rule 3010 for small dividends as in a Chapter 7 proceeding.

- 11.3.2. If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Debtor has been notified of such holder's then current address, at which time all missed distributions shall be made to such holder, without interest from the date of the first attempted distribution.
- 11.3.3. All unclaimed distributions which exist as of the date of the final distribution to holders of Allowed Claims may be retained by the Debtor or paid over to the U.S. Treasury as provided in Section 347 and Bankruptcy Rule 3011 for unclaimed distributions as in a Chapter 7 proceeding.
- 11.3.4. Checks issued by the Debtors in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for re-issuance of any check shall be made to the Debtor by the holder of the Allowed Claim with respect to which such check originally was issued.
- 11.3.5. The Debtor may, in accordance with Section 553 of the Bankruptcy Code and applicable non-bankruptcy law, set off against any Allowed Claim the distributions to be made pursuant to this Amended Plan on account of such Claim (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtor may possess against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Estate of any such claims, rights and causes of action that they may possess against such holder; and provided further, that any claims of the Debtor arising before the Petition Date shall first be set off against Claims against the Debtor arising before the Petition Date.

12. **GENERAL PROVISIONS**

- 12.1. **Exculpation**. Neither the Debtor, the Reorganized Debtor, Wells Fargo, nor any of their respective members, managers, officers, directors, employees, advisors, attorneys, accountants, consultants or agents shall have or incur any liability for or to any holder of a Claim or Interest for any act or omission in connection with, or arising out of, the pursuit of confirmation of the Amended Plan, the consummation of the

Amended Plan, or the administration of the Amended Plan or the property to be distributed under the Amended Plan except for willful misconduct or gross negligence and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Amended Plan.

12.2. Binding Effect. The Amended Plan shall be binding upon and inure to the benefit of the Debtor, the Reorganized Debtor, holders of Claims, holders of Equity Interests, and their respective successors and assigns.

12.3. Injunctions or Stays. Unless otherwise provided in the Amended Plan or in the Order confirming the Amended Plan, all injunctions or stays provided for Chapter 11 cases under Section 105 or 362 of the Bankruptcy Code or otherwise in existence on the date this case is confirmed shall remain in full force and effect until the entry of a Final Decree dismissing the case.

12.4. Notices. Any notice required to be provided to parties in interest under the Bankruptcy Code or Rules or under the Amended Plan shall be in writing and served by (a) regular mail, postage prepaid, (b) hand delivery, or (c) overnight delivery service, addressed to the appropriate parties and with copies of any such notice to be sent to the Bankruptcy Administrator and to counsel for the Debtor.

12.5. Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules), or, as to corporate matters, the laws of the jurisdiction in which the Debtor is incorporated, the laws of the State of North Carolina shall govern the construction and implementation of the Amended Plan and any agreements, documents, and instruments executed in connection with the Amended Plan.

Respectfully submitted on behalf of the Debtor, this the 30th day of June, 2011.

/s/ John A. Northen

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EXHIBIT A
Rights and Duties of Consultant

Consultant is empowered and authorized to do any and all things necessary for the proper management, operation, preservation, maintenance, protection and administration of the Collateral and Sale Properties. The Consultant may, but is not required to, take action in the name of the Debtor or, to the extent the Debtor may do so, the Sky Sail Homeowners Association (the "Association"), as the case may be, where necessary to fulfill his duties pursuant to this Amended Plan. The Consultant shall have and possess all powers and rights to the extent necessary in the discretion of the Consultant to facilitate its management and preservation including, but not limited to, the following:

- (a) taking immediate possession of the Collateral and Sale Properties to the extent necessary to manage, preserve and protect the same, including taking possession and control to the exclusion of Debtor and all others of all accounts relating to the Collateral and Sale Properties and holding, retaining, preserving, protecting, operating and managing the Collateral and Sale Properties and performing all tasks necessary therefore;
- (b) paying all costs reasonably necessary to conserve, maintain, repair, secure, operate, preserve and protect the Collateral and Sale Properties;
- (c) paying any and all necessary costs, executing any and all necessary documents, obtaining releases of liens;
- (d) paying any taxes, assessments and charges in the nature thereof, due in connection with the Collateral and Sale Properties;
- (e) applying for or obtaining from Debtor an assignment of all licenses, approvals, and permits issued for the operation of the Collateral and Sale Properties, including but not limited to the Certificate of Occupancy for the Collateral and Sale Properties;
- (f) taking any action which could lawfully be taken by the managers or offices of Debtor;
- (g) enforcing rights under agreements, contracts, leases, warranties, easements, covenants, and restrictions benefitting the Collateral and Sale Properties;
- (h) performing under any declarations of covenants, restrictions and easements or other similar agreements appurtenant to the Collateral and Sale Properties;
- (i) hiring legal counsel to assist the Consultant in performing these responsibilities with respect to the Collateral and Sale Properties;
- (j) maintaining the buildings, appurtenances and grounds of the Collateral and Sale Properties;
- (k) taking such actions as may be necessary or appropriate to ensure that any and all existing or future licenses, permits, applications and other governmental approvals and entitlements

pertaining to the ownership, operation, management, use or development of the Collateral and Sale Properties are obtained and maintained in full force and effect and enter into contracts with third parties to obtain and maintain such permits;

(l) maintaining casualty insurance, and any other necessary insurance, with respect to the Collateral and Sale Properties, all of which shall name the Consultant and Wells Fargo as additional insureds and Wells Fargo as loss payee;

(m) to the extent the Debtor may do so, operating the Association in accordance with the applicable operating documents and in accordance with North Carolina law and carry out its duties and obligations as necessary, including without limitation, the following: (i) collection of assessments and payment of obligations of the Association including, inter alia, the right to collect rents from any unit which is not current in paying its Association assessments and/or fees or dues; (ii) appoint, pursuant to the declarant rights provided herein, directors to the Association's board of directors and to exercise such other declarant rights as the Consultant deems advisable; (iii) exercise the voting rights of Debtor; (iv) hold an election for the Association board of directors at a time as determined by Consultant; (v) receive and respond to the Association's communications; (vi) retain a licensed community association manager to manage the Association; and (vii) when appropriate, coordinate with the community association manager to effectuate the Association turnover; and

(n) entering into agreements in connection with the build-out, listing and leasing of the Sale Properties.