

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In re:

WATERBROOK PENINSULA, LLC
a Florida limited liability company,

Debtor and Debtor-in-Possession.

Case No. 08-18603-BKC-JKO

Chapter 11

AMENDED PLAN OF LIQUIDATION OF WATERBROOK PENINSULA, LLC

DATED: October 22, 2009

Messana Stern, P.A.
Thomas M. Messana
Scott Underwood
401 East Las Olas Blvd
Suite 1400
Fort Lauderdale, FL 33301
Fax No.: (954) 712-7401
Email: tmessana@mws-law.com
Attorneys for Debtor

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND CONSTRUCTION OF TERMS.....1

ARTICLE 2 CLASSIFICATION OF CLAIMS AND INTERESTS; IMPAIRMENT1

**ARTICLE 3 TREATMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE
CLAIMS, AND U.S. TRUSTEE FEES2**

**ARTICLE 4 PROVISIONS FOR TREATMENT OF ALLOWED CLAIMS AND
INTERESTS2**

ARTICLE 5 EXECUTORY CONTRACTS.....5

ARTICLE 6 MEANS FOR EFFECTUATION OF THE PLAN.....5

**ARTICLE 7 GENERAL PROVISIONS GOVERNING DISTRIBUTIONS BY DEBTOR
ON OR AFTER THE EFFECTIVE DATE7**

**ARTICLE 8 DISCHARGE, RELEASE AND EXTINGUISHMENT OF LIENS, CLAIMS,
INTERESTS, AND ENCUMBRANCES8**

**ARTICLE 9 INJUNCTION AGAINST ENFORCEMENT OF PRECONFIRMATION
DEBT.....8**

ARTICLE 10 CONDITIONS TO EFFECTIVE DATE.....9

**ARTICLE 11 PROVISIONS FOR THE RESOLUTION OF OBJECTIONS TO PROOFS
OF CLAIM9**

**ARTICLE 12 GENERAL PROVISIONS RELATING TO RESERVES PRIOR TO
EFFECTIVE DATE.....10**

ARTICLE 13 RETENTION OF JURISDICTION.....10

ARTICLE 14 GENERAL PROVISIONS.....12

ARTICLE 15 SUBSTANTIAL CONSUMMATION13

ATTACHMENTS TO PLAN

Glossary of Defined Terms **Annex “A”**
Purchase and Sale Agreement..... **Annex “B”**

INTRODUCTION

Waterbrook Peninsula, LLC proposes the following Plan of Liquidation pursuant to Section 1121(a) of Title 11 of the United States Code (the “Bankruptcy Code”).

Reference is made to the Disclosure Statement in Support of Plan of Liquidation of Waterbrook Peninsula, LLC (the “Disclosure Statement”) for a discussion of Debtor’s history, businesses, properties, results of operations, projections for future recoveries, a summary and analysis of the Plan and other related matters.

PLEASE READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY WITH RESPECT TO HOW YOUR RIGHTS MAY BE AFFECTED.

ARTICLE 1 **DEFINITIONS AND CONSTRUCTION OF TERMS**

1.1 Definitions. All capitalized terms not otherwise defined in the Plan shall have the meanings ascribed to them in **Annex “A”** to the Plan. Any capitalized term used in the Plan that is not defined in **Annex “A”** or elsewhere in the Plan shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

1.2 Rules of Interpretation and Construction. For purposes of the Plan, (i) any reference in the Plan to an existing document or exhibit filed or to be filed means that document or exhibit as it may have been or may be amended, modified, or supplemented; (ii) unless otherwise specified, all references in the Plan to sections, articles, and exhibits are references to sections, articles, or exhibits to the Plan; (iii) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan in its entirety and not to any particular portion of the Plan; (iv) captions and headings contained in the Plan are inserted for convenience and reference only, and are not intended to be part of or to affect the interpretation of the Plan; (v) wherever appropriate from the context, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; and (vi) the rules of construction outlined in Section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply to the Plan.

ARTICLE 2 **CLASSIFICATION OF CLAIMS AND INTERESTS; IMPAIRMENT**

2.1 Classification. Pursuant to Section 1122 of the Bankruptcy Code, a Claim or Interest is placed in a particular Class for purposes of voting on the Plan and receiving Distributions under the Plan only to the extent the particular Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled before the Effective Date. A Claim or Interest shall be classified in a different Class to the extent that it qualifies within the identification of that different Class. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims are not classified under the Plan, and the treatment of those Claims is set forth in Article 3.

2.2 Identification of Classes. Classes of Claims against and Interests in Debtor are designated as follows:

Classes of Claims against and Interests in Debtor are designated as follows:

Class 1.1 Secured Claim of NCB. Impaired--entitled to vote.

Class 1.2 Secured Claims of Peninsula Lender, LLC. Impaired--entitled to vote.

Class 1.3 Other Secured Claims. Impaired--entitled to vote.

Class 2 Unsecured Claims. Impaired--entitled to vote.

Class 3 Interests in Debtor. Impaired--Deemed to have rejected the Plan.

2.3 Impaired Voting Classes. Claims in Classes 1.1, 1.2, 1.3 and 2 are impaired under the Plan, and therefore, holders of Claims in such Classes are entitled to vote to accept or reject the Plan.

2.4 Impaired Non-Voting Class. Class 3 is deemed to have rejected the Plan by virtue of Section 1126(g) of the Bankruptcy Code and is not entitled to vote to accept or reject the Plan.

