

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re: Chapter 11  
ODYSSEY PROPERTIES III, LLC, Case No. 8:10-bk-18713-CPM  
et al.,  
Debtors. (Jointly Administered with cases  
8:10-bk-18715-CPM; 8:10-bk-18718-CPM;  
8:10-bk-18719-CPM; 8:10-bk-18720-CPM;  
8:10-bk-18721-CPM; 8:10-bk-18723-CPM;  
8:10-bk-18725-CPM; 8:10-bk-18728-CPM;  
and 8:10-bk-18730-CPM)

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ODYSSEY (III) DP XVII, LLC, Case No. 8:10-bk-18715-CPM  
CRF-PANTHER IX, LLC, 8:10-bk-18720-CPM  
PARADISE SHOPPES 8:10-bk-18728-CPM  
AT APOLLO BEACH, LLC

Applicable Debtors.  
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**ORDER CONFIRMING JOINT CHAPTER 11 PLAN  
OF LIQUIDATION FOR ODYSSEY (III) DP XVII, LLC,  
CRF-PANTHER IX, LLC AND PARADISE SHOPPES AT  
APOLLO BEACH, LLC UNDER CHAPTER 11 OF TITLE 11,  
UNITED STATES CODE AND APPROVING SALES OF ASSETS**

THIS CASE came before the Court for hearing on May 18, 2011, at 1:30 p.m. (the “**Confirmation Hearing**”), to consider: (i) confirmation of the *Joint Plan of Liquidation for Odyssey (III) DP XVII, LLC, Paradise Shoppes at Apollo Beach, LLC and CRF-Panther IX, LLC Under Chapter 11 of Title 11, United States Code* (Doc. No. 240), as amended by that certain Amendment to Joint Plan of Liquidation of Odyssey (III) DP XVII, LLC, Paradise Shoppes at Apollo Beach, LLC, and CRF-Panther IX, LLC Under Chapter 11 of Title 11, United States Code (Doc. No. 307) (as used in this Confirmation

Order, including the modifications set forth below, the “**Plan**”<sup>1</sup>, (ii) approval of the sales of the Debtors’ assets pursuant to the Purchase Agreements and the transactions contemplated thereby, as described herein, and final approval of the Joint Disclosure Statement for Plan of Liquidation of Odyssey (III) DP XVII, LLC, Paradise Shoppes at Apollo Beach, LLC and CRF-Panther IX, LLC (the “**Disclosure Statement**”) (Doc. No. 239).

At the Confirmation Hearing, the Debtors were represented by Edward J. Peterson, III; the Office of the United States Trustee (the “**US Trustee**”) was represented by Benjamin E. Lambers, Esq.; Wells Fargo Bank, N.A. (“**Wells**”) was represented by Drew M. Dillworth, Esq.; ~~OC-DIP, LLC~~ was represented by Zala Forizs, Esq.; and the Odyssey III Noteholders were represented by Gregory Golson, Esq.; St. Charles Station LLC (“**St. Charles Station**”) was represented by Joseph R. Sgroi; Cole CCPT III Acquisitions, LLC (“**Cole**”) was represented by David Cranshaw, Esq.; and BRY 2010 Auction, LLC (“**BRY**”) had a business person present. St. Charles Station, Cole and BRY are referred to herein collectively as “**Purchasers**” and individually as a “**Purchaser**.”

These Chapter 11 Cases were commenced on August 2, 2010 (the “**Petition Date**”), the date on which the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. From the Petition Date through the present, the Debtors remained in possession of their respective assets and properties as debtors in possession.

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<sup>1</sup> Capitalized terms used but not defined in this Confirmation Order shall have the meanings ascribed to them in the Plan.

Wells is the largest secured creditor of the Debtors with a first priority lien on substantially all of the assets of the Debtors. Wells asserts a Claim against the Debtors in the amount of \$42,286,841.00. On January 27, 2011, the Debtors and Wells participated in a judicial settlement conference with the Honorable Paul Hyman. The settlement conference resulted in a global settlement between Wells and the Debtors. In summary, the global settlement between the Debtors and Wells provides for a structured sale of substantially all of the assets of the Debtors through a Court approved auction process, with carve outs sufficient to pay in full the Holders of Allowed Unsecured Claims. The Plan incorporates the global settlement between Wells and the Debtors.

On February 23, 2011, the Debtors filed their Emergency Motion to Approve Settlement Term Sheet with Wells Fargo Bank, N.A. (Doc. No. 168) (the “**Settlement Motion**”). At the February 25, 2011 hearing on the Settlement Motion, counsel for the Debtors and Wells Fargo Bank, N.A. requested that this Court enter an order on negative notice: (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Assets of Odyssey XVII, Paradise Shoppes, and CRF-Panther, (II) Establishing Procedures for the Assumption and/or Assignment by the Debtor of Certain Executory Contracts and Unexpired Leases, (III) Approving Form and Manner of Notice of Bidding Procedures, and (IV) Setting Objection Deadlines (the “**Ore Tenus Procedures Motion**,” collectively with the Settlement Motion, the “**Motions**”).

On March 11, 2011, the Debtors filed an Application for Authorization to Employ Holliday Fenoglio Fowler, L.P. As Broker *Nunc Pro Tunc* to January 27, 2011. Holliday Fenoglio Fowler, L.P. (the “**Broker**” or “**HFF**”) has served as the broker in connection

with the Auction and sale of the Sale Assets. HFF has widely marketed the Sale Assets in a manner sufficient to put interested bidders on notice of the sale of the Sale Assets.

In connection with the proposed sale by the Debtors of the Sale Assets, on April 7, 2011, this Court entered its Order (A) Granting Wells Fargo Debtors' Emergency Motion (Doc. No. 168) to Approve Settlement Term Sheet with Wells Fargo Bank, N.A.; (B) Authorizing Sales of Substantially all the Assets of the Estates of Odyssey (III) DP XVII, LLC, 8:10-18715-CPM, CRF-Panther IX, LLC, 8:10-18720-CPM and Paradise Shoppes at Apollo Beach, LLC, 8:10-18728-CPM; (C) Establishing Bidding Procedures in Connection with the Sales of Substantially all the Assets of the Estates of Odyssey (III) DP XVII, LLC, 8:10-18715-CPM, CRF-Panther IX, LLC, 8:10-18720-CPM and Paradise Shoppes at Apollo Beach, LLC, 8:10-18728-CPM, and (D) Setting Objection Deadline for Proposed Settlement, Sales and Other Transactions Contemplated Thereby (Doc. No. 232) pursuant to which it granted the Motions (the "**Sale Order**"). A true and correct copy of the Sale Order is attached hereto as **Exhibit A** and incorporated herein by reference. The Sale Order sets forth bid procedures (the "**Bid Procedures**") for the sale of the Sale Assets. In the Sale Order, the Court established a deadline of 5:00 p.m. (Eastern Daylight Time) on May 16, 2011 (the "**Objection Deadline**") for the filing of any and all objections to the sale of the Sale Assets. Moreover, pursuant to the Sale Order, the Auction to consider any competing bids in respect of the Sale Assets was scheduled for May 17, 2011, with the Sale Approval Hearing to be held on May 18, 2011 at 1:30 p.m.

On April 8, 2011, the Debtors filed the Plan and their Joint Disclosure Statement Pursuant to 11 U.S.C. § 1125 for the Joint Plan of Liquidation of Odyssey (III) DP XVII,

LLC, CRF-Panther IX, LLC and Paradise Shoppes at Apollo Beach, LLC (Doc. No. 239) (the “**Disclosure Statement**”). The Plan provides for the sale of the Sale Assets pursuant to the Bid Procedures. On April 12, 2011, the Court entered an order conditionally determining that the Disclosure Statement meets the “adequate information” standards required by Section 1125 of the Code, approving the Disclosure Statement, scheduling the confirmation hearing, and fixing the time for filing acceptances or rejections of the Plan (Doc. No. 247) (the “**Disclosure Statement Order**”).

