

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
OPUS SOUTH CORPORATION, et al.,)	Case No. 09-11390 (MFW)
)	
Debtors.)	Jointly Administered
)	
)	

**LENDERS' PLAN OF LIQUIDATION
FOR WATERS EDGE ONE, L.L.C. PURSUANT
TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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INTRODUCTION

The Lenders (as defined herein) hereby propose the following plan of reorganization (as amended, modified or supplemented, the “Plan”) for Waters Edge One, L.L.C. (the “Debtor”) in its reorganization case (the “Chapter 11 Case”) pursuant to chapter 11, title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”) for the resolution of the outstanding claims against and interests in the Debtor. Reference is made to the Disclosure Statement (as defined herein), distributed contemporaneously herewith, for a discussion of the Debtor’s history, business, properties and operations, projections for those operations, risk factors, a summary and analysis of the Plan, and certain related matters including, among other things, the proceeds from recovery from the RMSSR Claims (as defined herein), if any, to be issued and distributed under the Plan. Under the Terms of the Global Settlement (as defined herein), the Debtor agreed that their exclusive period to file a plan would expire on October 31, 2009. The Debtor did not file a plan by such date. The Global Settlement provides that the Lenders may file a plan after such date. The Plan and Disclosure Statement are thus filed pursuant to the Court’s approval of the Global Settlement. The Global Settlement is thus incorporated into this Plan and all of its terms and conditions shall continue to survive the confirmation of the Plan. Subject to certain restrictions and requirements set forth herein and in section 1127 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3019, the Lenders reserve the right to alter, amend, modify, revoke or withdraw the Plan prior to its substantial consummation.

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ARTICLE I

GENERAL PROVISIONS

1.1 Rules of Interpretation and Construction.

The rules of construction applicable to the Bankruptcy Code and the Bankruptcy Rules are applicable to the Plan. The words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than a particular portion of the Plan.

1.2 Entire Agreement.

This Plan supersedes all prior plans, discussions, understandings, agreements and documents pertaining or relating to any subject matter of the Plan other than prior orders of the Bankruptcy Court.

1.3 Governing Law.

Except to the extent the Bankruptcy Code or the Bankruptcy Rules are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of the State of Delaware.

1.4 Binding Effect.

The rights and obligations of any entity named or referred to in the Plan shall be binding upon and shall inure to the benefit of the successors, heirs and assigns of such entity.

1.5 Severability.

Should any provision or section of the Plan be determined to be unenforceable, such determination shall not impair, limit or otherwise effect the enforceability of any other provision or section of the Plan.

1.6 Headings.

Headings of the articles, paragraphs and sections of the Plan are inserted for convenience only and shall not affect the meaning of any Plan provision.

1.7 Notices.

All notices given in connection with the Plan shall be made in writing and shall be deemed to have been given when received by (or if mailed, five business days from the date of mailing, first class postage prepaid) counsel for the Lenders (David R. Kuney, Sidley Austin LLP, 1501 K St., N.W. Washington, D.C. 20005). All payments, distributions, notices and requests to holders of Claims shall be sent to (a) the address of each such holder as set forth on the Debtor's schedules of liabilities filed with the Bankruptcy Court unless superseded by the address set forth on any proof[s] of claim filed by such holders, or (b) the last known address of such holder if no proof of claim is filed, such claimant is not listed on the Debtor's schedules or if the Debtor has been notified in writing of a change of address. Any holder of a Claim may designate in writing any other address which designation shall be effective upon receipt. Each holder of a Claim bears exclusive responsibility to notify the Lenders in writing of any change of address. Neither the Lenders nor any successor shall have any duty or obligation to research or otherwise investigate the correct address of any holder of a Claim when any item addressed to the last-known address of record and deposited in the U.S. Mail with sufficient postage is returned as undeliverable.

1.8 Modification of the Plan.

The Lenders reserve the right to amend or modify the Plan at any time prior to the entry of the Confirmation Order so long as the amendments or modifications comply with the Bankruptcy Code and Bankruptcy Rules. Upon Confirmation, the Lenders may, upon order of

the Bankruptcy Court, amend or modify the Plan to remedy any defect or omission or reconcile any inconsistency in the Plan as necessary to carry out the purpose and intent of the Plan. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such holder or otherwise materially affect the rights of any Claim holder.

1.9 Revocation or Withdrawal.

The Plan may be revoked or withdrawn by the Lenders prior to the Confirmation Date. If the Plan is revoked or withdrawn, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtor, the Lenders, or any other entity.

1.10 Time Periods.

In computing any period of time prescribed or allowed hereby, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II

DEFINITIONS

A term used but not defined in the Plan shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

The following definitions shall apply for purposes of the Plan:

1. “Administrative Claim” shall mean a Claim that has been timely filed, pursuant to the deadline and procedure set forth in the Confirmation Order (except as otherwise provided by a separate order of the Bankruptcy Court), for any cost or expense of the administration of this Chapter 11 Case entitled to priority in accordance with Sections 503(b), 507(a)(1), 507(b) or 1114(e)(2) of the Bankruptcy Code, including without limitation:
 - (a) actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate;

- (b) all compensation for legal and other services and reimbursement of expenses awarded or allowed under Sections 328, 330(a) or 331 of the Bankruptcy Code or otherwise;
 - (c) any fees or charges, including fees due the United States Trustee and assessed against the Debtor pursuant to 28 U.S.C. §§ 1911-1930; and
 - (d) any Claim afforded priority status under Sections 503(b), 507(a)(1), 507(b) or 1114(e)(2) of the Bankruptcy Code pursuant to Final Order of the Bankruptcy Court.
2. “Allowed” shall mean, with respect to any Claim, except as otherwise provided herein:
- (a) any Claim for which a proof of claim has been filed with the Bankruptcy Court on or before the Bar Date:
 - (i) as to which no objection has been made to its allowance by the Claims Objection Bar Date, or
 - (ii) as to which an objection was filed and the Claim has been allowed by a Final Order;
 - (b) any Claim that is deemed to be Allowed pursuant to:
 - (i) any provision of the Plan,
 - (ii) in any stipulation of amount and nature of Claim executed prior to the Confirmation Date and approved by the Bankruptcy Court, or
 - (iii) in any stipulation with the Debtor of amount and nature of Claim executed on or after the Confirmation Date; and
 - (c) any Claim that has been scheduled by the Debtor in its schedules of liabilities as other than disputed, contingent and unliquidated and as to which the Debtor or other party in interest has not filed an objection by the Claims Objection Bar Date.

Unless otherwise specified by the Plan or by order of the Bankruptcy Court, Allowed Claims shall not include interest for the period from and after the Petition Date, nor shall they include any Claim which may be disallowed under Section 502(d) of the Bankruptcy Code.