ARTICLE 3

TREATMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, AND U.S. TRUSTEE FEES

3.1 Administrative Claims Bar Date. All requests for payment of Administrative Claims and applications for payment of Professional Fee Claims shall be filed with the Bankruptcy Court and served upon Debtor at least ten days before the Confirmation Hearing or by such earlier deadline as may apply to such Administrative Claim pursuant to an earlier order of the Bankruptcy Court. Except as provided herein, any Administrative Claim or Professional Fee Claim for which an application or request for payment is not filed within such time period shall be discharged and forever barred.

3.2 Treatment of Administrative Claims, including Professional Fee Claims. Allowed Administrative Claims and Professional Fee Claims incurred through the Effective Date shall be paid by Debtor on the later of the Effective Date or the Allowance Date.

3.3 U. S. Trustee Fees. On or before ten days after the Effective Date, Debtor shall pay all fees incurred under 28 U.S.C. § 1930(a)(6) and owing.

ARTICLE 4

PROVISIONS FOR TREATMENT OF ALLOWED CLAIMS AND INTERESTS

4.1 Treatment of Class 1.1 Secured Claim of NCB. Allowed Secured Claims in Class 1.1 shall be completely and fully satisfied by the following treatment:

- a. NCB shall be deemed to have an Allowed Secured Claim in the amount of \$9,268,694.19 secured by the Acquired Assets, not subject to objection, disallowance or subordination. In full and complete satisfaction of NCB's Secured Claim, and subject to the terms and conditions provided for in the Purchase and Sale Agreement, NCB shall receive the Acquired Assets, free and clear of all Encumbrances, except for the allowed claims of Wiper Corporation, solely on account of its status as a holder of the Palm Beach County tax lien certificate and the rights thereunder, numbered 2008-19993, in the face value amount of \$148,267.98 and the Palm Beach City Tax Collector which shall remain a lien on the Acquired Assets.
- b. NCB shall be deemed to have an Allowed General Unsecured Claim in the amount of \$17,504,611 (the "NCB Deficiency Claim").
- c. If Class 1.2 and Class 2 vote to accept the Plan and Class 1.2 does not file an objection to the Plan or objection to administrative claims, NCB shall subordinate the right to receive any distribution under Class 2 of the Plan on account of the NCB Deficiency Claim to all the other Class 2 claimants.
- d. **ON THE EFFECTIVE DATE, IN CONSIDERATION OF THE AGREEMENT OF NCB TO MAKE THE NCB PLAN FUNDING COMMITMENT AND ITS OTHER OBLIGATIONS AND COMMITMENTS PURSUANT TO THE PLAN, NCB AND EACH OF ITS DIRECTORS, EMPLOYEES, OFFICERS, PREDECESSORS, SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, REPRESENTATIVES, SURETIES AND INSURERS SHALL BE RELEASED AND DISCHARGED OF ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, DEBTS, DAMAGES, OBLIGATIONS, COSTS, AND DEMANDS OF WHATEVER CHARACTER, NATURE, TYPE, OR DESCRIPTION, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHICH, ANY PARTY IN INTEREST, INCLUDING DEBTOR AND ALL CREDITORS, INCLUDING VILA & SON LANDSCAPING, INC., VERCON CONSTRUCTION MANAGEMENT, INC., AND CDL EARTHMOVING AND PAVING, INC., MAY HAVE HAD, OR MAY NOW HAVE THAT RELATE IN ANY WAY TO DEBTOR, DEBTOR'S BANKRUPTCY CASE, THE CLASS 1.1 CLAIM, THE NCB ALLOWED SECURED CLAIM OR THE NCB DEFICIENCY CLAIM AND THE PROPERTY, EXCEPT FOR OBLIGATIONS EXPRESSLY CONTAINED IN THE PLAN.**
- e. **ON THE EFFECTIVE DATE, THE DIP FINANCING BY NCB IS TERMINATED, NCB HAS NO FURTHER OBLIGATION TO ADVANCE ANY ADDITIONAL FUNDS UNDER THE AGREEMENT THAT PROVIDED DIP FINANCING PURSUANT**

TO THE DIP FINANCING ORDER, AND ANY UNDISBURSED FUNDS DEPOSITED WITH MIDWEST BELONG SOLELY TO NCB.

4.2 Treatment of Class 1.2 Secured Claim of Peninsula Lenders, LLC. Allowed Secured Claims in Class 1.2 shall be completely and fully satisfied by the following treatment:

- a. The Class 1.2 Allowed Secured Claim shall be satisfied in full with the proceeds of the sale of the Acquired Assets to the extent there are any Net Sale Proceeds which exceed the aggregate of the Allowed Secured Claim of Class 1.1.
- b. **Deficiency Claim.** The Allowed Class 1.2 Secured Claim shall have a deficiency claim to the extent the value of the collateral securing its Allowed Secured Claim is less than the amount of its Allowed Secured Claim (the "Peninsula Lenders Deficiency Claim"). If Class 1.2 Allowed Secured Claim has a deficiency claim, it shall be treated under the Plan in Class 2.