Pursuant to the Disclosure Statement Order, copies of the Disclosure Statement, the Plan, and the Disclosure Statement Order, together with a Ballot (collectively, the “**Solicitation Package**”), were mailed by the Debtors to all Creditors of the Debtors and to other parties in interest. Appropriate affidavits and certificates have been filed in the record regarding such service. Copies of the Solicitation Package were transmitted and served in substantial compliance with the Disclosure Statement Order, the Federal Rules of Bankruptcy Procedure (including without limitation F.R.B.P. 3017(d)), and the Local Rules of this Court. Such transmittal and service were adequate, sufficient, and compliant with due process. Timely and proper notice of the Confirmation Hearing and of the time fixed for filing objections to and Ballots accepting or rejecting the Plan was given to all appropriate Creditors and equity security holders and all parties in interest in accordance with orders of this Court. Such notice complied with due process and was adequate and sufficient to notify all appropriate Creditors and equity security holders and parties in interest of the Confirmation Hearing and the objection and voting deadlines as to the Plan. Such notice also complied in all respects with the procedural orders of this

Court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (including without limitation F.R.B.P. 2002, 3018, 3019, and 9006), and the Local Rules of this Court and otherwise satisfied the requirements of due process. Adequate and sufficient notice of the Confirmation Hearing and other deadlines was given in compliance with the Disclosure Statement Order, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court.

Pursuant to the Sale Order and the Plan, certain Bidders submitted Bids pursuant to Term Sheets in the form attached as Exhibit 2 to the Sale Order. After reviewing the content of the Bids, Wells and the Debtors designated a group of Bidders that are qualified (the “**Qualified Bidders**”) to consummate the subject transactions and participate in the Auction.

Pursuant to the Sale Order and the Plan, the Debtors submitted to all Qualified Bidders a form Purchase Agreement that matched the terms of the Term Sheet. Certain Qualified Bidders submitted their respective fully executed Purchase Agreement and the Bid Deposit in the amount of ten percent (10%) of the total purchase price(s) as set forth in the Bid Procedures.

The Auction, as defined in the Sale Order and the Plan, was held on May 17, 2011. At the Auction, Wells made credit bids in the following amounts: \$8,965,000 for the Sale Assets of Odyssey (III) DP XVII, LLC; \$8,870,000 for the Sale Assets of Paradise Shoppes at Apollo Beach, LLC; and \$11,635,000 for the Sale Assets of CRF-Panther IX, LLC. Following the Auction, Wells, after consultation with the Debtors, selected the highest and best offer(s) in its reasonable discretion.

At the Sale Approval Hearing, on May 18, 2011, the Debtors and Wells recommended for approval by the Court the transactions set forth in the following Purchase Agreements, as subsequently amended as provided herein (collectively, the “**Purchase Agreements**”), which were the highest and best Bids made at the Auction:

*St. Charles Plaza.* That certain Purchase Agreement (the “**St. Charles Purchase Agreement**”) by and between the Debtor, Odyssey (III) DP XVII, LLC (“**Odyssey XVII**”) and St. Charles Station, providing for the sale by Odyssey XVII, and the purchase by St. Charles Station, pursuant to 11 U.S.C. § 363, of the Sale Assets (as further described in the legal description attached hereto as **Exhibit B**) of Odyssey XVII for \$10,100,000.00 in cash, free and clear of any and all claims (including "claims" as defined in Section 101(5) of the Bankruptcy Code), mortgages, pledges, liens, security interests, interests, charges, encumbrances, setoffs, recoupments, Cure Claims, as defined in the Plan, liabilities, debts, indebtedness, costs, damages, judgments or obligations of any character whatsoever and whenever arising, either before or after the Petition Date (collectively, the "**Encumbrances**"), with such Encumbrances to attach to the proceeds of the sale as further described below in this Order.

*Paradise Shoppes.* That certain Purchase Agreement (the “**Paradise Shoppes Purchase Agreement**”) by and between the Debtor, Paradise Shoppes at Apollo Beach, LLC (“**Paradise Shoppes**”) and BRY, providing for the sale by Paradise Shoppes, and the purchase by BRY, pursuant to 11 U.S.C. § 363, of the Sale Assets (as further described in the legal description attached hereto as **Exhibit C**) of Paradise Shoppes for

\$10,175,000.00 in cash, free and clear of any and all Encumbrances, with such Encumbrances to attach to the proceeds of the sale as further described below in this Order.

*Century Town Center.* That certain Purchase Agreement (the “**Century Town Center Purchase Agreement**”) by and between the Debtor, CRF-Panther IX, LLC (“**CRF-Panther**”), and Cole providing for the sale by CRF-Panther, and the purchase by Cole, pursuant to 11 U.S.C. § 363, of the Sale Assets (as further described in the legal description attached hereto as **Exhibit D**) of CRF-Panther for \$14,775,000.00 in cash, free and clear of any and all Encumbrances, with such Encumbrances to attach to the proceeds of the sale as further described below in this Order. As part of the purchase of the Sale Assets of Century Town Center, the Debtor is assuming and assigning to Cole that certain lease with Marshalls, and Cole, or its assignee, is assuming the obligations of the Debtor under the Marshalls’ lease. CRF-Panther and Cole have agreed that the Century Town Center Purchase Agreement, as it relates to the shopping center tract, will be assigned to and closed in the name of Cole MT Vero Beach FL, LLC, a Delaware limited liability company, which is wholly owned by Cole Reit III Operating Partnership, LLC, a Delaware limited liability company.

The following second highest and best Bids were made at the Auction: That certain Backup Bid for the Sale Assets of CRF-Panther made by CRP II-Century Town Center, LLC in the amount of \$14,750,000.00; that certain Backup Bid for the Sale Assets of Odyssey XVII made by Westdale Asset Management, Inc. in the amount of \$10 million; that certain Backup Bid for the Sale Assets of Paradise Shoppes made by St. Charles Station, or its assignee, in the amount of \$10,150,000.00.



The Court finds that the Bid Procedures have been duly complied with in all respects by the Debtors. The Court finds that the implementation and conduct of the Bid Procedures were fair and reasonable under the circumstances and reasonably calculated to achieve the highest and best price for the Sale Assets for the benefit of the Debtors' estates and creditors.

No objections to the sale of the Sale Assets were filed with the Court.

The Court further finds that, based upon the entire record:

- (a) The Debtors have advanced sound and sufficient business reasons and it is a reasonable exercise of the Debtors' business judgment pursuant to Section 363 of the Bankruptcy Code to sell the Sale Assets to the Purchasers, in accordance with the terms of the Purchase Agreements. The Debtors' entry into the Purchase Agreements is further justified by the compelling circumstances described in the Motions and the Sale Order and the representations and proffers offered in support at the Sale Approval Hearing and at previous hearings before this Court.
- (b) The Purchase Agreements resulted from an extensive search and marketing process and good faith arm's-length negotiations. The Purchasers are not affiliates of the Debtors under 11 U.S.C. § 101(2) or an insider of the Debtors under 11 U.S.C. § 101(31).
- (c) Pursuant to the terms of the Purchase Agreements, the Debtors will be relieved of liabilities thus reducing potential claims.
- (d) The Debtors and the Purchasers have each acted in good faith and without collusion or fraud in connection with the preparation, negotiation and execution of the Purchase Agreements, the subject matter of the Sale Order and this Order, and the implementation of the Sale Order and the Bid Procedures. Without limiting the foregoing, the Purchase Agreements have been negotiated in good faith, at arm's-length, and not by any means forbidden by law. The Court specifically finds that the Purchasers have acted in good faith in pursuing and closing the transactions contemplated under the Purchase Agreements for purposes of Section 363(m) of the Bankruptcy Code or otherwise and each Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code. Neither the Debtors nor the Purchasers have engaged in any conduct that

would cause or permit the Purchase Agreements to be avoided under Section 363(n) of the Bankruptcy Code.