- 3. “Agent” shall mean Wachovia Bank, National Association, in its capacity as administrative Agent for the Lenders.
- 4. “Avoidance Action” shall mean any and all avoidance, recovery, subordination or other actions or remedies against persons that may be brought by or on behalf of

the Debtor or its Estate under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions, settlements or remedies under sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code.

5. “Bankruptcy Code” shall mean title I of the Bankruptcy Reform Act of 1978, as amended from time to time, as set forth in Sections 101 *et seq.* of title 11 of the United States Code, and applicable portions of titles 18 and 28 of the United States Code.
6. “Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Delaware.
7. “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure promulgated under Section 2075 of title 28 of the United States Code, as amended from time to time, and any and all applicable local rules of the Bankruptcy Court, as the same may from time to time be in effect and applicable to this bankruptcy case and other related proceedings.
8. “Bar Date” shall mean the applicable date set by the Bankruptcy Court, if any, as the last date for timely submission of a proof of claim on account (i) of all Claims against the Debtor other than Administrative Claims and (ii) Claims by governmental units (as defined in Section 101(27) of the Bankruptcy Code), as applicable.
9. “Beneficiaries” shall mean holders of Allowed Claims in Classes 1, 2, 3 and 4.
10. “Chapter 11 Case” means the case commenced when the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on the Petition Date in the United States Bankruptcy Court for the District of Delaware, with a case number of 09-11394.
11. “Claim” shall mean (a) a right to payment whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.
12. “Claims Objection Bar Date” shall mean the deadline fixed by the Bankruptcy Court, if any, for the Debtor, the Trustee, or any other entity to file an objection to the allowance of any Claim.
13. “Class” shall mean a Class of Claims, as described in Article III of the Plan in accordance with Section 1123(a)(1) of the Bankruptcy Code.

14. “Confirmation” shall mean the entry of the Confirmation Order in form and substance satisfactory to the Debtor and the Lenders.
15. “Confirmation Date” shall mean the date upon which the Confirmation Order is entered by the Bankruptcy Court on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.
16. “Confirmation Order” shall mean the order of the Bankruptcy Court confirming the Plan.
17. “Consummation” shall mean the entry of an Order confirming the Plan, and the implementation and effectuation of its terms, pursuant to Section 1142 of the Bankruptcy Code.
18. “Contested Claim” shall mean any Claim against the Debtor (a) subject to a timely objection or request for estimation, or (b) that is otherwise disputed by the Debtor in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order, or (c) that is not an Allowed Claim.
19. “Debtor or Debtor In Possession” shall mean Waters Edge One, L.L.C., a Delaware limited liability company.
20. “Debtor Assets” shall mean all assets of the Debtor and the Debtor’s Estate prior to the Effective Date.
21. “DIP Facility” shall mean the financing facility, including the DIP Loan Agreement, approved by the Final Order (I) Authorizing Waters Edge One, L.L.C. to Obtain Postpetition Financing and (II) Granting Related Relief entered by the Court on September 9, 2009. (Dkt. No. 609).
22. “DIP Lenders” shall mean the Lenders when acting in their capacity as the lenders under the DIP Loan Agreement.
23. “DIP Loan Agreement” shall mean that certain Debtor-in-Possession Loan Agreement dated as of August 21, 2009, by and among the Debtor, the Agent and the Lenders (as amended, restated, supplemented or otherwise modified from time to time).
24. “Disclosure Statement” shall mean the Disclosure Statement for the Lenders’ Liquidation Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code, together with all exhibits and supplements thereto, as amended, supplemented or modified, that is prepared and distributed in accordance with Sections 1125, 1126(b) and/or 1145 of the Bankruptcy Code and/or other applicable law.
25. “Disputed” shall mean, with respect to any Claim or Equity Interest: (a) listed on the Debtor’s Schedules as unliquidated, disputed or contingent, unless a proof of

Claim has been timely filed; (b) as to which the Trustee has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules; or (c) as otherwise disputed by the Debtor or the Trustee in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order.

26. “Effective Date” shall mean the date selected by the Lenders which is a business day after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect, and (b) all conditions specified in Section 11.1 hereof have been (i) satisfied, or (ii) waived pursuant to Section 11.2 hereof.
27. “Equity Interest” shall mean any equity ownership interest in the Debtor.
28. “Estate” shall mean the estate of the Debtor created on the Petition Date by section 541 of the Bankruptcy Code.
29. “Exit Financing” the loan or loans contemplated to be made hereunder by the Lenders in order to fund the necessary costs of the Liquidation Trust including any funds which may be needed to pursue the RMSSR Claims. The terms and conditions of the Exit Financing are to be agreed upon hereafter, but shall incorporate the Pledge Agreement, and shall continue to be secured by a pledge on the RMSSR Claims, junior only to the lien of the DIP Lenders.
30. “Final Order” shall mean an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, that has become final for purposes of 28 U.S.C. §§ 158 and 1291 and:
 - (a) that is no longer subject to appeal;
 - (b) as to which an appeal or certiorari proceeding is pending but an order granting a stay has not been entered; or
 - (c) as to which any appeal has been rendered moot pursuant to applicable provisions of federal law.
31. “Global Settlement Agreement” means that certain agreement by and among the Debtor, the Lenders, the Agent and other parties, dated August 21, 2009 and approved by the Court on September 9, 2009 (Dkt. No. 611).
32. “Lenders” shall mean Wachovia Bank, National Association, Regions Bank, PNC Bank, National Association,¹ and Bank of America,² or their successor assigns, and shall include such Lenders in their capacity either as pre-petition lenders to the Debtor, and in their respective capacities as the DIP Lenders.

¹ PNC Bank, National Association is the successor in interest of National City Bank.

² Bank of America is the successor in interest of LaSalle Bank, National Association.

