

## PLEDGE AND SECURITY AGREEMENT

**THIS PLEDGE AND SECURITY AGREEMENT** (“Pledge Agreement”) is made as of [\_\_\_\_\_], 2010, by and between **WATERS EDGE LIQUIDATION TRUST** (“Pledgor”) and **WACHOVIA BANK, NATIONAL ASSOCIATION**, as Administrative Agent for the Lenders (“Pledgee”).

### RECITALS:

A. Pledgor and Pledgee are parties to that certain Exit Loan Agreement dated as of the date hereof by and among Pledgor, Pledgee and Lenders (as amended, restated, supplemented or otherwise modified from time to time, the “Exit Loan Agreement”), pursuant to which Lenders have agreed to make Loans to Borrower;

B. Pursuant to the Plan, Pledgor shall pursue claims against Ruden, McCloskey, Smith, Schuster & Russell, P.A. and Mark Grant (collectively, the “RMSSR Parties”) pursuant to that certain case described as follows: Waters Edge One, L.L.C. v. Ruden, McCloskey, Smith, Schuster & Russell, P.A. and Mark Grant, Case No. 08012052CI-020, in the Circuit Court of the Sixth Judicial District in and for Pinellas County, Florida (together with any and all actions, proceedings, cases and appeals arising from the same facts and circumstances, but not including any claims against Waters Edge One L.L.C.’s officers, directors or employees, the “RMSSR Claims”).

C. The subject matter of the RMSSR Claims relates to legal services provided in connection with real estate and improvements in Clearwater, Florida (the “Waters Edge Property”) which are now owned by the Lenders as a result of a sale pursuant to Section 363 of the Bankruptcy Code.

D. Pledgor and Pledgee have agreed that Pledgor shall grant to Pledgee a first priority perfected security interest in and to the Collateral (as defined below), to secure any and all obligations of Pledgor arising under the Exit Loan Agreement.

E. As a material inducement to Pledgee’s agreements contained herein and in the Exit Loan Agreement and the other documents and instruments entered into by Pledgee in connection herewith and therewith, Pledgor has agreed to enter into this Pledge Agreement in order to, among other things, obtain the benefits of the Exit Loan Agreement and to evidence the security interest of Pledgee in and to the Collateral.

F. It is a condition precedent to the availability of the Loans under the Exit Loan Agreement that Borrower enter into this Agreement.

### AGREEMENTS:

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth hereinabove are incorporated herein as if fully set forth herein.

2. RMSSR Collateral Pledge. To secure the prompt payment and performance of all Obligations under the Exit Loan Agreement, Pledgor hereby grants to Pledgee (for the benefit of Pledgee and the Lenders) a security interest in the following collateral, whether now owned by Pledgor or hereafter acquired and whether the same constitutes accounts, chattel paper, commercial tort claims to the extent permissible under applicable law, deposit accounts, documents, general intangibles, goods, instruments, investment property, letter-of-credit rights, letters of credit or money (collectively, the "RMSSR Collateral"):

(i) net proceeds of the RMSSR Claims, including any and all sums paid, payable or owing at any time to Pledgor on account of or in relation to the RMSSR Claims, including any amounts awarded as damages or for legal fees and expenses (or amounts which may be paid in settlement of the RMSSR Claims by any party, including, without limitation, the RMSSR Parties and/or any insurer of the RMSSR Parties) to Pledgor in connection with the RMSSR Claims, after all costs and expenses incurred in connection with pursuing the RMSSR Claims, which are not covered or paid by proceeds from the Exit Loan Agreement (collectively, the "Net Litigation Award");

(ii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the RMSSR Collateral;

(iii) all books and records relating to the foregoing and all accounts, general intangibles; and

(iv) all proceeds of any or all of the property described in clauses 2(i) – 2(iii) above.

3. Pledge of Additional Collateral. To further secure the prompt payment and performance of all Obligations under the Exit Loan Agreement, Pledgor hereby grants to Pledgee (for the benefit of Pledgee and the Lenders) a security interest in the following collateral, whether now owned by Pledgor or hereafter acquired and whether the same constitutes accounts, chattel paper, commercial tort claims to the extent permissible under applicable law, deposit accounts, documents, general intangibles, goods, instruments, investment property, letter-of-credit rights, letters of credit or money (collectively, the "Additional Collateral"): All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are now or hereafter acquired by Pledgor; together with all rents and security deposits derived from or with respect to the Additional Collateral; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks; all

development rights and credits, and any and all permits; all interest rate protection agreements, including, without limitation, any swaps, caps and collars; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Pledgor; all advance payments of insurance premiums made by Pledgor; all plans, drawings and specifications; all loan funds held by Pledgee or the Lenders, whether or not disbursed; all funds deposited with Pledgee or the Lenders pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing; provided that the lien on Avoidance Actions shall be only to the extent that Loans made pursuant to the Exit Loan Agreement are used to pursue such Avoidance Actions.