4.3 Treatment of Class 1.3 All Other Secured Claims Against Debtor. Allowed Secured Claims in Class 1.3 shall be completely and fully satisfied by the following treatment:

- a. Each Class 1.3 Allowed Secured Claim shall be deemed to be classified in a separate subclass of Class 1.3. Each Class 1.3 Allowed Secured Claim shall be satisfied in full with the proceeds of the sale of the Acquired Assets to the extent the Net Sale Proceeds exceeds the aggregate of the Allowed Secured Claims of Class 1.1 and 1.2. Each Class 1.3 Allowed Secured Claim shall be paid in order of priority under otherwise applicable law. Should the Net Sale Proceeds exceed the aggregate of the Allowed Secured Claims of Class 1.1 and 1.2, on or before confirmation, Debtor will file a schedule of proposed distribution and priority of holders of Class 1.3 Allowed Secured Claims.
- b. **Deficiency Claim.** Each holder of an Allowed Class 1.3 Other Secured Claim shall have a deficiency claim to the extent the value of the collateral securing its Allowed Secured Claim is less than the amount of its Allowed Secured Claim. If the holder of a Class 1.3 Allowed Secured Claim has a deficiency claim, it shall be treated under the Plan in Class 2.

4.4 Treatment of Class 2 Unsecured Claims . Allowed Unsecured Claims in Class 2 shall be completely and fully satisfied by the following treatment:

- a. Each holder of an Allowed Class 2 Unsecured Claim shall receive a pro rata distribution pursuant to the priorities set forth in the Bankruptcy Code but in no event less than a pro rata distribution of \$50,000.

4.5 Treatment of Class 3 Interests in Debtor. Allowed Class 3 Interests shall receive no distribution under the Plan and shall retain no property whatsoever under the Plan.

ARTICLE 5
EXECUTORY CONTRACTS

Executory Contracts entered into by Debtor prior to the Petition Date, shall be treated as follows:

5.1 Assumption and Rejection. All Executory Contracts not otherwise assumed, assumed and assigned, or rejected pursuant to Section 365 of the Bankruptcy Code prior to the Effective Date shall be deemed rejected as of the Effective Date. Notwithstanding anything to the contrary set forth in the prior sentence, Debtor may designate any Executory Contract to be assumed or assumed and assigned on or before the Effective Date and such Executory Contract shall be assumed or assumed and assigned as of the Effective Date.

5.2 Approval of Assumption or Rejection. Entry of the Confirmation Order shall constitute the approval, pursuant to Sections 363(b), (f) and (m) and 365(a) and (f) of the Bankruptcy Code, of (i) the assumption or assumption and assignment of the Executory Contracts identified in accordance with Section 5.1 and (ii) the rejection of the remaining Executory Contracts.

5.3 Rejection Claims. Unless the Bankruptcy Court, the Bankruptcy Code or the Bankruptcy Rules establish an earlier deadline with regard to the rejection of particular Executory Contracts, any Claims arising out of the rejection of Executory Contracts pursuant to Section 5.1 must be filed with the Bankruptcy Court and served upon Debtor no later than thirty days after entry of the Confirmation Order. Any Claims not filed within such time will be forever barred and will not receive any distributions under the Plan. All Claims arising from the rejection of an Executory Contract shall be treated in Class 2.

ARTICLE 6
MEANS FOR EFFECTUATION OF THE PLAN

6.1 The Effective Date. The closing of the transactions required and contemplated under the Plan shall take place on the Effective Date at a location in Miami-Dade County, Broward County or Palm Beach County, Florida. The Effective Date is the business day on which Debtor closes upon the sale of the Acquired Assets pursuant to this Plan, unless such sale is consummated prior to entry of the Confirmation Order, in which event, the Effective Date shall be ten (10) days after the Confirmation Order becomes a Final Order.

6.2 Transactions on the Effective Date. The following shall occur at or before the Effective Date and shall be effective as of the Effective Date.

Plan Funding Commitment of NCB. NCB shall provide or make available to the Debtor Cash sufficient to make all payments required by the Plan to be made or reserved for on the Effective Date provided, however, that the aggregate amount of payments to be made on the Effective Date shall not exceed the Contribution Of The Proceeds of Class Action Settlement, the Refund of Impact Fee and the Creditor Give-Up.

Contribution of the Proceeds of Class Action Settlement and Refund of Impact Fee. Upon the Effective Date and in exchange for the receipt of the Acquired Assets free and clear of all Encumbrances and the NCB Release, NCB shall contribute to the Post-Confirmation Debtor the sum total of all of its Cash Collateral which remains from the proceeds of the Class Action Settlement and the refund of the impact fee, but only to the extent Debtor obtains such funds either pre-confirmation or post-confirmation. NCB's contribution, through its release of liens upon Debtor's Cash Collateral, does not obligate NCB to fund any shortfall that exists as a result of Debtor's inability to recover any portion of the impact fee refund.

Creditor Give-Up. NCB shall contribute \$50,000 so long as NCB reaches a satisfactory settlement agreement with non-debtor guarantors prior to the day of the confirmation hearing.

Transfer of Property to NCB. On the Effective Date, the transactions contemplated by the Purchase and Sale Agreement shall be consummated and the Debtor shall convey and transfer to NCB or its designee all of the Acquired Assets, free and clear of all Encumbrances, except for the allowed claims of Wiper Corporation as a holder of the Palm Beach County tax lien certificate, numbered 2008-19993, in the amount of \$148,267.98 and the Palm Beach City Tax Collector which shall remain a lien on the Acquired Assets, by signing and delivering to NCB such deeds, bills of sale, assignments and other Conveyance Documents as NCB reasonably requests.

6.3 Section 1146 Exemption. Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of any security under the Plan, or the making, delivery, or recording of an instrument of transfer in connection with the sale of the transactions contemplated by the Purchase and Sale Agreement shall not be taxed under any law imposing a stamp or similar tax, including but not limited to any documentary stamp taxes or intangible taxes, whether on any deed, leasehold, assignment, promissory note, security agreement or mortgage.