33. “Lenders’ Allowed Secured Claim” shall mean the allowed secured claim of the Agent on behalf of the Lenders in an amount not less than \$70,796,928.98, plus other amounts permitted by the Bankruptcy Code and other applicable law, costs and attorneys fees allowable under the Bankruptcy Code as provided in the Global Settlement.
34. “Lenders’ Allowed Unsecured Claim” shall mean the allowed unsecured claim of the Agent on behalf of the Lenders against the Debtor without the need to file any proof of claim, in the approximate amount of \$39,089,852.72, calculated as set forth in the Court’s Sale Order dated October 7, 2009, entitled Order (1) Approving Sale of Certain Assets of the Debtor Waters Edge One, L.L.C. Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Pursuant to Bankruptcy Code Sections 105, 363(b), (f), and (m) and (2) Granting Related Relief (the “Sale Order”) (Dkt. No. 703).
35. “Liquidation Trust” or “Liquidation Trust Agreement” shall have the meaning ascribed to it in Article 7.1 of the Plan.
36. “Liquidation Trust Assets” shall mean all Trust Claims and all assets to be transferred to and owned by the Liquidation Trust pursuant to Article 7.2 of the Plan, including Avoidance Actions, the RMSSR Claims, and the proceeds of any the foregoing. Notwithstanding anything to the contrary herein, the Liquidation Trustee may abandon, waive, settle, or prosecute the Avoidance Actions.
37. “Litigation Trust” shall mean the litigation trust established pursuant to the terms of the Litigation Trust Agreement.
38. “Litigation Trust Agreement” shall mean that certain Litigation Trust Agreement between the Debtor and the Trustee dated as of [December __, 2009].
39. “Litigation Trust Budget” shall mean the budget attached as Exhibit B to The Motion of Waters Edge One, L.L.C. Requesting Entry of Interim and Final Orders Authorizing Borrowing with Priority Over Administrative Expenses and Secured by Liens on Property of the Estates Pursuant to Section 364(c) and (d) of the Bankruptcy Code and Scheduling of a Final Hearing on Requested Final Relief, and all amendments and supplements thereto. (Dkt. No. 557).
40. “Loan Agreements” shall mean that certain Construction Loan Agreement, dated as of October 26, 2005 (as amended and supplemented from time to time), those certain Promissory Notes dated as of May 30, 2008, that certain Mortgage, Assignment of Rents and Security Agreement dated as of October 26, 2005 as amended by a Modification of Mortgage dated as of October 2, 2007 and May 30, 2008 and all other related Loan Documents, between the Lenders and the Debtor or the Debtor’s affiliates.
41. “Petition Date” shall mean April 22, 2009.

42. "Plan" shall mean this Liquidation Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code.
43. "Pledge Agreement" shall mean that certain Pledge and Security Agreement dated on or about August 21, 2009 by and between the Debtor and Agent which Pledge Agreement is attached to the DIP Credit Agreement, to secure any and all obligations of Waters Edge arising under the DIP Loan Agreement. The Pledge Agreement shall survive confirmation of this Plan, notwithstanding any other provision to the contrary.
44. "Priority Claim" shall mean any Claim, other than a Tax Claim or an Administrative Claim, which is entitled to priority in payment under Section 507(a) of the Bankruptcy Code.
45. "Waters Edge Property" shall mean the real property commonly known as Waters Edge located in Clearwater, Florida and that contains a condominium building with approximately 153 residential units and 10,000 square feet of retail space.
46. "Property Tax Claims" shall mean all amounts owed to the State of Florida, or any of its political subdivisions, on account of real property taxes assessed against the Waters Edge Property.
47. "Releasees" shall mean the Debtor, its attorneys, officers, directors, employees, representatives, agents, current owner and any officers, directors, members and managers of its current owner, any professional retained by the current owner, the Trustee, and any professionals retained by the Trustee.
48. "Retained Actions" shall mean any actions arising under Chapter 5 of the Bankruptcy Code, or any other Claim, demand, or causes of action of the Debtor against any third party, including, without limitation, those described in Section 12.1 of the Plan.
49. "RMSSR Claims" shall mean those claims currently being pursued by the Debtor against Ruden, McCloskey, Smith, Schuster & Russell, P.A. and Mark Grant, in the Circuit Court of the Six Judicial Circuit in and for Pinellas County, Florida, (together with any and all related cases, and appeals) as set forth in the Pledge Agreement.
50. "Tax Claim" shall mean a Claim of a kind specified in Section 507(a)(8) of the Bankruptcy Code other than Property Tax Claims.
51. "Trust Expenses" shall mean all expenses incurred by the Liquidation Trust.
52. "Trustee" shall mean either Executive Sounding Board Associates, or that entity or person hereafter designated by the Lenders to serve as Trustee for the Liquidation Trust or any successor as determined in the sole discretion of the Lenders.

53. “Unsecured Claims” shall mean any Claims against the Debtor that are neither Administrative Claims, Priority Claims, Tax Claims, Property Tax claims, nor Equity Interests.
54. “Wachovia” shall mean Wachovia Bank, National Association.

ARTICLE III

DESIGNATION OF CLAIMS AND INTERESTS

3.1 Classification in General.

A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. The Bankruptcy Court shall have exclusive jurisdiction over disputes concerning the classification of Claims or Interests. Resolution of any such disputes shall not be a condition precedent to Confirmation or Consummation of the Plan. A Claim or Interest is in a particular Class only to the extent that any such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

3.2 Unclassified Claims.

Unclassified Claims shall consist of all Administrative Claims, Tax Claims and the DIP Facility.

3.3 Designation of Classes.

The Classes of Claims and Interests are designated as follows:

- Class 1.** Priority Claims.
- Class 2.** Lenders’ Allowed Unsecured Claim.

3. **Class 3.** All other allowed unsecured Claims, other than the Class 2 claims, against the Debtor of whatever nature or description.

4. **Class 4.** Equity Interests in the Debtor held by Opus South Development, L.L.C.

ARTICLE IV

TREATMENT OF UNCLASSIFIED AND UNIMPAIRED CLAIMS

4.1 Unclassified Claims.

(a) **Administrative claims.** Ordinary course administrative claims have, in most cases, been paid, or will be paid, from the DIP Facility. To the extent that such claims have not been paid from the DIP Facility or from any Exit Facility, and subject to the provisions of Sections 330(a) and 331 of the Bankruptcy Code or as otherwise provided by the Plan, each holder of an Allowed Administrative Claim shall be paid in cash (a) within thirty (30) days after the date the RMSSR Claims are finally resolved, including pursuant to a final and nonappealable order, if applicable (the "RMSSR Resolution Date") or (b) upon such terms as may be agreed upon by the claimant and the Trustee. Professional fees and reimbursable expenses shall be paid when Allowed, after notice and hearing on such professional's application. United States Trustee and other bankruptcy fees shall be paid in full on or before the Effective Date or as they come due thereafter, in accordance with the Budget in the DIP Facility.

(b) **Allowed Tax Claims.** Allowed Tax Claims will be paid in cash (a) on the RMSSR Resolution Date, or (b) if such Claims are Allowed after the RMSSR Resolution Date, when such Claims are Allowed.