4. Defined Terms. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Exit Loan Agreement, and if such terms are not defined in the Exit Loan Agreement, then such terms shall have the meanings ascribed to them in the Uniform Commercial Code as in effect in the State of New York (the "UCC"). As used herein, the term "Collateral" shall mean, collectively, the RMSSR Collateral and the Additional Collateral.

5. Application of the Litigation Award. Notwithstanding anything in the Loan Documents or any other document entered into by the parties hereto prior to the date hereof to the contrary, the parties hereto acknowledge and agree that all of the Net Litigation Awards necessary to satisfy and repay the Obligations under the Exit Loan Agreement shall be paid directly to Pledgee (and, if for any reason any Net Litigation Awards are paid directly to Pledgor or any party other than Pledgee, such amounts shall be held in trust for the benefit of Pledgee and immediately paid over to Pledgee) to be applied by Pledgee towards repayment of the Obligations. Pledgor further acknowledges that Pledgee shall be entitled, in accordance with the immediately preceding sentence, to set off, appropriate and apply against the Obligations any and all deposits received by Pledgee on account of the Net Litigation Awards.

6. Consultation Regarding the RMSSR Claims. Pledgor shall retain the right to supervise, control and direct prosecution of the RMSSR Claims, and in connection with such prosecution will do the following:

(a) Consult with Pledgee and exercise reasonable efforts to cause its current counsel and all participants in the RMSSR Claims on behalf of Pledgor (including, without limitation, witnesses and experts) to consult with Pledgee with respect to all significant decisions that materially affect the interests of Pledgee in prosecuting the RMSSR Claims and the implementation of the procedures set forth herein, and to cooperate with Pledgee with regard to the foregoing as is necessary and appropriate to protect Pledgee's interests as a creditor;

(b) Forward to Pledgee copies of all pleadings, notices, and communications in its possession relating to the RMSSR Claims;

(c) To the extent money is received from the Lenders under the Exit Loan Agreement, pay any and all legal fees and expenses incurred by Pledgor in connection with the RMSSR Claims as and when such fees and expenses come due in accordance with the terms of the Exit Loan Agreement and the Approved Budget;

(d) Promptly notify Pledgee of any settlement offers and consult with Pledgee prior to making any settlement demands with respect to the RMSSR Claims.

(e) Consult with Pledgee and take Lenders' interest into account prior to entering into any settlement with respect to any RMSSR Claims for an aggregate amount that is less than \$30,000,000.00; and

(f) Otherwise pursue the RMSSR Claims in accordance with the terms of the Plan.

7. Except as provided in the Exit Loan Agreement, Pledgee shall not, under any circumstances, undertake or assume any liability in connection with the RMSSR Claims including, without limitation, any liability for any loss, costs or damages arising as a result of any counterclaim or other action brought or instituted by any party (including, without limitation, the RMSSR Parties) in connection with the RMSSR Claims.

#### 8 Further Assurances.

(a) Pledgor hereby agrees: (i) to execute and deliver such documents as Pledgee deems necessary to create, perfect and continue the security interests contemplated hereby; (ii) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Pledgee prior written notice thereof; and (iii) to cooperate with Pledgee in perfecting all security interests granted herein to the extent reasonably required and in obtaining such agreements from third parties as Pledgee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder.

(b) Without limiting the foregoing, Pledgor hereby authorizes Pledgee to file, at the expense of Pledgee, UCC financing statements describing the Collateral. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as Pledgee may determine, in its reasonable discretion, is necessary, advisable or prudent to ensure that the perfection of the security interest in the Collateral granted to Pledgee herein. Pledgor hereby authorizes the filing of UCC financing statements, and continuation statements and amendments thereto and assignments thereof, describing the Collateral covered thereby as "all of debtor's personal property or assets" or words to that effect. Subject to adequate and timely funding by Pledgee, Pledgor shall take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of Pledgee in such Collateral and the priority thereof against any other lien or security interest.

9. Pledgee May Perform. If Pledgor fails to perform any agreement contained herein, Pledgee may perform, or cause to be performed, such agreement, and the expenses incurred in connection therewith shall constitute additional Obligations secured hereby.

10. Remedies upon Default. If Pledgor is in breach of any of its covenants set forth in this Pledge Agreement or the other Loan Documents, Pledgor shall be deemed to be in default hereunder and Pledgee may, in addition to all rights and remedies set forth in the Exit Loan Agreement: (a) exercise those rights and remedies set forth herein with respect to the Collateral; and (b) to the extent permitted by applicable law, exercise all of the rights and remedies of a secured party under the UCC.

11. Continuing Security Interest. This Pledge Agreement shall create a continuing security interest in and right of set-off against, the Collateral and shall: (a) be binding upon the parties hereto and their successors and assigns; (b) inure to the benefit of the parties hereto and their respective successors and assigns; and (c) survive the contribution of the RMSSR Claims to the any litigation trust.