- (e) The consideration provided by the Purchasers for the purchase of the Sale Assets pursuant to the Purchase Agreements exceeds what the Debtors would be able to realize in a liquidation of the Sale Assets, represents fair and adequate consideration for the Sale Assets, and will provide a meaningful distribution to creditors of the Debtors.
- (f) The Purchase Agreements were not entered into, and neither the Debtors nor the Purchasers have entered into the Purchase Agreements or propose to consummate the sale of the Sale Assets, for the purpose of hindering, delaying or defrauding the Debtors' creditors. Neither the Debtors nor the Purchasers have entered into the Purchase Agreements or propose to consummate the sale of the Sale Assets fraudulently for the purpose of statutory or common law fraudulent conveyance or fraudulent transfer claims, whether under the Bankruptcy Code or under the laws of the United States, any state, territory or possession thereof, or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.
- (g) The Debtors have articulated good and sufficient business justifications for the sale pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code.
- (h) The Sale Assets may be sold pursuant to Section 363(f) of the Bankruptcy Code because Wells consents to the sale, with its asserted lien to attach to the proceeds of the sale to the same validity, priority and extent that such lien against the Sale Assets exists on the Closing Date (as defined in the Purchase Agreements).
- (i) The offers evidenced by the Purchase Agreement(s) constitute the highest and best offers for the Sale Assets.
- (j) The Purchase Agreements and the consideration to be paid by the Purchasers under the Purchase Agreements constitute reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory or possession thereof or the District of Columbia
- (k) The sales of the Sale Assets to the Purchasers are a necessary and appropriate step toward enabling the Debtors to successfully conclude these Chapter 11 cases as part of a plan of liquidation.

- (l) The sales of the Sale Assets to the Purchasers are in the best interests of the Debtors, their creditors and estates and all parties in interest.
- (m) As of the Closing, the transfer of the Sale Assets to the Purchasers will be a legal, valid, and effective transfer of the Sale Assets, and will vest the Purchasers with all right, title and interest of the Debtors in and to the Sale Assets, free and clear of all Encumbrances.

On May 13, 2011, the Debtors filed a Ballot Tabulation and Summary (the “**Ballot Tabulation**”) (Doc. No. 295) reflecting the acceptances and rejections of each Class that voted to accept or reject the Plan on or prior to the Voting Deadline. On May 16, 2011, the Debtors filed with the Court the Debtors’ Confirmation Affidavit and Memorandum in Support of Confirmation (Doc. No. 308) (the “**Confirmation Affidavit**”). In light of the fact that there were no ballots cast by the Holders of Unsecured Claims in Classes 5A-5C, counsel for the Debtors announced on the record that the payments to Holders of Allowed Unsecured Claims will include interest at the Federal Judgment Rate and such payments will be made to Holders of Allowed Unsecured Claims on or before the date that is thirty days after the entry of this Order.

*cpm*

The Court finds that the Classes 5A-5C are not Impaired and are deemed to accept the Plan.

Subject to the modification of Article 14.10 of the Plan as agreed to by the Debtors and the staff of the U.S. Securities and Exchange Commission (the “**SEC**”), this Court has jurisdiction as provided by 28 U.S.C. § 1334 over the Debtors, the Debtors’ Chapter 11 Cases, all Claims against and Equity Interests in the Debtors, all Creditors of the Debtors, and all of the Debtors’ property, contracts, and assets, wherever located. Confirmation of the Plan and approval of the sales of the Sale Assets are “core proceedings” pursuant to, and without limitation, 28 U.S.C. §§ 157(b)(2)(A), (L), and


(O). The Court has jurisdiction to enter a final order with respect to Confirmation of the Plan and the approval of the sales of the Sale Assets. Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

The Court finds that the Motions, the Plan, the Sale Order, the Bid Procedures, and notice of the Sale Hearing and the Objection Deadline were served upon (i) Wells and its counsel, (ii) the U.S. Trustee, (iii) all parties which, to the knowledge of the Debtors, have or have asserted liens or other interests in the Sale Assets, (iv) the parties set forth on the Master Service List for these Chapter 11 cases, (v) all creditors of the Debtors, (vi) certain governmental entities, including the Internal Revenue Service, the Florida Department of Revenue, the Polk County Tax Collector, the Indian River County Tax Collector, and the Hillsborough County Tax Collector. The Court finds that notice to creditors and other parties in interest was adequate and sufficient, that it complied in all respects with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, and otherwise satisfies the requirements of due process. The Court further finds that appropriate certificates of mailing and service have been filed in the record regarding such notice.

The Office of the United States Trustee filed an objection to confirmation (Doc. No. 288) (the “**UST Objection**”), in which it raised an objection to the scope of the discharge provisions in Article 11.1 of the Plan and the scope of the exculpation provision set forth in Article 11.2 of the Plan. As further discussed below, based on the facts and circumstances of these Bankruptcy Cases, the Court finds that the UST Objection as it relates to Article

11.1 of the Plan should be sustained because the factors of Section 1141(d)(3) of the Bankruptcy Code are present in these Bankruptcy Cases.

With respect to the UST's objection to exculpation provision, the Court finds that the objection should be sustained in part and denied in part. Based on the facts and circumstances of these Bankruptcy Cases, the Court finds that the provisions of Article 11.2 shall be limited to Lawrence W. Maxwell and William Maloney.

 Additionally, according to proffers, the staff of the SEC informally raised an objection with respect to the scope of the discharge provision in Article 11.1. The modification of Article 11.1 set forth in paragraph five below has resolved this objection. Moreover, the staff of the SEC raised an objection with respect to the scope of the jurisdictional provisions in Article 14.10 of the Plan. As a resolution of this objection, counsel for the Debtors announced that Article 14.10 is hereby modified such that the following provision is to be added to Article 14.10:

“Nothing in the Plan or in this Order shall diminish or enhance the Court’s jurisdiction over the U.S. Securities and Exchange Commission pursuant to applicable law, including, without limitation, 11 U.S.C. Section 106, 1109, and 28 U.S.C. Section 1334.”

The foregoing modifications are collectively referred to herein as the “Modifications.”

The Court has considered the foregoing findings of fact, as well as the Plan, the Modifications, and the Purchase Agreements, together with the record and the arguments of counsel, the Confirmation Affidavit, the Ballot Summary, and the testimony proffered by counsel at the Sale Approval Hearing and the Confirmation Hearing, and being otherwise duly advised in the premises, and for the reasons announced on the record,

finds that the terms of the Plan and the proposed sales pursuant to the Purchase Agreements are in the best interests of the Debtors, their creditors and estates and all parties in interest, the Plan meets all of the requirements of Section 1129(a) of the Bankruptcy Code, and the sales to the Purchasers represent the highest and best offers for the Sale Assets and should be approved.

Accordingly, for the foregoing reasons, as well as those stated orally and recorded in open court which shall constitute the decision, findings of fact, and conclusions of law of the Court, it is

**ORDERED, ADJUDGED AND DECREED** that:

1. ***Findings of Fact and Conclusions of Law.*** To the extent that any of the findings of fact set forth in this Confirmation Order are deemed to be conclusions of law, such findings of fact are confirmed as conclusions of law.

2. ***Oral Findings of Fact Incorporated.*** All oral findings of fact and conclusions of law reached by the Court at the Confirmation Hearing are incorporated by reference and are made a part of this Confirmation Order, in accordance with F.R.B.P. 7052(a).

**Confirmation of Plan and Final Approval of Disclosure Statement**

3. ***Final Approval of Disclosure Statement.*** The Disclosure Statement is hereby approved on a final basis as meeting the requirements of 11 U.S.C. § 1125.

4. ***Benefit to Creditors.*** The Plan, the statements of counsel, and the entire record reveal that the transactions contemplated by the Plan and the sale of the Sale Assets will provide benefit to all Creditors and will provide for payments to be made on

account of Allowed Administrative Expense Claims, Priority Tax Claims, DIP Loan Claims, Priority Claims, Secured Claims and Other Claims of Wells, Secured Tax Claims of Governmental Units, other Secured Claims, Unsecured Claims and Equity Interests.