(c) **The DIP Loan Agreement and DIP Lenders.** The DIP Loan Agreement is incorporated herein and expressly made a part of this Plan. The DIP Lenders shall receive, in satisfaction of all obligations due and owing to the Lenders under the DIP Loan Agreement,

payment under the terms of its first lien on the proceeds of the RMSSR Claims, as more fully described in the Pledge Agreement, and shall be entitled to be paid in full before any other distributions are made from or in connection with the RMSSR Claims, subject only to the payment of the costs and expenses of the Litigation Trust or any Liquidation Trust. No provision of this Plan shall impair, alter or diminish the rights of the DIP Lenders under the DIP Loan Agreement. In the event that the Liquidation Trustee obtains an Exit Facility to fund the costs of the Liquidation Trust, then at the option of the Lenders, such Exit Facility may be used to repay in full all sums due and owing under the DIP Facility. In any event, any undisbursed funds from the DIP Loan, which are still held by the Debtor on the Effective Date, shall be returned to the DIP Lenders, other than amounts which are for costs and expenses invoiced or due prior to the Effective Date.

4.2 Classes of Claims Not Impaired by the Plan.

Priority Claims (Class 1) are not impaired by the Plan. Under Section 1126(f) of the Bankruptcy Code, holders of such Claims are conclusively presumed to accept the Plan, and the votes of such holders will not be solicited.

4.3 Special Provision Governing Unimpaired Claims.

Nothing in the Plan shall affect the Debtor's or the Trustee's rights, as the case may be, in respect of any unimpaired Claim, including, but not limited to, the right to assert legal and equitable defenses to or setoff or recoupment against such unimpaired Claims.

ARTICLE V

TREATMENT OF IMPAIRED CLASSES

5.1 Class 2.

The Lenders' Allowed Unsecured Claim shall receive its pro rata distribution from the proceeds of the RMSSR Claim, after payment of expenses, and the DIP Lenders' first lien on the proceeds of the RMSSR Claim and any Exit Financing. The Class 2 Claimants shall not share pro rata in the distribution of any proceeds from any avoidance actions under Chapter 5 of the Code. No holder of a Class 2 Claim shall be entitled to any prepetition or postpetition interest on account of their Claim.

5.2 Class 3.

Each holder of an Allowed Class 3 Claim shall receive its pro rata share of the Estate assets, and any proceeds of the RMSSR Claim, after payment in full of all Allowed Administrative Claims, the sums due to the DIP Lenders under the DIP Facility and the Pledge Agreement, all amounts advanced by the Lenders under the terms of any Exit Financing, Allowed Tax Claims and the Allowed Claims in Classes 1, until paid in full in cash upon the later of (a) the Effective Date, (b) when such Claim becomes an Allowed Claim, or (c) thirty (30) days after the date the RMSSR Resolution Date. No holder of a Class 3 Claim shall be entitled to any prepetition or post-petition interest on account of their Claim.

5.3 Class 4.

Holders of the Class 4 Interests shall not receive or retain any property under the Plan on account of such Interests. The Equity Interests will be cancelled and the Debtor may be dissolved pursuant to 11 Del. Code § 303, provided however, that such dissolution is to be delayed until after the judgment or settlement of the RMSSR Claims, unless the Lenders consent

to an earlier dissolution. The Equity Interests shall be assigned to the Lenders at any time, pursuant to the Global Settlement Agreement, if they so elect.

ARTICLE VI

ACCEPTANCE OR REJECTION OF THE PLAN

6.1 Voting Classes.

Each holder of an Allowed Claim in Classes 2 and 3 and the Interest holder in Class 4 shall be entitled to vote to accept or reject the Plan.

6.2 Acceptance by Impaired Classes of Claims.

An impaired Class of holders of Claims shall have accepted the Plan if the Plan is accepted by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have voted to accept or reject the Plan. A Class of holders of Claims shall be deemed to accept the Plan in the event that no holder of a Claim within that Class submits a ballot by the deadline for doing so. All Claims shall be allowed for voting purposes only unless objected to prior to the hearing on Confirmation of the Plan.

6.3 Acceptance by Class of Equity Interest.

An impaired Class of holders of Equity Interests shall have accepted the Plan if the Plan is accepted by at least two-thirds (2/3) in amount of the Allowed Interests of such Class that have voted to accept or reject the Plan.

6.4 Presumed Acceptance of the Plan.

Class 1 is unimpaired under the Plan and, therefore, is presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code.

6.5 Non-Consensual Confirmation.

In the event that any impaired Class of Claims or Equity Interests shall fail to accept the Plan in accordance with Section 1129(a) of the Bankruptcy Code, the Debtor reserves the right to request that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code or amend the Plan.

ARTICLE VII

IMPLEMENTATION OF THE PLAN

7.1 Formation of the Liquidation Trust and Appointment of the Trustee.

Pursuant to the Global Settlement Agreement the Litigation Trust was established to pursue the Estate's claims against Ruden, McCloskey, Smith, Schuster & Russell, P.A. and Mark Grant, which are currently pending in the Circuit Court of the Six Judicial Circuit in and for Pinellas County, Florida (the "RMSSR Claims"), with the appointment of Executive Sounding Board Associates as Trustee.

On the Effective Date, a Liquidation Trust shall become effective (the "Liquidation Trust"). It is anticipated that the Litigation Trust shall be converted into the Liquidation Trust_ which will operate under the Plan, continue to pursue the RMSSR Claims, and liquidate and distribute all of the Debtor's Assets pursuant to the terms of the Plan. Alternatively, the Lenders may elect to have the Liquidation Trust serve as a "sub-trust" of the Litigation Trust. The Trustee of the Litigation Trust, will, if requested by the Lenders, serve as the Trustee for the Liquidation Trust. Following the transfer of the Assets to the Liquidation Trust pursuant to section 7.2 of the Plan, the Trustee shall succeed to all of the Debtor's right, title and interest in and to the Assets, and the Debtor, as grantor, shall have no interest in, or with respect to, the Assets.

The Trustee shall serve at the direction of the Lenders to the extent set forth in the Liquidation Trust Agreement and the Plan, provided, however, the Lenders may not direct the Trustee to act inconsistently with its duties under the Liquidation Trust Agreement and the Plan. The Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Liquidation Trust Agreement and the Plan. The Lenders may remove the Trustee at any time in accordance with the provisions of the Liquidation Trust Agreement. The Lenders shall be entitled to select the Trustee's counsel for all Avoidance Actions and Claims, including but not limited to, the RMSSR Claims.

7.2 Transfer of the Debtor's Assets to the Liquidation Trust.

On the Effective Date, the Debtor's Estate shall transfer and shall be deemed to have irrevocably transferred to the Liquidation Trust, for and on behalf of the Beneficiaries, with no reversionary interest in the Debtor, the Debtor's Assets which shall become part of the Liquidation Trust's Assets. In addition, the Debtor shall transfer to the Trustee for the Liquidation Trust, the Debtor's evidentiary privileges, including the attorney/client privilege, solely as they relate to the Claims and other Avoidance Actions, and shall also transfer to the Trustee for the Liquidation Trust all of its books and records relating to the Claims, Avoidance Actions and Disputed Claims. The Plan shall be considered a motion pursuant to sections 105, 363 and 365 of the Bankruptcy Code for such relief. Upon such transfer, the Debtor, and the Debtor's Estate shall have no other further rights or obligations with respect thereto.