6.4 Waiver of Federal Rule of Civil Procedure 62(a). Debtor will request that the Confirmation Order include (i) a finding that Fed. R. Civ. P. 62(a) shall not apply to the Confirmation Order; and (ii) authorization for the consummation of the Plan and the transactions contemplated by the Plan immediately after entry of the Confirmation Order.

6.5 Disbursing Agent. Debtor shall act as Disbursing Agent. Its fees for acting as Disbursing Agent shall not exceed \$5,000. The Disbursing Agent shall disburse all of Debtor's cash in accordance with the terms of the Plan and the Bankruptcy Code. Disbursing Agent shall also pay all post-confirmation U.S. Trustee's fees pursuant to 28 U.S.C. § 1930 to the extent required by law.

6.6 Post-Confirmation Debtor. Upon the Effective Date, all of Debtor's pre-confirmation Property shall vest in the Post-Confirmation Debtor, subject to the Plan and the Confirmation Order. Wherever the Plan refers to Debtor's authority, responsibilities, rights, powers or limitations on or after the Effective Date, such reference shall be deemed to be a

reference to the Post-Confirmation Debtor. The Post-Confirmation Debtor shall have the same authority, responsibilities, rights, powers or limitations to discharge the duties of Debtor pursuant to the Plan. The Post-Confirmation Debtor shall be managed by Thomas N. Yianilos (“Yianilos”) and L. William Rudnick (“Rudnick”). Yianilos and Rudnick will not receive compensation for their role as managers of the Post-Confirmation Debtor.

6.7 Employment of Professionals of the Post-Confirmation Debtor. The Post-Confirmation Debtor may retain Professionals without the need for approval by the Bankruptcy Court to assist the Post-Confirmation Debtor with its duties and responsibilities under the Plan (the “Post-Confirmation Professionals”). Debtor may retain its pre-confirmation counsel as a Post-Confirmation Professional.

6.8 Post-Confirmation Professional Compensation. Upon the transfer of Debtor’s cash to the Disbursing Agent, the Disbursing Agent shall set aside \$35,000 for the retention and payment of Post-Confirmation Professionals and compensation for the Disbursing Agent (the “Set Aside”). Payment to the Post-Confirmation Professionals and the Disbursing Agent shall only be made upon application to this Court pursuant to the procedures set forth herein (the “Application Procedures”). Not more than every 30 days, the Post-Confirmation Professionals and Disbursing Agent may submit an application with the Bankruptcy Court for compensation of reasonable fees and expenses in assisting Debtor with implementing the Plan. Such applications shall be served upon the Post-Confirmation Debtor, NCB, and any other party that specifically requests notice of such fee applications. Any party may object to the application for compensation of the Post-Confirmation Professionals and the Disbursing Agent within 10 days of service of an application pursuant to these Application Procedures. If a party in interest timely objects, the Post-Confirmation Debtor shall file a notice of contested matter with the Bankruptcy Court and request a hearing to resolve the objection. If no party timely objects to any application pursuant to the Application Procedures, the Disbursing Agent may distribute cash sufficient to pay the Post-Confirmation Professional or Disbursing Agent’s application, without need for further action or approval of the Bankruptcy Court.

6.9 Unclaimed or Undistributable Funds. To the extent any funds are unclaimed or undistributable pursuant to the Plan, Bankruptcy Code Section 347, Bankruptcy Rule 3011, or Local Bankruptcy Rule 3011-1, the Disbursing Agent may distribute such funds to the Bankruptcy Bar Foundation for the Southern District of Florida.

6.10 Bond. Neither the Disbursing Agent nor Post-Confirmation Debtor shall be required to post a bond.

ARTICLE 7

GENERAL PROVISIONS GOVERNING DISTRIBUTIONS BY DEBTOR ON OR AFTER THE EFFECTIVE DATE

7.1 Place and Manner of Payments or Distributions. Debtor shall make Distributions to the holders of Allowed Claims on the Effective Date or Allowance Date via delivery by either (i) mail to the Claimant at the address of such Claimant as listed in the Schedules of Assets and Liabilities, or listed on any proof of claim filed by the Claimant, or (ii)

by mail to such other address or by wire transfer to the destination that such Claimant shall have specified for payment purposes in a written notice to Debtor.

7.2 Undeliverable Distributions. If a Distribution to any Claimant is returned as undeliverable, Debtor shall use reasonable efforts to determine such Claimant's current address, and no further Distributions shall be made to such Claimant unless and until Debtor is notified of such Claimant's current address.

7.3 Treatment of Unclaimed or Undeliverable Distributions. If any Claimant entitled to Distributions from Debtor cannot be located prior to the Effective Date or Allowance Date or has its Distribution returned to Debtor, then such Distribution shall be transferred to Debtor and, in the case of Cash, held in an interest-bearing account or fund maintained by Debtor for purposes of holding such distributions. Debtor will distribute such distributions six months after the Effective Date to Allowed Claims pursuant to this Plan.

7.4 Tax I.D. Number Required In lieu of backup withholding, Debtor may suspend distribution to any Claimant that has not provided its Federal Tax Identification Number or Social Security Number, as the case may be. Any such distributions that remain suspended as of the Effective Date or Allowance Date shall be transferred to Debtor and held in an interest-bearing account or fund maintained by Debtor pending receipt by Debtor of such information.