5. ***The UST Objection.*** Based on the facts and circumstances of these Bankruptcy Cases, the UST Objection as it relates to Article 11.1 of the Plan is sustained because the factors of Section 1141(d)(3) of the Bankruptcy Code are present in these Bankruptcy Cases. Article 11.1 of the Plan is hereby amended and replaced with the following provision:

As the factors set forth in 11 U.S.C. § 1141(d)(3) are present in these Bankruptcy Cases, based on the facts and circumstances of these Bankruptcy Cases, confirmation of the Plan does not result in a discharge of the Debtors within the meaning of 11 U.S.C. § 1141.

Nothing in the Plan or in this Confirmation Order, including numbered paragraphs 33 and 36 herein, shall restrict or limit any federal government regulatory agency from pursuing any regulatory or police enforcement action or performing its statutory duties against any Person or Entity, including the Debtors, in any non-bankruptcy forum, but only to the extent not prohibited by the automatic stay of Section 362 of the Bankruptcy Code. Nothing contained in the Plan is intended to, nor shall it, supersede or alter any applicable provisions of the Bankruptcy Code.

The UST Objection as it relates to the exculpation provision in Article 11.2 of the Plan is sustained in part and denied in part. Based on the facts and circumstances of these Bankruptcy Cases, the provisions of Article 11.2 shall be applicable only to Lawrence W. “Larry” Maxwell and William Maloney.

6. ***Compliance with Sections 1122 and 1123.*** The Plan complies with all of the applicable provisions of Title 11 of the United States Code including, without limitation, the provisions of Sections 1122 and 1123 of the Bankruptcy Code.

7. ***Compromises.*** The Court finds that, pursuant to Section 1123(b)(3) of the Bankruptcy Code and F.R.B.P. 9019(a), the Debtors have demonstrated that each of the compromises and settlements reflected or referenced in the Plan or this Confirmation Order or announced by counsel for the Debtors at the Confirmation Hearing are fair, equitable, reasonable, and proper and are in the best interests of the Debtors' Estates and their Creditors.

8. ***Compliance with Sections 1125 and 1126.*** The Debtors have complied with the disclosure and solicitation requirements of Sections 1125 and 1126 of the Bankruptcy Code. Further, the Disclosure Statement and the Plan contain adequate information for purposes of Section 1125, and no further disclosure is required by the Debtors in connection with the Plan. The Debtors have acted in good faith and complied in all respects with Section 1125 of the Bankruptcy Code; F.R.B.P. 3017, 3018, and 3019; all procedural orders of this Court; all other applicable provisions of the Bankruptcy Code; and all other applicable laws, rules, and regulations.

9. ***Plan Compliance with Bankruptcy Code.*** The Plan complies with all applicable provisions of the Bankruptcy Code, satisfying Section 1129(a)(1) of the Bankruptcy Code.

10. ***Compliance with Bankruptcy Code.*** The Debtors are proper debtors under Section 109 of the Bankruptcy Code. The Debtors are proper proponents of the Plan under Section 1121(a) of the Bankruptcy Code. The Debtors have complied with the applicable provisions of the Bankruptcy Code and the matters provided or permitted by orders of the Court. The Debtors have complied with the applicable provisions of the



Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order in transmitting the Plan, the Disclosure Statement, the Ballot, and related documents and notices, and in soliciting and tabulating votes on the Plan. The Debtors, as the proponents of the Plan, therefore have complied with the applicable provisions of Title 11 of the United States Code, satisfying Section 1129(a)(2) of the Bankruptcy Code.

11. ***Plan Proposed in Good Faith.*** The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying Section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Cases and the formulation of the Plan. This Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and honest purpose of maximizing the value of the Debtors' assets and the recovery to Creditors under the circumstances of these Chapter 11 Cases.

12. ***Payments for Services.*** Any payment made or to be made by the Debtors for services or for costs and expenses in connection with this Chapter 11 Case (including all Administrative Expense Claims under Section 503 of the Bankruptcy Code) or in connection with the Plan and incident to these Chapter 11 Cases, has been approved by, or is subject to the approval of, the Court as reasonable, satisfying Section 1129(a)(4) of the Bankruptcy Code.

13. ***Directors and Officers.*** The Debtors have complied with Section 1129(a)(5) of the Bankruptcy Code by disclosing the identity of the executive officers and directors of the Debtors following the Effective Date.

14. **No Governmental Regulation of Rates.** Section 1129(a)(6) of the Bankruptcy Code is satisfied because the business of the Debtors are not subject to governmental regulation of rates.


15. **Best Interest of Creditors.** In that the Plan calls for the liquidation of the Debtors, there is no advantage to conversion of these Chapter 11 Cases to cases under Chapter 7. Conversion to Chapter 7 would simply add an additional layer of administrative expenses to the Estates with no assurance that sufficient income would be generated to pay the administrative expenses. In addition, Unsecured Creditors would fare no better if the case were converted to Chapter 7 given the additional administrative expenses incurred, the inability of a Chapter 7 trustee to fund the costs of operating the Debtors, and the inability of a Chapter 7 trustee to utilize the work product and knowledge of the Debtors and their professionals. The Plan therefore satisfies Section 1129(a)(7) of the Bankruptcy Code.

16. **Unimpaired Classes.** Classes 1, 3, and 5 (the “**Unimpaired Classes**”) are unimpaired under the Plan as amended in open court, as the term “unimpaired” is defined in Section 1124 of the Bankruptcy Code. Accordingly, the Unimpaired Classes are deemed to have accepted the Plan and are not entitled to vote on the Plan.


17. **Impaired Classes.** Classes 2, 4, and 6 (collectively, the “**Impaired Classes**”) are impaired under the Plan, as the term “impaired” is defined in Section 1124 of the Bankruptcy Code. Classes 2 through 4 and 6 were entitled to submit votes to accept or reject the Plan. No claims were filed or scheduled in Class 4; its acceptance of the Plan is irrelevant.

18. **Accepting Impaired Classes.** Classes 2A-2C unanimously voted to accept the Plan as set forth in the Ballot Tabulation. As a result, at least one Impaired Class has voted to accept the Plan, determined without including any acceptance of the Plan by any insider, thereby satisfying the requirement of Section 1129(a)(10) of the Bankruptcy Code.

19. **Acceptance and Deemed Acceptance.** With respect to each Impaired Class of Claims, each Holder of a Claim of such Class (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors had filed for relief under Chapter 7 of Title 11 of the United States Code on the Petition Date. ~~The Plan has been accepted or is deemed accepted by all Impaired Classes entitled to vote on the Plan, thereby satisfying the requirements of Section 1129(a)(8) of the Bankruptcy Code.~~



20. **Deemed Rejected.** Class 6 is deemed to have rejected the Plan, but the Plan meets the requirements of Section 1129(b)(2)(B) in that the Plan does not discriminate unfairly and is fair and equitable with respect to this class of interests.



21. **Treatment of Administrative Expense Claims, Priority Tax Claims, and Priority Claims.** The treatment of Administrative Expense Claims and Priority Claims under the Plan satisfies the requirements of subparagraphs (A) and (B), respectively, of Section 1129(a)(9) of the Bankruptcy Code. The treatment of Priority Tax Claims under the Plan satisfies subparagraph (C) of Section 1129(a)(9).

22. **Administrative Expenses Claims.** Except to the extent that the Holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that, with respect to a Claim of a kind specified in Section 507(a)(1) of the Code, on the Effective Date, the Holder of such Claim will receive on account of such Claim: (a) on the Effective Date, an amount, in Cash, by the Reorganized Debtors equal to the Allowed Amount of its Administrative Expense Claim, in accordance with Section 1129(a)(9)(A) of the Bankruptcy Code, or (b) under such other terms as may be agreed upon by both the Holder of such Allowed Administrative Expense Claim and the Debtors or the Reorganized Debtors, as the case may be, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

23. **Priority Claims.** Except to the extent that the Holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that, with respect to a Claim of a kind specified in paragraphs (3) through (7) of Section 507(a) of the Code, on the Effective Date, the Holder of such Claim will receive an amount in Cash equal to the Allowed Amount of its Administrative Expense Claim. Notwithstanding the above, each Holder of an Allowed Priority Claim may be paid under such other terms as may be agreed upon by both the Holder of such Allowed Priority Claim and the Debtors or the Reorganized Debtors, as the case may be.