7.3 No Transfer Taxes.

Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto, including the transfer of the Debtor's Assets to the Liquidation Trust as contemplated herein, as well as any transfer or sale of the Waters Edge Property by the Lenders

to any third party within twenty-four (24) months of the Effective date, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real Estate transfer tax, mortgage recording tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

7.4 Purpose of the Liquidation Trust.

The Liquidation Trust shall be established the purpose of, among other things, (i) to enforce and prosecute the RMSSR Claims, (ii) to satisfy its obligations under this Liquidation Trust Agreement, (iii) after the liquidation of the RMSSR Claims through settlement or prosecution, make distribution of any net proceeds of the RMSSR Claims and remaining Assets pursuant to the Plan, (iv) file appropriate tax returns in accordance with the Liquidation Trust Agreement, (v) investigate and, if appropriate, pursue the Claims, (vi) administer the Liquidation Trust Assets, (vii) pursue, settle, waive or abandon the Avoidance Actions, (viii) resolve all Disputed Unsecured Claims, including objecting, prosecuting, settling and compromising in any manner approved by the Bankruptcy Court such Disputed Unsecured Claims, except the Trustee may, in its discretion, settle or compromise any Disputed General Unsecured Claim without Bankruptcy Court approval so long as the amount in dispute is the lesser of \$50,000 or 50% of the disputed amount, (ix) upon dissolution of the Debtor, resolve Disputed Secured, Disputed Other Secured, Disputed Administrative, Disputed Priority Tax and Disputed Other Priority Claims, including objecting, prosecuting, settling, and compromising in any manner approved by the Bankruptcy Court such Disputed Claims, and (x) make all Distributions to the Beneficiaries

from the Liquidation Trust as provided for in the Plan and the Liquidation Trust Agreement. The Liquidation Trust is intended to qualify as a Liquidation trust pursuant to United States Treasury Regulation Article 301.7701-4(d).

7.5 Interests in the Liquidation Trust and Dissolution of the Liquidation Trust.

Interests in the Liquidation Trust shall be uncertificated and shall be non-transferable except upon death of the interest holder or by operation of law. Holders of interests in the Liquidation Trust shall have no voting rights with respect to such interests. The Trustee shall seek authority from the Bankruptcy Court to dissolve the Liquidation Trust as soon as practicable after the earlier of the final distribution to the Beneficiary is made, or the Lenders fail to fund the Litigation Trust Budget or any supplement to the Litigation Trust Budget pursuant to the Final DIP Order, as the same may from time to time be amended (such date being referred to herein as the "Termination Date"), provided that, the Liquidation Trust shall have a term of not more than four (4) years from the Effective Date, unless such term is extended pursuant to section 8.2 of the Litigation Trust Agreement.

7.6 Funding of the Liquidation Trust.

The Liquidation Trust shall be funded in accordance with the Litigation Trust Agreement, the Final DIP Financing Order and the budgets attached thereto, and or alternatively, through the contemplated Exit Facility to be negotiated hereafter. The Exit Facility shall be on substantially the same terms and conditions as the DIP Facility, and shall include a first lien on the RMSSR Claim, subject to the prior rights of the DIP Lenders.

7.7 Rights and Powers of the Liquidation Trust and the Trustee.

The Trustee shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and shall have all the rights and powers set forth in the

Liquidation Trust Agreement and the Plan, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and the right to seek testimony and the production of documents pursuant to Rule 2004 of the Bankruptcy Rules (including without limitation, the right to (1) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidation Trust Agreement; (2) investigate, and if appropriate, commence, prosecute, appeal, settle, abandon or compromise any Trust Claims, including the RMSSR Claims, provided that, the Trustee will not consent to any settlement of the RMSSR Claims which would produce a net distribution to the Beneficiary of less than \$30 million without first consulting with the Agent and taking the Lenders' interests into account, (3) prosecute, settle, abandon or compromise Avoidance Actions; (4) make Distributions, if any, contemplated by the Plan and the Liquidation Trust Agreement, (5) establish and administer any necessary reserves for Disputed Claims that may be required; (6) object to Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court such objections; (7) assume any remaining responsibilities of the Debtor under the Plan upon the dissolution of the Debtor; (8) employ and compensate professionals and other agents; and (9) file all federal, state and local tax returns if necessary.

7.8 Distribution of Liquidation Trust Assets.

Distributions of the Liquidation Trust Assets to the Classes of Claims and Equity Interests as provided under the Plan shall be made by the Trustee when the aggregate proceeds and income available for distribution are sufficient, in the Trustee's discretion (after consultation with the Lender) to economically distribute monies.

7.9 Semi-Annual Reports to Be Filed by the Liquidation Trust.

The Liquidation Trust shall file semi-annual reports regarding the liquidation or other administration of property comprising the Liquidation Trust Assets, the Distributions made by it and other matters required to be included in such report in accordance with the Liquidation Trust Agreement. In addition, the Liquidation Trust will file tax returns as a grantor trust pursuant to United States Treasury Regulation Article 1.671-4(a).

7.10 Directors/Officers/Equity/Assets of the Debtor on the Effective Date.

On the Effective Date, the authority, power and incumbency of the persons then acting as directors and officers of the Debtor shall be terminated and such directors and officers shall be deemed to have resigned or to have been removed without cause.

7.11 Liquidation of the Debtor.

On the Effective Date and after the Liquidation Trust has been established, the Debtor shall: (a) file its certificate of dissolution, together with all other necessary corporate documents, to effect its dissolution under the applicable laws of its state of incorporation; and (b) complete and file its final federal, state and local tax returns, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of the Debtor or its Estate for any tax incurred during the administration of the Debtor's Chapter 11 Case, as determined under applicable tax laws (the "Dissolution"), provided, however, that such Dissolution may be delayed until after the RMSSR Resolution Date if determined to be appropriate by the Trustee, the Lenders or counsel prosecuting the RMSSR Claims, and provided further, that if the Equity Interests of the Debtor have been assigned to the Lenders, then the Lenders shall determine if and when to take any action to effectuate a dissolution. The filing by the Debtor (or the Lenders, as holders of the Equity Interests) of the certificate of dissolution of

the Debtor shall be authorized and approved in all respects without further action under applicable law, regulation, order or rule, including, without limitation, any action by the board of directors of the Debtor and expressly without the need to pay any franchise or similar taxes in order to effectuate such Dissolution. Upon the Dissolution of the Debtor, the Liquidation Trust shall assume any remaining, outstanding responsibility of the Debtor under the Plan.