12. Miscellaneous.

(a) The captions and headings of various Sections of this Pledge Agreement are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

(b) The Pledgee's failure, at any time or times hereafter, to require strict performance by Pledgor of any provision of this Pledge Agreement shall not waive, affect or diminish any right of Pledgee thereafter to demand strict compliance and performance therewith or with any provision of the other Loan Documents. Any suspension or waiver by Pledgee of any default under this Pledge Agreement or the other Loan Documents shall not suspend, waive or affect any other default under this Pledge Agreement or the other Loan Documents, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the undertakings, agreements, warranties, covenants or representations of Pledgor contained in this Pledge Agreement and no Default by Pledgor under this Pledge Agreement shall be deemed to have been suspended or waived by Pledgee unless such suspension or waiver is in writing by an officer of Pledgee and directed to Pledgor specifying such suspension or waiver. This Pledge Agreement may not be modified or amended, except in a written agreement signed by the parties hereto.

(c) THIS PLEDGE AGREEMENT SHALL BE CONSTRUED IN ALL RESPECTS IN ACCORDANCE WITH, AND GOVERNED BY, ALL OF THE PROVISIONS OF THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE APPLICATION OF THE LAWS OF ANOTHER STATE), EXCEPT TO THE EXTENT THAT, UNDER THE UCC, THE LAWS OF ANOTHER JURISDICTION GOVERN THE PERFECTION, EFFECT OF PERFECTION OR PRIORITY OF ANY SECURITY INTERESTS CREATED HEREBY.

(d) This Pledge Agreement is made for the sole benefit of: (a) Pledgor and its permitted successors and assigns; and (b) Pledgee and its successors and assigns, and no other

person or persons shall have any benefits, rights or remedies under or by reason of this Pledge Agreement.

(e) THE PARTIES HERETO ARE NOT NOW, AND UPON THE EXERCISE OF ANY OR ALL OF THE PLEDGEE'S REMEDIES HEREUNDER, SHALL NOT BE JOINT VENTURERS OR PARTNERS WITH EACH OTHER IN ANY MANNER WHATSOEVER AND NO PROVISION HEREIN AND NO COURSE OF DEALING BETWEEN THE PARTIES SHALL BE DEEMED TO CREATE ANY AGENCY RELATIONSHIP BETWEEN PLEDGOR AND PLEDGEE, NOR ANY FIDUCIARY DUTY BY PLEDGEE TO PLEDGOR OR PLEDGOR TO PLEDGEE.

(f) THE PARTIES HERETO HEREBY CONSENT TO THE JURISDICTION OF THE FEDERAL BANKRUPTCY COURT WITHIN THE STATE OF DELAWARE HAVING PROPER VENUE, AND ALSO CONSENT TO SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY THE STATE OF NEW YORK OR FEDERAL LAW, AND ALSO IRREVOCABLY AGREE THAT UPON THE SOLE AND ABSOLUTE ELECTION OF ANY PARTY HERETO, ALL ACTIONS OR PROCEEDINGS RELATING TO THIS PLEDGE AGREEMENT SHALL BE LITIGATED IN SUCH COURTS (OTHER THAN TO THE EXTENT AN ACTION MUST BE MAINTAINED IN THE COURTS WHERE THE COLLATERAL IS LOCATED), AND EACH PARTY WAIVES ANY OBJECTION WHICH THEY MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING IN ANY SUCH COURT. THE PARTIES HERETO ACKNOWLEDGE THAT THE TIME AND EXPENSE REQUIRED FOR TRIAL BY JURY EXCEED THE TIME AND EXPENSE REQUIRED FOR A BENCH TRIAL AND HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY.

(g) This Pledge Agreement may be executed in any number of counterparts, any or all of which may contain the signature of only one of the parties, and all of which shall be construed together as a single instrument.

(h) The terms, covenants and conditions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

(i) This Pledge Agreement contains the entire understanding of the parties hereto with regard to the subject matter contained herein, and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements and representations of every nature whatsoever with respect to the matters referred to in this Pledge Agreement, all of which have become merged and finally integrated into this Pledge Agreement.

(j) The provisions of this Pledge Agreement are intended by the parties hereto to be fully severable, and each obligation undertaken herein to be separately enforceable without regard to the enforceability of any other provision. To that end, the court is requested to reform any and all terms to give them the fullest possible effect under the law, and if any provision in this Pledge Agreement is held to be inoperative, unenforceable, or invalid in any jurisdiction, such provision shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions of this Pledge Agreement (or the remaining portions of that

offending provision which do not affect the legality thereof) and without affecting the operation, enforceability, or validity of that provision in any other jurisdiction.

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IN WITNESS WHEREOF, the parties hereto have executed this Pledge Agreement as of the day and year first set forth above.

**WACHOVIA BANK,  
NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**WATERS EDGE LIQUIDATION TRUST**

By: EXECUTIVE SOUNDING BOARD ASSOCIATES,  
INC., SOLELY IN ITS CAPACITY AS  
LIQUIDATION TRUSTEE OF WATERS EDGE  
LIQUIDATION TRUST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_