24. **Priority Tax Claims.** Except to the extent that the Holder of a Priority Tax Claim has agreed to a different treatment of such Claim, the Plan provides that each Holder of an Allowed Priority Tax Claim shall receive ~~regular installment payments in~~ Cash in accordance with Section 1129(a)(9)(D) of the Bankruptcy Code.



Notwithstanding the above, each Holder of an Allowed Priority Tax Claim may be paid under such other terms as may be agreed upon by both the Holder of such Allowed Priority Claim and the Debtors or the Reorganized Debtors, as the case may be.

25. ***Feasibility.*** Because the Debtors are being liquidated under the Plan, the Plan satisfies Section 1129(a)(11) of the Bankruptcy Code.

26. ***Payment of Fees.*** To the extent that all fees payable to the United States Trustee under 28 U.S.C. § 1930(a)(6) have not been paid, the Plan and this Confirmation Order provide for the payment of all such fees due on the Effective Date of the Plan and as they come due after the Effective Date. Accordingly, the Plan satisfies Section 1129(a)(12) of the Bankruptcy Code.

27. ***Continuation of Retiree Benefits.*** No retiree benefits, as that term is defined in Section 1114 of the Bankruptcy Code, exist in these Chapter 11 Cases. The Plan thus satisfies Section 1129(a)(13) of the Bankruptcy Code.

28. ***Principal Purpose.*** The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, and there have been no objections filed by any governmental unit asserting such avoidance. Accordingly, the Plan complies with Section 1129(d) of the Bankruptcy Code.

29. ***Conditions to Confirmation and Effective Date.*** The entry of this Confirmation Order establishes that the Court has made all findings, determinations, and approvals regarding the Plan, and has entered all orders, as are necessary to Confirmation. The Effective Date will occur as set forth in the Plan; provided, however,

that (i) all conditions precedent to the closing of Sale of the Sale Assets shall have been satisfied or waived in accordance with the terms thereof; and (ii) all obligations under the Settlement Agreement between the Debtors and Wells have been satisfied.

30. ***Retention of Jurisdiction.*** The Court's retention of jurisdiction as set forth in Article 12 of the Plan comports with the parameters contained in 28 U.S.C. §157 and is to be interpreted as broadly as possible. Without limiting the provisions of Article 12 of the Plan, the Court's retention of jurisdiction includes jurisdiction over all matters and parties in connection with objections to Claims and the pursuit, litigation, and recovery of any and all causes of action.

31. ***Confirmation of Plan.*** Based upon the findings and conclusions set forth and the documents referenced in this Confirmation Order and on the record in these Chapter 11 Cases, the Plan is confirmed pursuant to Sections 1129(a) and 1129(b) of the Bankruptcy Code with the Modifications set forth in this Confirmation Order, which shall become part of the Plan and this Confirmation Order.

32. ***Binding Effect.*** The Court finds that the Plan, as modified herein, and this Confirmation Order are binding upon any and all Creditors, Holders of Equity Interests, and parties in interest. The Court finds that all Creditors, Holders of Equity Interests, and parties in interest received sufficient and proper notice, actual or constructive, of the Plan and the Confirmation Hearing. The provisions of the Plan, as modified herein, and this Confirmation Order are binding upon the Debtors, the Debtors' Estates, all Creditors (whether or not the Claims of such Creditors are Impaired under the Plan and whether or

not such Creditors have accepted the Plan), all Holders of Equity Interests, all other parties in interest, and the respective successors and assigns of all such entities.

~~33. **Effect of Confirmation.** Except as otherwise provided in this Confirmation Order and the Modifications, upon the Effective Date, (a) any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the Debtors with respect to any debt discharged by this Confirmation Order, shall be made null and void, and (b) the commencement or continuation of any action, the employment of process, or any act, to collect, recover, or offset any debt, Claim, or Equity Interest discharged by this Confirmation Order as a personal liability of the Debtors shall forever be enjoined.~~

N.B.:  
There is  
no dis-  
charge in  
these 3  
cases.



34. **Plan Confirmed in Its Entirety.** The Plan, as modified herein, is confirmed in its entirety as if set forth *in haec verba*. The inclusion of decretal paragraphs in this Confirmation Order referring to specific provisions of the Plan or authorizing specific action shall not be construed to imply nonapproval of other provisions or nonauthorization of other actions. The failure to reference or discuss any particular provision of the Plan in this Confirmation Order shall have no effect on the validity, binding effect, or enforceability of such provision, and such provision shall have the same validity, binding effect, and enforceability as every other provision of the Plan.

35. **Implementation.** The Debtors and their agents, attorneys, and authorized representatives are authorized, empowered, and directed, subject to the conditions set forth in the Plan, to take all steps necessary to effectuate and implement the Plan, including, without limitation, the execution and delivery of documents necessary to

implement the Plan and the various other documents, agreements, and instruments contemplated by the Plan and the various settlements, agreements, and compromises referenced in the Plan. Stearns Weaver is authorized and directed to comply with the provisions of the Plan, including but not limited to the provisions of the Plan that direct the application of the Bid Deposit to the purchase price at closing as well as the return of the Bid Deposit (inclusive of any earned interest) of any Bidder (except the Backup Bidder) that is not selected as having the highest and best offer at the Sale Hearing within five (5) days following the entry of this Confirmation Order.

~~36. **Claims and Interests.** The rights afforded under the Plan, as modified herein, and the treatment of all Claims and Equity Interests under the Plan, as modified herein, shall be in complete satisfaction, discharge, and release of Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors and any of their respective assets or properties. The discharge of the Debtors shall be effective as to each Claim, regardless of whether (a) a proof of claim with respect to that Claim was filed or deemed filed under Section 501 of the Bankruptcy Code, (b) the Claim is an Allowed Claim under Section 502 of the Bankruptcy Code or (c) the holder of the Claim voted to accept the Plan. Except as otherwise provided in the Plan or in this Confirmation Order, (i) on the Effective Date, all Claims against and Equity Interests in the Debtors shall be satisfied, discharged and released in full, and (ii) all persons shall be precluded from asserting against the Debtors, their successors, or their assets or property any other or further~~

N.B. :  
There is  
no dis-  
charge in  
these 3  
cases.





~~Claims or Equity Interests based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.~~

37. ***Claim Objections.*** The Debtors shall have the exclusive right to make and file objections to all Claims as well as the authority to compromise, settle, otherwise resolve, or withdraw any objections to Claims and compromise, settle, or otherwise resolve Disputed Claims without approval of the Bankruptcy Court. The Debtors shall file all objections to Claims and serve such objections upon the holder of the Claim no later than ninety days after the Effective Date.

**Approval of the Sales of Sale Assets**

A. The offers by the Purchasers set forth in the Purchase Agreements to purchase the Sale Assets are the highest and best offers for the purchase of the Sale Assets and represent fair and adequate consideration for the Sale Assets.

B. The form and substance of the Purchase Agreements and the transactions contemplated thereby are hereby approved in all respects. After the date of entry of this Order, the Debtors and the Purchasers (i) will enter into amendments to the Purchase Agreements, in form and substance acceptable to each applicable Purchaser, as necessary to incorporate all buyer-friendly provisions accepted by the Debtors in any other Qualified Bidder's proposed purchase agreement related to the Sale Assets being acquired by such Purchaser and (ii) may enter into any non-material amendment or modification to the Purchase Agreements that are not adverse to the Debtors' estates without the need of further notice and hearing or Court order, provided, however, such amendments and

modifications will not be deemed to deprive the Purchasers of any rights or benefits provided under this Order.

C. The Debtors' execution, delivery and performance of the Purchase Agreements and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreements are hereby ratified and authorized in all respects.