7.12 Operations of the Debtor Between the Confirmation Date and the Effective Date.

The Debtor shall continue to operate as Debtor in Possession during the period from the Confirmation Date through and until the Effective Date.

7.13 Term of Injunctions or Stays.

Unless otherwise provided, all injunctions or stays provided for in the Debtor's Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Chapter 11 Cases is closed.

7.14 Transfer or Cancellation of Equity Interests.

On the Effective Date, all the then Equity Interests in the Debtor (including all instruments evidencing such Equity Interests) shall be assigned to the Lenders, in the sole discretion of the Lenders, or alternatively, if the Lenders do not so elect, then, on the Effective Date, (i) all Equity Interests shall be cancelled, shall be of no further force, whether surrendered for cancellation or otherwise, (ii) any indenture relating to any of the foregoing shall be deemed to be cancelled, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code, and (iii) the obligations of the Debtor thereunder or in any way related thereto shall be discharged, provided however, that no such cancellation shall occur unless authorized in writing by the Lenders or as

may be needed in order to permit prosecution of the RMSSR Claims or to otherwise effectuate the terms of this Plan.

ARTICLE VIII

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 All Executory Contracts and Unexpired Leases Are Rejected.

All executory contracts and unexpired leases that (a) the Debtor entered into prior to the commencement of this Chapter 11 Case, (b) are executory as of the Effective Date, and (c) have not been assumed or rejected pursuant to the Sale Order or Section 365 of the Bankruptcy Code prior to the Effective Date, shall be deemed rejected by the Debtor as of the Effective Date.

8.2 Bar Date of Claims Resulting from the Rejection of Contracts Hereunder.

All Claims arising from the rejection of executory contracts or unexpired leases under the Plan must be filed within twenty (20) days of the Effective Date.

ARTICLE IX

PROCEDURE FOR RESOLVING CONTESTED CLAIMS

9.1 Claims Objection Bar Date.

Unless the Bankruptcy Court orders otherwise, all objections to the allowance of any Claim shall be filed on or before the Claims Objection Bar Date. If no such objection is filed on or before the Claims Objection Bar Date with respect to a particular Claim, such Claim shall be deemed an Allowed Claim and any distribution due on account of that Claim shall be paid in accordance with the Plan. The Trustee reserves the right to seek extensions of the Claims Objection Bar Date.

9.2 Objection to Claims; Prosecution of Contested Claims.

The Trustee may, in his discretion, object to the allowance of any Claim filed with the Bankruptcy Court and any claim listed on the Debtor's schedules, regardless of whether such Claim is listed as contingent, unliquidated, or undisputed. All of the Trustee's objections shall be litigated prior to Final Order; provided however, that the Trustee shall have authority to file, settle, compromise or withdraw any objections to Claims without the consent or approval of any third party and without further order of the Bankruptcy Court after the Effective Date.

9.3 Allowance of Claims.

Except as otherwise provided in the Plan or any order entered in this Chapter 11 Case prior to the Effective Date (including the Confirmation Order), the Debtor will assign to the Liquidation Trust, and the Trustee will retain all rights and defenses the Debtor had with respect to the Allowance of any Claim as of the Petition Date.

9.4 Disallowance of Claims of Entities from Whom Property is Recoverable.

Pursuant to Section 502(d) of the Bankruptcy Code, the Bankruptcy Court shall disallow any Claim of any entity: (a) from which property is recoverable under Sections 542, 543, 550 or 553 of the Bankruptcy Code, or (b) that is a transferee of a transfer avoidable under Sections 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code. Such Claims may be Allowed in the event that the entity or transferee has turned over such property, or paid such amount, to the Debtor. Any and all potential claims for avoidance against the Lenders have been irrevocably released under the Global Settlement and such release is incorporated herein.

ARTICLE X

PROVISIONS REGARDING DISTRIBUTIONS

10.1 Time and Method of Distributions.

All distributions under the Plan will be made by the Trustee. The record date for distributions shall be the Confirmation Date or any later date established by order of the Bankruptcy Court. Whenever any distribution to be made under the Plan is due on a day other than a business day, such distribution shall instead be made, without interest, on the immediately succeeding business day, but will be deemed to have been made on the date due.

10.2 Delivery of Distributions.

Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to holders of Allowed Claims shall be made in accordance with the notice provisions in Section 1.7.

10.3 Undeliverable and Unclaimed Distributions; Time Bar to Cash Payments.

If any distribution is returned to the Trustee as undeliverable, no further distributions shall be made to such holder unless and until the Trustee is notified in writing of such holder's then current address. Checks issued by the Trustee on account of Allowed Claims that are not returned as undeliverable, but are not negotiated within sixty (60) days from and after the date of issuance thereof shall be null and void.

Any holder of an Allowed Claim that does not assert its rights pursuant to the Plan to receive a distribution within ninety (90) days from and after the date (a) such distribution is returned as undeliverable, or (b) of the issuance of a check that has not been returned as undeliverable, but is null and void because it was not timely negotiated, shall have such holder's Claim for such distribution discharged and shall be forever barred from asserting any such Claim

against the Estate, the Debtor, the Liquidation Trust or its assets. In the event that there is more than one distribution under the Plan, any creditor whose funds escheat shall be eliminated from any future distributions.

Any entities ultimately receiving undeliverable cash, voided checks or unclaimed distributions shall not be entitled to interest or other accruals of any kind. Nothing contained in the Plan shall require the Trustee to attempt to locate any holder of an Allowed Claim or an Allowed Interest. Any undeliverable and unclaimed distributions and distributions not made pursuant to Section 10.6 shall be redistributed to the holder of Class 2.

10.4 Set-Offs.

Pursuant to Section 553 of the Bankruptcy Code or applicable non-bankruptcy law, the Trustee or Debtor, as applicable, may set-off the distributions to be made pursuant to the Plan against any Allowed Claim; provided however, that neither the failure to effect a set-off nor the allowance of any Claim shall constitute a waiver or release of such Claims, right or cause of action.

10.5 Distributions to Contested Claims.

No distribution shall be required to be made with respect to any portion of a Contested Claim pending the resolution thereof in the manner prescribed herein.

10.6 Distributions Under Twenty Dollars.

No distribution of less than \$20 shall be made to the holder of any Allowed Claim.

10.7 Interest on Claims.

Unless otherwise specifically provided for in the Plan, the Confirmation Order or by reason of applicable non-bankruptcy law, postpetition interest shall not accrue or be paid on any Claim.