ARTICLE 8
DISCHARGE, RELEASE AND EXTINGUISHMENT
OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES

8.1 Discharge of Debtor. The rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever against any of the Property, including the Acquired Assets. As this plan is one of liquidation, Debtor shall not be discharged under Section 1141 of the Bankruptcy Code.

8.2 Retention of Prepetition Actions. Notwithstanding confirmation, Debtor, its successors, heirs, or assigns, shall be able to continue to pursue any and all fraudulent transfer and preference actions commenced prior to confirmation of the Plan.

ARTICLE 9
INJUNCTION AGAINST ENFORCEMENT OF PRECONFIRMATION DEBT

9.1 Injunction Enjoining Certain Actions

Except as expressly provided herein, at all times on and after the Effective Date, all Persons who have been, are, or may be holders of Claims against or Interests in Debtor arising prior to the Effective Date, shall be enjoined from taking any of the following actions against or affecting the Property, including the Acquired Assets:

- (i) commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind arising before the Confirmation Date against Debtor, Debtor's estate, or the Property, including the

Acquired Assets (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date, shall be deemed to be withdrawn or dismissed with prejudice), including any suit, action or other proceeding which might affect the use or enjoyment of any portion of the Acquired Assets;

(ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against Debtor, Debtor's estate, or the Property, including the Acquired Assets, relating to any obligation which arose prior to the Effective Date;

(iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien or Encumbrance against Debtor, Debtor's estate, or the Property, including the Acquired Assets;

(iv) asserting any right of subrogation, or recoupment of any kind, directly or indirectly against any obligation due Debtor, Debtor's estate, or the Property, including the Acquired Assets; and

(v) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

ARTICLE 10 **CONDITIONS TO EFFECTIVE DATE**

10.1 Conditions. The occurrence of the Effective Date shall be subject to the satisfaction or waiver by Debtor or NCB, as applicable, of each of the following conditions:

10.1.1 All deliveries required to be made on the Effective Date have been made or waived by the party for whose benefit such delivery is intended.

10.1.2 The Confirmation Order shall be entered by the Bankruptcy Court in a manner and form reasonably satisfactory to NCB and shall be effective and not stayed.

10.1.3 Each of the conditions to the obligations of Debtor and NCB under the Purchase and Sale Agreement shall have been satisfied or waived in writing by Debtor and NCB.

ARTICLE 11 **PROVISIONS FOR THE RESOLUTION OF** **OBJECTIONS TO PROOFS OF CLAIM**

11.1 Right to Object to Claims. The Deadline to object to claims shall be 10 days prior to the confirmation hearing or some other date as established by Bankruptcy Court Order.

11.2 Deadline for Responding to Claim Objections. A Claimant whose Claim has been objected to in accordance with Section 11.1, must file with the Court and serve upon the parties identified in Section 14.1 a response to such claim objection within 30 days after service

of any objection to its Claim. Failure to file such a response within the 30-day time period shall be cause for the Bankruptcy Court to enter a default judgment against the non-responding Claimant and to thereby grant the relief requested in the Claim objection.

11.3 Estimation of Claims. Debtor may request the Bankruptcy Court to estimate any Claim for purposes of voting on this Plan or Allowance pursuant to Section 502(c) of the Bankruptcy Code.

ARTICLE 12

GENERAL PROVISIONS RELATING TO RESERVES PRIOR TO EFFECTIVE DATE

12.1 Distributions on Allowed Claims Only. Distributions made by Debtor under the Plan shall be made only to the holders of Allowed Claims. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive the consideration otherwise provided to such Claimant under the Plan.

12.2 Establishment of Disputed Claims Reserve. Debtor shall deposit the Distributions reserved for the holders of Disputed Claims in a reserve fund called the Disputed Claims Reserve. Debtor shall hold the Disputed Claims Reserve in trust for the benefit of the holders of Allowed Claims whose Distributions are unclaimed and the holders of Disputed Claims pending determination of their entitlement thereto under the terms of the Plan. When a Disputed Claim becomes an Allowed Claim, Debtor shall release and deliver the Distributions reserved for such Allowed Claims from the Disputed Claims Reserve, together with any earned interest attributable to such Distribution.

ARTICLE 13

RETENTION OF JURISDICTION

13.1 Retention of Jurisdiction. The Bankruptcy Court, even after the case has been closed, shall have jurisdiction to the fullest extent of the law over all matters arising under, arising in, or relating to Debtor's chapter 11 cases, including proceedings to:

- (a) ensure that the Plan is carried out;
- (b) enter such orders as may be necessary or appropriate to implement, consummate, or enforce the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan or the Disclosure Statement;
- (c) consider any modification of the Plan under Section 1127 of the Bankruptcy Code;
- (d) hear and determine all Claims, controversies, suits and disputes against Debtor to the extent permitted under 28 U.S.C. § 1334;
- (e) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any and all objections to the allowance or priority of Claims;

(f) hear, determine, and adjudicate any litigation involving the Avoidance Actions or other claims or causes of action constituting Estate Property;

(g) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving Debtor that may be pending on or commenced after the Effective Date;

(h) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, or any entity's obligations incurred in connection with the Plan, or any other agreements governing, instruments evidencing, or documents relating to any of the foregoing, including the interpretation or enforcement of any rights, remedies, or obligations under any of the foregoing;

(i) hear and determine all controversies, suits, and disputes that may arise out of or in connection with the enforcement of any and all subordination and similar agreements among various creditors pursuant to Section 510 of the Bankruptcy Code;