D. Subject to the terms and conditions of the Purchase Agreements and the granting of the Debtors' Motion for Authority to Assume and/or Assign certain Contracts and Leases to Purchaser(s) Free and Clear of All Liens, Claims and Encumbrances (Doc. No. 267), the Debtors shall be, and hereby are, authorized and directed to sell, transfer, assign and deliver the Sale Assets to the Purchasers free and clear of any and all Encumbrances, subject to the payment by the Purchasers of the purchase price. The Debtors are authorized to execute and deliver all documents (both before and after the Closing) and to take all appropriate actions necessary to evidence and consummate the Closing on the sale of the Sale Assets to the Purchasers and the transactions contemplated thereby.

E. The transfer of the Sale Assets to the Purchasers will be a legal, valid, and effective transfer of the Sale Assets and will vest the Purchasers with all right, title and interest of the Debtors in and to the Sale Assets, free and clear of all Encumbrances of any kind or nature whatsoever, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the Debtors' or the Purchasers' interest in the Assets, or any similar rights, (ii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the

Sale Assets prior to the Closing, and (iii) (A) all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, rights of setoff, demands, encumbrances, or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, transfer, receipt of income or other exercise of any attributes of ownership, and (B) all debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors and Encumbrances, including those arising under doctrines of successor liability.

F. Except as otherwise provided in this Order or the Purchase Agreements, all persons and entities (and their respective successors and assigns) including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, holding claims (including "claims" as defined in Section 101(5) of the Bankruptcy Code), whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated, arising under or out of, in connection with, or in any way relating to, the Debtors, the Sale Assets, the operation of the Debtors' businesses prior to Closing, or the transfer of the Sale Assets to the Purchasers, are hereby forever barred, estopped and permanently enjoined from asserting such claims against the Purchasers, their successors or assigns, their property, or the Sale Assets. No such persons or entities shall assert against the Purchasers or their successors in interest any liability, debt, claim or obligation arising from, related to or in connection with the ownership or operation of the Sale Assets prior to the Closing.

G. If any person or entity that has filed financing statements or other documents or agreements evidencing Encumbrances on or in the Sale Assets shall not have delivered to the Debtors at or prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of Encumbrances which the person or entity has with respect to the Sale Assets, the Debtors or the Purchaser, as the case may be, are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Sale Assets. The Purchasers are hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances in or on the Sale Assets of any kind or nature whatsoever.

H. Following the Closing, no holder of any Encumbrance shall interfere with the Purchasers' title to or use and enjoyment of the Sale Assets based on or related to any such Encumbrance, or based on any actions the Debtors may take in their chapter 11 cases.

I. The Debtors and the Purchasers have acted in good faith, the terms and conditions of the Purchase Agreements are fair and reasonable and have been negotiated and agreed upon in good faith on the part of the Debtors and the Purchasers, and the Purchasers are an arm's length purchaser who are purchasing the Sale Assets in good faith and not an insider of the Debtors. The Purchase Price constitutes reasonably equivalent and fair market value under the Bankruptcy Code and applicable non-bankruptcy law. Accordingly, each Purchaser is a "good faith purchaser" under Section

363(m) of the Bankruptcy Code and shall be entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code.

J. The transactions contemplated by the Purchase Agreements are undertaken by the Purchasers in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale of the Sale Assets shall not affect the validity of such sale of the Sale Assets to the Purchasers, unless such authorization is duly stayed pending such appeal

K. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Sale Assets and a bill of sale transferring good and marketable title in the Assets to the Purchasers free and clear of all Encumbrances. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreements.

L. The sale of the Sale Assets by the Debtors is in contemplation of, a necessary condition precedent and essential to, and necessary to consummate and implement the confirmation of the Plan in these cases and, accordingly, constitutes a transfer to which Section 1146(a) of the Bankruptcy Code applies. The Debtors and the Purchasers shall be entitled to any and all rights and benefits that may be afforded to them by Section 1146(a) of the Bankruptcy Code. Pursuant to Section 1146(a) of the Bankruptcy Code, the sale or transfer of the Sale Assets or the making, delivery or

recording of any instrument of transfer pursuant to, in implementation of or as contemplated by the Plan, or the revesting, transfer or sale of any real or personal property of, by or in the Debtors pursuant to, in implementation of or as contemplated by the Plan, or any transaction arising out of, contemplated by or in any way related to the foregoing, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangible or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall be, and hereby are, directed to accept and abide by the terms of this Order and to forego the collection of any such tax or governmental assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

M. Any real estate, personal property or other taxes related to the Sale Assets accruing prior to the Closing Date shall be the sole responsibility of the Debtors. The Purchasers shall take title to the Sale Assets subject to real estate, personal property or other taxes (excluding income taxes) relating to the Sale Assets accruing on and after the Closing Date and shall indemnify the Debtors with respect thereto. Upon the consummation of the Closing on the purchase of the Sale Assets, any taxing authorities or governmental agencies having jurisdiction over the Sale Assets shall have no further claim against the Debtors or the estates for taxes (excluding income taxes) accruing on or after the Closing Date.

N. The Debtors shall not be liable for, and no portion of the Purchase Price shall be disbursed for, any brokerage commissions or finder's fees with respect to the sale of the Sale Assets, except for the fees and expenses due to Holliday Fenoglio Fowler, L.P. which shall be paid from the proceeds of the sale of the Sale Assets.

O. With the sole exception of any obligations of the Purchasers under the Purchase Agreements or this Order, the Purchasers does not and shall not be deemed to, pursuant to the Purchase Agreements or otherwise, assume, agree to perform, or pay any Encumbrances, liabilities, claims, debts or obligations of the Debtors. The Purchasers shall not be, nor shall it be deemed to be, a successor or successors in interest to the Debtors by reason of any theory of law or equity, and the Purchasers shall not have any successor or transferee liability of any kind or character.

P. The Purchasers shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Sale Assets other than as expressly set forth in this Order and in the Purchase Agreements. Without limiting the effect or scope of the foregoing, the transfer of the Sale Assets from the Debtors to the Purchasers do not and will not subject the Purchasers or their affiliates, successors or assigns or their respective properties (including the Sale Assets) to any liability for any Encumbrances or Claims against the Debtors or the Sale Assets by reason of such transfer or otherwise under the laws of the United States or any state, territory or possession thereof applicable to such transactions. Neither the Purchasers nor their affiliates, successors or assigns shall be deemed, as a result of any action taken in connection with the purchase of the Sale Assets, to: (a) be a successor to the Debtors; (b) have, de facto or

otherwise, merged with or into the Debtors; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Neither the Purchasers nor their affiliates, successors or assigns is acquiring or assuming any liability, warranty or other obligation of the Debtors, including, without limitation, any tax incurred but unpaid by the Debtors prior to the Closing Date, including, but not limited to, any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, fixed or audited, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, except as otherwise expressly provided in this Order or in the Purchase Agreements. Accordingly, the sale of the Sale Assets to the Purchasers shall be free and clear of all Encumbrances to the fullest extent allowed under applicable law and equity, all of which Encumbrances shall attach to the proceeds of the sale.

Q. Effective upon the Closing, all persons and entities are forever prohibited and enjoined from commencing or continuing any action or proceeding, at law or in equity, against the Purchasers, their affiliates, successors and assigns, or the Sale Assets, with respect to any (a) claim (including "claims" as defined in Section 101(5) of the Bankruptcy Code) or (b) successor liability of the Purchasers for the Debtors.

R. The terms and provisions of this Order shall be binding upon the Debtors and their estates, creditors and stakeholders, the Purchasers, all parties to the Assumed Contracts, all parties to executory contracts and leases to be rejected or otherwise not assumed by the Debtors, and all other parties in interest and the respective successors and assigns of each of the foregoing (all of the foregoing whether known or unknown), including



any trustee subsequently appointed for or on behalf of the Debtors under the Bankruptcy Code in these Chapter 11 cases or upon a conversion to Chapter 7 and the Purchase Agreements shall not be subject to rejection.