ARTICLE XI

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

11.1 Conditions Precedent to Effective Date of the Plan.

The occurrence of the Effective Date and substantial Consummation of the Plan shall be subject to the satisfaction of the following conditions precedent:

(a) (i) The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Agent, (ii) more than ten (10) days shall have elapsed since the Confirmation Date, and (iii) except as provided below, the Confirmation Order is in full force and effect and is not stayed;

(b) All actions, documents and agreements necessary to implement the Plan and the Liquidation Trust Agreement shall have been effected or executed; and

Notwithstanding the foregoing, the Effective Date may occur notwithstanding the pendency of an appeal of the Confirmation Order so long as no stay in effect. The Effective Date may occur before the expiration of time to take an appeal or to seek reconsideration of the Confirmation Order without notice to any objecting party. The Agent may seek the dismissal of any appeal as moot following the Effective Date.

11.2 Waiver of Conditions Precedent.

To the extent practicable or legally permissible, the Agent may at any time waive, in whole or in part, in its sole discretion, each of the conditions precedent above without notice or order of the Bankruptcy Court and without any formal action other than proceeding as if such condition did not exist.

11.3 Effect of Non-Occurrence of Conditions to the Effective Date.

If the Effective Date of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor, (b) prejudice in any manner the rights of the Debtor or the Lenders, or (c) constitute an admission, acknowledgment, offer or undertaking by the Debtor or the Lenders in any respect.

11.4 Limited Scope.

Nothing in the Plan is intended, nor should it be construed, to enlarge or diminish the liability of the officers, director, member or manager of the Debtor, or the members of the Debtor's current owner, for any of the obligations of the Debtor. Any such liability shall be determined in accordance with applicable non-bankruptcy law.

ARTICLE XII

RETENTION OF CAUSES OF ACTION

12.1 Reservation.

Except as otherwise provided herein or in any prior order of the Bankruptcy Court, the Debtor and its bankruptcy Estate reserve all of its Claims and causes of action arising under the Bankruptcy Code (including, but not limited to, Sections 510, 542-545, 547-551 and 553 of the Bankruptcy Code) or under other applicable federal or state law, including, but not limited to, any third-party claims, counterclaims, cross-claims and the Retained Actions, other than with respect to the Lenders, which claims have been irrevocably settled and released pursuant to the Global Settlement. The Lenders, the Debtor and the Estate expressly reserve the RMSSR Claims, as defined herein, and all related claims, causes of action, rights, and entitlements related to or in any connected with the RMSSR Claims, and any amendment,

supplement, re-filed claim, or related claim. As of the Confirmation Date, the Trustee shall have the sole and exclusive authority to prosecute, abandon, settle or adjust the Estate's Claims or causes of action. As of the Effective Date, the Trustee shall have the sole and exclusive authority to prosecute, abandon, settle or adjust the Estate's Claims or causes of action without the consent or approval of any third party and without further order of the Bankruptcy Court.

12.2 No Waiver.

Unless a Claim or cause of action against an entity is expressly waived, relinquished, released, compromised or settled by the Litigation Trust, the Debtor and/or the Trustee expressly reserves such Claim or cause of action for later adjudication by the Debtor and/or Trustee, as applicable in accordance with the Plan, including, but not limited to, Claims and causes of action not specifically identified or which the Debtor and/or Trustee may be presently unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor and/or Trustee at this time or facts or circumstances that may change or be different from those which the Debtor and/or Trustee now believes to exist.

ARTICLE XIII

RELEASE, INJUNCTIVE AND RELATED PROVISIONS

13.1 Releases by Holders of Claims or Interest Holders; preservation of Pledge Agreement.

Except as otherwise provided in the Plan or Confirmation Order, the distributions to be received by creditors (if any), or contemplated, under the Plan are in full and final satisfaction and settlement of any and all Claims such creditors may have against the Releasees, the Debtor's Estate, the Trustee, the Litigation Trust, the Liquidation Trust, the Estate assets, the Lenders, the DIP Lenders, and the assets contemplated under the Plan to satisfy Claims, and all such Claims are released, other than the rights of the Debtor, the DIP Lenders or the Liquidation

Trustee to enforce the Plan, the DIP Loan Agreement and Pledge Agreement, and the contracts, instruments, and other agreements or documents delivered thereunder, and provided however, that nothing contained in this Plan, nor the confirmation of this Plan, shall release or discharge any obligation under the Global Settlement Agreement, the Pledge Agreement, and the DIP Loan Agreement, and all liens granted to the DIP Lenders, all of which shall survive the confirmation of the Plan. All claims by any Interest Holder are fully released and discharged. Provided further, nothing in this Plan shall release, alter or affect the rights of Wachovia, with respect to Calm Waters, LLC, or the assertion of any claim by Wachovia under the Capital Funding Commitment Letter, as defined in the Disclosure Statement and that Opus South Corporation shall not be deemed to have released Opus Corporation of any obligations under the Funding Letter and that nothing herein shall limit or impair the rights of Calm Waters with respect to such Capital Funding Letter.

13.2 Injunction.

Except as otherwise provided herein, from and after the Effective Date, all holders of Claims shall be permanently enjoined from commencing or continuing in any manner, any suit, action or other proceeding, on account of any Claim, Interest, obligation, debt, right, cause of action, remedy or liability released or to be released pursuant to the Plan or against any asset of the Debtor's Estate, the Litigation Trust or the Liquidation Trust which is subject to administration to pay Claims and Interests. Further, notwithstanding Confirmation of the Plan or the Confirmation Order, the automatic stay shall remain in place for the Debtor, its Estate, the Estate assets and the assets contemplated under the Plan to satisfy Claims. Additionally, no holder of a Claim against the Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, the Debtor, its successors, property

of the Estate or its property, the Litigation Trust, the Liquidation Trust, or the Trustee, except as expressly provided in the Plan. Provided however, that this injunction shall not pertain to nor affect any right under the Global Settlement Agreement, the Pledge Agreement or the DIP Facility, nor any lien granted thereunder.

13.3 Exculpation.

(a) Neither (1) the Debtor, its current owner and any officers, members and managers of its current owner, (2) the Trustee, (3) the Agent and Lenders, nor (4) any professional or advisors retained by the Debtor, the Trustee, the Agent or the Lenders, shall have or incur any liability to any holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to or arising out of this Chapter 11 Case, formulating, negotiating or implementing the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, Confirmation of the Plan, the Consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan (including the distributions), except for their gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advise of counsel with respect to their duties and responsibilities under the Plan. Provided however, and for the avoidance of all doubt, the Plan does not exculpate Ruden, McCloskey, Smith, Schuster & Russell, P.A., Mark Grant or any other defendant party to the RMSSR Claims, whether presently named or joined at a future date, nor does it exculpate any party from its obligations and duties under the Global Settlement Agreement.