(j) hear and determine all requests for compensation and/or reimbursement of expenses that may be made for fees and expenses incurred before the Effective Date;

(k) enforce any Final Order, the Confirmation Order, the final decree, and all injunctions contained in those orders;

(l) enter an order concluding and terminating this case;

(m) correct any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order;

(n) determine all questions and disputes regarding title to the Estate Property and any other assets of Debtor;

(o) classify the Claims of any Claim holders and the treatment of these Claims under the Plan, to re-examine Claims that may have been allowed for purposes of voting, and to determine objections that may be filed to any Claims;

(p) take any action described in the Plan involving the post-confirmation Debtor;

(q) enter a final decree in Debtor's case as contemplated by Bankruptcy Rule 3022;

(r) enforce, by injunction or otherwise, the provisions set forth in the Plan, the Trust, the Confirmation Order, any final decree, and any Final Order that provides for the adjudication of any issue by the Bankruptcy Court; and

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

13.2 Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains or exercises discretion not to hear any matter within the scope of its jurisdiction, nothing herein shall prohibit or limit the exercise of jurisdiction by any other tribunal of competent jurisdiction.

ARTICLE 14
GENERAL PROVISIONS

14.1 Notices. Whenever the Plan requires notice to be given to Debtor, such notice shall be given to the following parties at their respective addresses unless a prior notice of change of address has been served indicating a new address:

Debtor or Post-Confirmation Debtor:

Messana Stern, P.A.
Attn: Thomas M. Messana, Esq.
P.O. Box 2485
Fort Lauderdale, Florida 33303 -2485
Facsimile : (954) 712-7401
E-mail: tmessana@mws-law.com

Disbursing Agent

Thomas N. Yianilos

14.2 Dates. The provisions of Bankruptcy Rule 9006 shall govern the calculation of any dates or deadlines referenced in the Plan.

14.3 Further Action. Nothing contained in the Plan shall prevent Debtor from taking such actions as may be necessary to consummate the Plan, even though such actions may not specifically be provided for within the Plan.

14.4 Attachments. All attachments to the Plan are incorporated herein by reference and are intended to be an integral part of this document as though fully set forth in the Plan. All exhibits to the Plan and Asset Purchase Agreement shall be filed with the Bankruptcy Court no later than ten days before the Confirmation Date.

14.5 Plan Amendments. Before the Confirmation Date, Debtor may modify, amend or withdraw the Plan, without approval of the Bankruptcy Court. After the Confirmation Date, Debtor may, subject to Bankruptcy Court approval and so long as it does not materially or adversely affect the rights set forth in the Plan of creditors and other parties in interest, amend or modify the Plan to remedy any defect or omission or reconcile any inconsistencies in the Plan or in the Confirmation Order, in such manner that may be necessary to carry out the purposes and intent of the Plan.

14.6 Exhibits. Exhibits to the Amended Plan or the Disclosure Statement can be filed with the Court no later than 10 days prior to the confirmation hearing and will be available on the docket, at the clerk of the Bankruptcy Court, or upon request of Debtor's bankruptcy counsel.

14.7 Binding Effect. Upon occurrence of the Effective Date, the Plan shall be binding on, and inure to the benefit of, Debtor, the Purchaser, the Claim holders and Interest holders, and their respective successors and assigns, regardless of whether those parties voted to accept the Plan.

14.8 Governing Law. Except to the extent that the Bankruptcy Code or 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 Florida, without giving effect to any conflicts of law principles.

14.8 Assignment by NCB. NCB may assign all of its rights under the Plan provided that such assignment shall not relieve NCB of its obligations under the Plan. In the event of an assignment by NCB of its rights under the Plan, all provisions of the Plan and Confirmation Order intended for the benefit of NCB shall inure to the benefit of NCB's assignee.

ARTICLE 15
SUBSTANTIAL CONSUMMATION

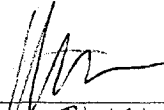
15.1 Substantial Consummation. The Plan shall be deemed substantially consummated immediately on the completion of all material actions required to be undertaken at the Effective Date.

15.2 Notice of Effective Date. Promptly after occurrence of the Effective Date, Debtor shall file with the clerk of the Bankruptcy Court a notice that the Plan has become effective; *provided, however,* that the failure to file such notice shall not affect the effectiveness of the Plan or the rights or substances obligations of any entity hereunder.

15.3 Final Decree. After the Effective Date, Debtor may move for a final decree closing the case and requesting such other orders as may be necessary and appropriate.

DATED: October 22, 2009.

WATERBROOK PENINSULA, LLC,
Debtor and Debtor-in-Possession

By: 
Name: THOMAS N. YLANVOK
Its: MANAGER

Messana Stern, P.A.

Attorneys for Debtor

Thomas M. Messana

Scott Underwood

401 East Las Olas Blvd

Suite 1400

Fort Lauderdale, FL 33301

Fax No.: (954) 712-7401

Email: tmessana@mws-law.com

By: /s/ Scott A. Underwood
Thomas M. Messana
Scott A. Underwood

ANNEX “A”

GLOSSARY OF DEFINED TERMS

Acquired Assets means the Property to be transferred to NCB pursuant to the Purchase and Sale Agreement.

Administrative Claim means any Claim constituting a cost or expense of administration of Debtor’s Chapter 11 case under Section 503(b) of the Bankruptcy Code and that is entitled to priority under Section 507(a) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses of preserving the estate, and all fees and charges assessed against the bankruptcy estate under Chapter 123 of Title 28, United States Code.