S. The 14-day stays set forth in Rules 6004 and 6006(d) of the Federal Rules of Bankruptcy Procedure are hereby waived, for good cause shown, and this Order shall be immediately enforceable and the Closing under the Purchase Agreements may occur immediately following the entry of this Order. <sup>No closing agent or title insurer may</sup> delay closing to wait for the appeal <sup>period to lapse.</sup>

*cpm*

T. The failure specifically to include any particular provisions of the Purchase Agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreements be authorized and approved in their entirety (as amended herein). To the extent there is any inconsistency between the provisions of this Order and the terms of the Purchase Agreements or the Sale Order or any plan confirmed in these cases or any order confirming such plan or any other order entered in these cases, the provisions of this Order shall control.

U. Copies of this Order shall be served by the Court's CM/ECF System or by United States Mail on parties listed on the Master Service List maintained in this case. Notice of the Confirmation of the Plan shall be served on all creditors of the Debtors set forth on the Court's mailing matrix for this case.

**DONE AND ORDERED** at Tampa, Florida, on May 20, 2011.

*Catherine Peek McEwen*

Catherine Peek McEwen  
United States Bankruptcy Judge

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

Chapter 11

ODYSSEY PROPERTIES III, LLC,  
et al.,

Case No. 8:10-bk-18713-CPM

Debtors.

(Jointly Administered with cases  
8:10-bk-18715-CPM; 8:10-bk-18718-CPM;  
8:10-bk-18719-CPM; 8:10-bk-18720-CPM;  
8:10-bk-18721-CPM; 8:10-bk-18723-CPM;  
8:10-bk-18725-CPM; 8:10-bk-18728-CPM;  
and 8:10-bk-18730-CPM)

\_\_\_\_\_  
ODYSSEY (III) DP XVII, LLC,  
GP-COBB, LLC,  
CRF-PANTHER IV, LLC,  
WALDEN WOODS III, LTD.,  
PARADISE SHOPPES  
AT APOLLO BEACH, LLC,

Case No. 8:10-18715-CPM  
Case No. 8:10-18719-CPM  
Case No. 8:10-18720-CPM  
Case No. 8:10-18730-CPM  
Case No. 8:10-18728-CPM

Wells Fargo Debtors.  
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**ORDER (A) GRANTING WELLS FARGO DEBTORS' EMERGENCY MOTION [DE 168] TO APPROVE SETTLEMENT TERM SHEET WITH WELLS FARGO BANK, N.A.; (B) AUTHORIZING SALES OF SUBSTANTIALLY ALL THE ASSETS OF THE ESTATES OF ODYSSEY (III) DP XVII, LLC, 8:10-18715-CPM, CRF-PANTHER IV, LLC, 8:10-18720-CPM PARADISE SHOPPES AT APOLLO BEACH, LLC, 8:10-18728-CPM; (C) ESTABLISHING BIDDING PROCEDURES IN CONNECTION WITH THE SALES OF SUBSTANTIALLY ALL THE ASSETS OF THE ESTATES OF ODYSSEY (III) DP XVII, LLC, 8:10-18715-CPM, CRF-PANTHER IV, LLC, 8:10-18720-CPM AND PARADISE SHOPPES AT APOLLO BEACH, LLC, 8:10-18728-CPM; AND (D) SETTING OBJECTION DEADLINE FOR PROPOSED SETTLEMENT, SALES, AND OTHER TRANSACTIONS CONTEMPLATED THEREBY (Hearing on Approval of Sale to be held on May 18, 2011 at 1:30 p.m.)**

**OPPORTUNITY TO OBJECT AND FOR HEARING**

THIS ORDER SHALL BECOME FINAL WITHOUT FURTHER NOTICE OR HEARING UNLESS A PARTY IN INTEREST FILES AN OBJECTION/ RESPONSE WITHIN TWENTY (20) DAYS FROM THE DATE OF SERVICE OF THIS PAPER. IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PAPER, YOU MUST FILE YOUR OBJECTION/RESPONSE WITH THE CLERK OF THE COURT AT 801 N. FLORIDA AVENUE, ROOM 501, TAMPA, FLORIDA 33602, AND SERVE A COPY ON THE DEBTOR'S ATTORNEY, EDWARD J. PETERSON, ESQUIRE, 110 E. MADISON STREET, SUITE 200, TAMPA, FLORIDA 33602.

IF YOU FILE AND SERVE AN OBJECTION/RESPONSE WITHIN THE TIME PERMITTED, THE COURT WILL SCHEDULE A HEARING AND YOU WILL BE NOTIFIED. IF YOU DO NOT FILE AN OBJECTION/RESPONSE WITHIN THE TIME

PERMITTED, THE COURT WILL CONSIDER THAT YOU DO NOT OPPOSE THE GRANTING OF THE RELIEF REQUESTED IN THIS ORDER AND THE ORDER SHALL BECOME FINAL

THESE CASES came on for hearing before the Court on February 25, 2011, at 9:30 a.m. (the “**Hearing**”), upon the Motion (the “**Settlement Motion**”) of Walden Woods III, Ltd. (“**Walden Woods**”), GP-Cobb, LLC (“**GP-Cobb**”), Odyssey (III) DP XVII, LLC (“**Odyssey XVII**”), Paradise Shoppes at Apollo Beach, LLC (“**Paradise Shoppes**”), and CRF-Panther IV, LLC (“**CRF-Panther**”) and, together with Walden Woods, GP-Cobb, Odyssey XVII, and Paradise Shoppes, the “**Debtors**”), to authorize and approve a settlement with Wells Fargo Bank, N.A. (the “**Bank**”).

In connection with the Hearing, the parties finalized a written settlement agreement (the “**Agreement**”) incorporating the terms of the term sheet attached to the Motion, a copy of which Agreement is attached to this Order as Exhibit “1” and contains the following salient terms:<sup>1</sup>

1. Walden Woods III, LTD., 8:10-bk-18730-CPM will be resolved as follows:
  - a. the Bank shall be granted stay relief to pursue the Walden Woods Foreclosure Case effective ninety-one (91) days after the date of this Order;
  - b. on or before ninety (90) days after the date of this Order, Lawrence W. Maxwell or his designee, shall purchase the Walden Woods Loan Documents and all claims arising thereunder for the sum of \$3,800,000;
  - c. within thirty (30) days after closing on the purchase described in subparagraph 1b above, the purchaser, represented by independent counsel, shall intervene and substitute as plaintiff in the Walden Woods Foreclosure Case; and
  - d. in the event that the transaction described in subparagraph 1b fails to timely close, then Walden Woods shall cooperate with the Bank to expedite the foreclosure of the Bank’s first priority lien against the Walden Woods Project in the Walden Woods Foreclosure Case; provided, however, in such event, the Parties reserve all of their respective rights with respect to any deficiency claims under the Walden Woods Loan Documents.

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<sup>1</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meaning ascribed to such terms in the Agreement.

2. GP-Cobb, LLC, 8:10-bk-18719-CPM will be resolved as follows:

a. the GP-Cobb Bankruptcy Case shall be dismissed in conjunction with the entry of this Order;

b. the Bank shall pay GP-Cobb the sum of \$60,000 within ten (10) calendar days of the date of the Order dismissing the GP-Cobb Bankruptcy Case;

c. upon dismissal of the GP-Cobb Bankruptcy Case, the Bank shall forthwith immediately exercise its foreclosure remedies against Grove Plaza as provided in the GP-Cobb Loan Documents and as available pursuant to the laws of the State of Georgia;

d. the parties to the Agreement will cooperate to ensure the orderly transition of Grove Park through the foreclosure process from GP-Cobb to the Bank; and

e. if not previously provided, in connection with the Bank's obtaining title to Grove Plaza and turnover of all assets related to the operation thereof, including all leases, accounts receivable and other intangible assets, the Bank shall deliver a release to the guarantors under the GP-Cobb Loan Documents.