(b) The foregoing exculpation and limitation on liability shall not, however, limit, abridge or otherwise affect the rights, if any, of the Trustee to enforce, sue on, settle or compromise the Claims retained pursuant to Article XII of the Plan.

13.4 Global Release.

(a) Pursuant to the terms of the Global Settlement Agreement, incorporated into this Plan, and restated and affirmed herein, Waters Edge One, L.L.C., 400 Beach Drive L.L.C., Clearwater Bluff, L.L.C., Opus South Corporation (collectively the “Debtors”) and Opus South Developers (“OSD”), on the one hand, and the Lenders and Wachovia, as the Administrative Agent of the Lenders on the other; and Waters Edge One, L.L.C., 400 Beach Drive L.L.C., Clearwater Bluff L.L.C., Opus South Corporation, OSD among and between one another, have, under the terms of the Global Settlement Agreement, mutually released each other from all claims arising with respect to the transactions related to Waters Edge, to any pledge of the properties of the Debtors (the “Subject Properties,”) or to any other claims (including deficiency claims, except as provided below) related to the Subject Properties or the respective estates of the Debtors, which release were previously effective upon the entry of the order approving the Global Settlement Agreement, other than the covenants and promises contained in the Global Settlement Agreement, and other than the exceptions set forth below and the OSD Transfer, OSD Note and OSD Mortgage in order to preserve the benefit of the OSD Transfers, as such terms are defined in the Global Settlement Agreement. The claims previously released include, without limitation, all avoidance actions under section 544, 545, 547, 548, 549, 550, and 553(b) of the Bankruptcy Code, and any similar applicable state law, and “equities of the case” under sections 105, 506(c) and 552(b). The release provided herein shall be binding on any chapter 7 or chapter 11 trustee appointed in these cases, provided however, that (a) such release shall not release any and all obligations due and owing to the DIP Lenders nor any obligation under the Global

Settlement Agreement, which shall survive the confirmation of this Plan; (b) that the release of any residual deficiency claims against the Debtors' bankruptcy estates shall not apply to any claim arising under 502(h) or any right of set off or recoupment arising from the pursuit of any avoidance action, although all such claims have been irrevocably released and settled; and (c) that the release of any residual deficiency claims against the Waters Edge bankruptcy estate shall not apply to the extent of the proceeds from both (i) the sale of the Subject Properties, and (ii) the RMSSR Claims. The parties have expressly acknowledged that Wachovia has not and does not waive any rights it may have under the Funding Letter (as defined in the Global Settlement Agreement) other than as set forth in the Global Settlement Agreement under "Release of Guaranty and Funding Letter" including with respect to the debtor Calm Waters, L.L.C., provided further, that with respect to the debtor Calm Waters, L.L.C., Opus South Corporation shall not be deemed to have released Opus Corporation of any obligations under the Funding Letter and that nothing herein shall limit or impair the rights of Calm Waters with respect to such Funding Letter.

13.5 Successor Liability.

The Lenders and Agent, and the Trustee do not, pursuant to the Plan or otherwise, assume, agree to perform, pay, or indemnify or otherwise have any responsibilities for any liabilities or obligations of the Debtors or any other party relating to or arising out of the operations of or assets of the Debtors, whether arising prior to, on, or after the Effective Date. The Liquidation Trust, the Trustee and the Lenders are not, and shall not be, successors to the Debtors by reasons of any theory of law or equity, and none shall have any successor or transferee liability of any kind or character, except that the Trustee and the Liquidation Trust shall assume the obligations specified in the Plan, the Liquidation Trust Agreement, the other Liquidation Trust Documents, and the Confirmation Order.

ARTICLE XIV

RETENTION OF JURISDICTION

Until entry of the final decree closing the Debtor's bankruptcy case pursuant to Bankruptcy Rule 3022, the Bankruptcy Court shall retain subject matter jurisdiction of this case and all proceedings arising therein or related thereto. Without in any manner limiting the scope of the foregoing, the Bankruptcy Court shall retain jurisdiction for the following purposes:

- (a) finally determine the classification, priority, allowance, disallowance, amount or objection to any Claim, including any Administrative Claim, or to estimate the Allowed amount of any Claim pursuant to Section 502(c) of the Bankruptcy Code;
- (c) issue such orders as may be necessary for the implementation, execution, and Consummation of the Plan, including orders to ensure the conformity with the terms and conditions of the Plan and other orders of the Bankruptcy Court, notwithstanding any otherwise applicable non-bankruptcy law;
- (d) determine any and all applications for allowance of compensation and expense reimbursement for periods on or before the Consummation Date and to determine any other request for payment of Administrative Claims;
- (e) determine all matters which may be pending before the Bankruptcy Court on or before the Effective Date;
- (f) resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of the Plan or any person's or entity's obligations incurred in connection with the Plan that arises at any time before this case is closed, including determination, to the extent a dispute arises, of the entities entitled to a distribution within any particular Class of Claims and of the scope and nature of any obligations to cure defaults under assumed contracts and leases, if any;
- (g) issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any person or entity with Consummation or enforcement of the Plan, except as otherwise provided herein;
- (h) determine any and all applications or motions for the rejection, assumption or assignment of executory contracts or unexpired leases and the allowance of any Claims resulting therefrom;

(i) determine all applications, motions, adversary proceedings, contested matters and other litigated matters which were brought or which could have been brought on or before the Effective Date, even if such matters are initiated after Confirmation but before the entry of a final decree closing this bankruptcy case;

(j) ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions hereof;

(k) enter such orders as may be necessary or appropriate to implement or consummate the provisions hereof and all contracts, instruments, releases and other agreements or documents created in connection with the Plan;

(l) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(m) determine such other matters and for such other purposes as may be provided in, or that may arise in connection with or relate to, the Plan, the Disclosure Statement, the Confirmation Order, the Liquidation Trust Agreement, or any contract, instrument, release or other agreement or document created in connection with the Plan or the Disclosure Statement;

(n) modify the Plan or to remedy any apparent non-material defect or omission in the Plan, or to reconcile any non-material inconsistency in the Plan so as to carry out its intent and purposes; and

(o) enter an order and/or final decree concluding this Chapter 11 Case.

ARTICLE XV

DISCLOSURE STATEMENT

The attention of holders, claimants, creditors, persons, entities and equity security holders is directed to the Disclosure Statement filed with the Bankruptcy Court in connection with the Plan.

Respectfully submitted,

WACHOVIA BANK, NATIONAL
ASSOCIATION, for and on behalf of the
Lenders

By: _____
NAME:
TITLE:

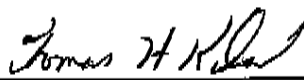
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One of Its Attorneys

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Respectfully submitted,

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