Allowance Date shall mean the date on which a Disputed Claim becomes an Allowed Claim by Final Order.

Allowed Administrative Claim means an Administrative Claim allowed under the Bankruptcy Code.

Allowed Claim means any Claim allowable under Section 502 of the Bankruptcy Code (i) for which a proof of claim was filed on or before the date designated by the Bankruptcy Court as the last date for filing proofs of claim against Debtor, or (ii) which has been or hereafter is listed in Debtor’s bankruptcy Schedules of Assets and Liabilities as liquidated in amount and not disputed or contingent and as to which a proof of claim is not filed and, in case of (i) and (ii) above, as to which no objection to the allowance thereof has been timely filed, or, if an objection has been timely filed, such Claim is allowed by Final Order, or (iii) which is deemed allowed by the terms of the Plan. For purposes of determining the amount of an Allowed Claim there shall be deducted therefrom an amount equal to the amount of any claim which Debtor may hold against the Claimant pursuant to Section 553 of the Bankruptcy Code. Unless otherwise specified in this Plan, “Allowed Claim” shall not, for the purposes of computation of Distributions under the Plan, include postpetition interest on the amount of such Claim.

Allowed General Unsecured Claim means a General Unsecured Claim that is an Allowed Claim.

Allowed Interest means any Interest allowable under Section 502 of the Bankruptcy Code (i) for which a proof of claim was filed on or before the date designated by the Bankruptcy Court as the last date for filing proofs of claim against Debtor, or (ii) which has been or hereafter is listed in Debtor’s bankruptcy Schedules of Assets and Liabilities as liquidated in amount and not disputed or contingent and as to which a proof of claim is not filed and, in case of (i) and (ii) above, as to which no objection to the allowance thereof has been timely filed, or, if an objection has been timely filed, such Claim is allowed by Final Order, or (iii) which is deemed allowed by the terms of the Plan. For purposes of determining the amount of an Allowed Interest there shall be deducted therefrom an amount equal to the amount of any claim which Debtor may hold against the Claimant pursuant to Section 553 of the Bankruptcy Code.

Allowed Priority Unsecured Non-Tax Claim means a Priority Unsecured Non-Tax Claim that is an Allowed Claim.

Allowed Priority Tax Claim means a Priority Tax Claim that is an Allowed Claim.

Allowed Secured Claim means a Secured Claim that is an Allowed Claim.

Avoidance Actions means any causes of action and rights arising under Sections 506, 510, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 and/or 553 of the Bankruptcy Code.

Bankruptcy Case means the chapter 11 bankruptcy case of Debtor, currently pending before the Bankruptcy Court as case no. 08-18603-BKC-JKO.

Bankruptcy Code means Title 11 of the United States Code, as amended from time to time and made applicable to Debtor's cases.

Bankruptcy Court means the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division, or in the event such court ceases to exercise jurisdiction over a Debtor's Chapter 11 case, such court as may have jurisdiction with respect to the reorganization of Debtor under Chapter 11 of the Bankruptcy Code.

Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure.

Cash means lawful currency of the United States of America.

Cash Collateral means the lawful currency which is the collateral of a Secured Claim as set forth in 11 U.S.C. § 361.

Claim shall have the meaning set forth in 11 U.S.C. § 101(5).

Claimant means the holder of a Claim.

Class means a category of holders of Claims or Interests as classified in the Plan.

Class Action Settlement means that agreement approved by the Bankruptcy Court which compromised that certain adversary proceeding, 08-01506-JKO.

Confirmation Date means the date upon which the Confirmation Order is entered on the docket of Debtor's Chapter 11 case by the Clerk of the Bankruptcy Court.

Confirmation Hearing means the date of the final hearing at which the Bankruptcy Court considers confirmation of the Plan.

Confirmation Order means the order of the Bankruptcy Court confirming the Plan.

Contractor Settlement means a certain settlement agreement between the Settlement Parties and approved of by the Court.

Conveyance Documents means those documents necessary to convey or evidence the conveyance of the Acquired Assets from the Debtor to NCB.

Creditor shall have the meaning set forth in 11 U.S.C. § 101(10).

Creditor Give-Up means the \$50,000 provided for in Section 6.2 of the Plan.

Debtor means Waterbrook Peninsula, LLC and, when the context so requires, in its capacity as debtor and debtor-in-possession under Section 1107 and 1108 of the Bankruptcy Code.

Deficiency Claim means the claim referred to in Section 4.2 of the Plan

Disclosure Statement means the Amended Disclosure Statement in Support of this Amended Plan of Liquidation of Waterbrook Peninsula, LLC dated the date of this Plan (including amendments thereto), filed by Debtor.

Disputed Claim means any Claim to which an objection is timely filed or any Claim which is listed as disputed, unliquidated or contingent on the Schedules of Assets and Liabilities filed with the Bankruptcy Court and which is not otherwise allowed by the Plan.

Disputed Claims Reserve means Cash reserved pursuant section 11.2 of the Plan.

Distribution means a distribution of Cash from Debtor on account of an Allowed Claim.

Encumbrance means any lien, charge, mortgage, interest, security interest, claim, option, encumbrance, pledge, hypothecation, right to purchase, deed of trust, equitable interest, beneficial interest, easement, right-of-way, servitude, right of possession, lease tenancy, license, Claim, encroachment, reservation, imperfection of title, condition, interest or restriction of any kind, including, but not limited to, restriction on the use, other than any of the foregoing specifically permitted in the Purchase and Sale Agreement.

Effective Date means the business day on which Debtor closes upon the sale of the Acquired Assets pursuant to this Plan, unless such sale is consummated prior to entry of the Confirmation Order, in which event, the Effective Date shall be ten (10) days after the Confirmation Order becomes a Final Order.

Escrow Deposits means, in the aggregate, the earnest money deposits paid by contract vendees in accordance with sales contracts for the purchase of individual units in the Project and held in escrow by Broad & Cassel., as escrow agent.

Executory Contracts means “executory contracts” and “unexpired leases” as such terms are used within Section 365 of the Bankruptcy Code, whether or not scheduled by Debtor.

Final Order means an Order as to which (a) any appeal that has been taken has been resolved, or (b) the time for appeal has expired, or (c) no stay pending appeal or pending review, rehearing, or certiorari has been issued.

General Unsecured Claim means an Unsecured Claim which is not entitled to priority under the Bankruptcy Code.

Impairment or Impaired means the definition under Section 1124 of the Bankruptcy Code.

Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

Interest means the rights arising from the issued and outstanding membership interest or the right to purchase membership interest in the Debtor.

Lien means a valid, perfected and enforceable lien, security interest or other interest in or encumbrance against Property of Debtor's Estate as defined in Section 101(37) of the Bankruptcy Code.

Local Bankruptcy Rules means those Local Rules issued by the Bankruptcy Court and effective as of January 2, 2008, as well as all guidelines and administrative orders issued by the Bankruptcy Court.

Midwest means the entity that processed DIP financing fund requests, received transfers from NCB and distributed said funds to Debtor pursuant to the DIP Financing Order.

NCB means National City Bank or its successor in interest, PNC Bank, N.A.

NCB's Deficiency Claim means the Allowed General Unsecured Claim of NCB in the amount of \$17,504,611 plus fees and expenses accruing after the Effective Date

Person (capitalized or not) means an individual, corporation, partnership, trust, business trust association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, governmental authority, or any other form of entity not specifically listed herein.

Petition Date means June 25, 2008, the date of the filing of the Bankruptcy Case.

Plan means this Amended Plan of Liquidation of Waterbrook, LLC, as it may be further amended, modified, or supplemented from time to time.

Plan Funding Commitment means the commitment of NCB pursuant to Section 6.2 of the Plan to provide or make available sufficient Cash on the Effective Date to make payments required to be made by the Plan on the Effective Date.

Post-Confirmation Debtor means the entity that exists from the Effective Date until the closure of the Bankruptcy Case and shall have the powers and responsibilities as set forth in Section 6.6 of the Plan.

Priority Unsecured Non-Tax Claim means any Unsecured Claim that is entitled to priority in payment under Sections 507(a)(2-7) and 507(a)(9) of the Bankruptcy Code.

Priority Tax Claim means a Claim that is entitled to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

Proceeds of Class Action Settlement means the lawful currency which the Debtor received from the Escrow Deposits on account of the Class Action Settlement as well as any other settlements concerning the Escrow Deposits.

Professional means a professional employed in Debtor's Chapter 11 case under 11 U.S.C. §§ 327 and/or 1103.

Professional Fee Claim means a Claim for compensation or reimbursement of expenses of a Professional retained in Debtor's cases in accordance with the provisions of Section 327 and 328 of the Bankruptcy Code.

Project means the real property and building improvements thereon referred to as "Peninsula on the Intracoastal", located at 2649 North Federal Highway, Boynton Beach, Florida 33435.

Property means all right, title and interest in and to any and all property of every kind or nature, owned by Debtor as of the Effective Date, including, but not limited to, property as defined in Section 541 of the Bankruptcy Code.

Purchase and Sale Agreement means the Purchase and Sale Agreement between the Debtor, as seller and NCB as Purchaser, attached as Annex B hereto.

Refund of Impact Fee means that certain refund of an impact fee, previously paid by Debtor, due to the Debtor for not constructing 20 townhomes in the Project

Schedules of Assets and Liabilities means the Schedules of Assets and Liabilities as amended from time to time and filed by Debtor in its Bankruptcy Case.

Secured Claim means a Claim for which a Claimant holds a valid, perfected and enforceable lien, not subject to avoidance or subordination under the Bankruptcy Code or applicable non-bankruptcy law, or a Claim for which a Claimant asserts a setoff under Section 553 of the Bankruptcy Code, but only to the extent of the value, determined in accordance with Section 506(a) of the Bankruptcy Code, of the Claimant's interest in Debtor's interest in the Property or to the extent of the amount subject to such setoff, as the case may be, unless a timely election has been made under Section 1111(b)(2) of the Bankruptcy Code.

Settlement Parties means Debtor, Vercon Construction Management, Inc., CDL Earthmoving and Paving, Inc., and Vila & Son Landscaping, Inc..

Unsecured Claim means a Claim that is not a Secured Claim. The term specifically includes any tort Claims or contractual Claims or Claims arising from damage or harm to the environment and, pursuant to Section 506(a) of the Bankruptcy Code, any Claim of a creditor against Debtor to the extent that such Creditor's Claim is greater than the value of the Lien securing such Claim, any Claim for damages resulting from rejection of any Executory Contract

pursuant to Section 365 of the Bankruptcy Code, and any Claim not otherwise classified under the Plan.

ANNEX "B"

PURCHASE AND SALE AGREEMENT