3. Odyssey (III) DP XVII, LLC, 8:10-bk-18715-CPM, Paradise Shoppes at Apollo Beach, LLC, 8:10-bk-18728-CPM, and CRF-Panther IV, LLC, 8:10-18720-CPM, will be resolved as follows:

a. The Parties shall work together collaboratively to prepare and prosecute a plan or plans of liquidation which plan(s) will incorporate and provide for: (i) the terms of the Agreement and this Order, as applicable; (ii) bankruptcy auction sales of St. Charles Plaza, Paradise Shoppes, and Century Town Center and all assets thereof; and (iii) the distribution of sale proceeds and the Bank's Cash Collateral as provided herein;

b. The Wells Fargo Debtors shall retain Dan Finkle and Holliday Fenoglio & Fowler, L.P. (the "**Broker**"), on terms and conditions reasonably acceptable to the Bank, to act as real estate broker in the marketing and auction sale of St. Charles Plaza, Paradise Shoppes, and Century Town Center and all assets thereof;

c. The auction sale(s) of St. Charles Plaza, Paradise Shoppes, and Century Town Center and all assets thereof (individually, the "**Sale Asset**" or collectively, the "**Sale Assets**") shall close (the "**Effective Date**") on or before four (4) months after the date of this Order;

d. The auction sale(s) of the Sale Assets shall be made pursuant to the bidding procedures and related matters set forth herein;

e. All customary and reasonable closing costs associated with the sale of the Sale Assets, including a reasonable broker's commission and customary prorated expenses (the "**Sale Closing Costs**"), shall be paid at closing on the sale of the Sale Assets;

f. After payment of the Sale Closing Costs, the proceeds of the sale(s) of the Sale Assets shall be distributed on the Effective Date as follows: (i) the Bank shall receive 100% of the proceeds from the sale of each Sale Asset from all sales equal to or less than 110% of the as-is fair market value of each such Sale Asset; (ii) the Bank shall receive 90% of the next 10% of proceeds (i.e. from sales between 110% and 120% of the as-is fair market value of each such Sale Asset) with the remaining 10% of such proceeds remaining with the estate; (iii) the Bank shall receive 80% of the next 10% of proceeds (i.e. from sales between 120% and 130% of the as-is fair market value of each such Sale Asset) with the remaining 20% of such proceeds remaining with the estate; and (iv) the Bank shall receive 70% of all proceeds from sales above 130% of the as-is fair market value of each Sale Asset with the remaining 30% of such proceeds remaining with the estate;

g. Notwithstanding the provisions of subparagraph 3f above, the Bank shall enter a "credit bid" at the auction sale(s) of the Sale Assets in an amount no greater than 110% of the as-is fair market value of such Sale Assets, as set forth above; provided, however, at closing on any such credit bid, the Bank shall pay the Sale Closing Costs associated with such Sale Assets;

h. The Wells Fargo Cash Collateral shall be distributed as follows: (i) on the Effective Date, a carve-out for non-insider general unsecured creditors holding allowed claims in an aggregate amount not to exceed \$150,000 and estimated as follows: (1) \$33,000 for Odyssey XVII, (2) \$16,500 for Paradise Shoppes, and (3) \$99,000 for CRF-Panther; (ii) a carve-out not to exceed \$425,000 for payment of allowed claims for (1) attorneys fees and costs for Stichter, Riedel, Blain & Prosser, P.A. relating to the Wells Fargo Debtor Bankruptcy Cases (excluding retainers of \$20,000 for each such case which retainers shall be returned to the appropriate party), and (2) reimbursement of costs and fees of Clark, Campbell, Mawhinney, P.A. and The Hollingsworth Group, Inc. (Bob Madden); (iii) on the applicable Effective Date for each estate, a carve-out equal to (1) \$63,000 for the estate of Odyssey XVII; (2) \$102,000 for the estate of Paradise Shoppes; and (3) \$121,900 for the estate of CRF-Panther; (iv) repayment of any DIP loans made by OC DIP, LLC; and (v) the balance to the Bank. The Bank acknowledges and agrees that the plan(s) will provide that the estate carve-outs referenced in 3(h)(iii) shall be disbursed to the equity owner of such estate;

i. The Wells Fargo Debtors shall use their best efforts to conduct the auction sale(s) of St. Charles Plaza, Paradise Shoppes, and Century Town Center and all assets related thereto pursuant to confirmed plan(s) of liquidation incorporating the terms of this Agreement such that the Effective Date will take place after confirmation of such plan(s) and constitute the effective date of such plan(s), if possible; and

j. Any plan(s) of liquidation filed in these cases shall be approved by the Bank, as sponsor thereof, which approval shall not be unreasonably withheld;

At the Hearing, and consistent with the sale aspect of the Agreement, counsel for the Debtors and the Bank also requested that the Court enter an order on negative notice: (I) Approving Bidding

Procedures in Connection with the Sale of Substantially All of the Assets of Odyssey XVII, Paradise Shoppes, and CRF-Panther, (II) Establishing Procedures for the Assumption and/or Assignment by the Debtor of Certain Executory Contracts and Unexpired Leases, (III) Approving Form and Manner of Notice of Bidding Procedures, and (IV) Setting Objection Deadlines (the “**Ore Tenus Procedures Motion**” and collectively with the Settlement Motion, the “**Motions**”).

The Court considered the Settlement Motion, together with the record and the arguments of counsel at the Hearing, and being otherwise duly advised in the premises, and for the reasons announced on the record at the Hearing, finds that the relief requested is necessary and appropriate, and that the Settlement Motion is well taken and shall be granted in accordance with the terms and conditions set forth herein. Specifically, the Court finds that it would be in the best interest of the Debtors, their creditors and their estates that the Settlement Agreement attached as Exhibit “1” hereto be approved as meeting the requirements of *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, (1990).

The Court considered the Ore Tenus Procedures Motion, together with the record and the arguments of counsel at the Hearing, and being otherwise duly advised in the premises, and for the reasons announced on the record at the Hearing, finds that the relief requested is necessary and appropriate, and that the Ore Tenus Procedures Motion is well taken and shall be granted in accordance with the terms and conditions set forth herein. Specifically, the Court finds that it would be in the best interest of the Debtors, their creditors and their estates that an orderly procedure for the selection of the highest and best offer for the sale of the Sale Assets be established. The Court thus finds that it is appropriate to provide other prospective purchasers with the opportunity to submit competing bids. The Court also finds that it is appropriate to require any such prospective purchasers to comply with certain requirements in connection with the submission of competing

bids, and that the bidding procedures proposed by the Debtor, as set forth on the record, are reasonable.

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Settlement Motion is GRANTED as set forth herein.
2. The parties are authorized and directed to execute the Agreement forthwith. The Debtors and the Bank are authorized to enter into and take all steps necessary to implement the Agreement, subject to the rights of any party in interest to file a written objection to the Agreement, explaining in detail the bases for the objection, on or before the date that is twenty calendar days after the date of service of this Order. Any such written objection shall be filed and served upon counsel for the Debtors, c/o Edward Peterson, Stichter Riedel Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602 and counsel for the Bank, c/o Drew Dillworth, Esq., Stearns Weaver Miller et al., 150 West Flagler Street, Suite 2200, Miami, Florida 33130. Any objection that is not timely filed and served shall be deemed forever waived and shall be barred.
3. The Debtors or their agents shall, within two (2) days from the date of this Order, serve a copy of this Order, by United States first class mail or electronic mail transmission, to (a) all parties listed on the Local Rule 1007(d) Parties in Interest List for this case, and (b) all creditors of the Debtors, and thereafter file a certificate of service with the Court. Service shall be deemed complete three days after mailing and immediately upon electronic mail submission.
4. **In re Walden Woods III, LTD.**, 8:10-bk-18730-CPM. Subject to the remaining provisions in the Agreement, the Bank is granted full stay relief pursuant to 11 U.S.C. § 362, effective on the ninety-first (91) calendar day after the date of this Order, to continue the foreclosure of the Bank's first priority lien against the Walden Woods Project in the Walden Woods Foreclosure Case.



5. **In re GP-Cobb, LLC**, 8:10-bk-18719-CPM. Subject to the remaining terms of the Agreement, the Bank is granted full stay relief pursuant to 11 U.S.C. § 362 to foreclose on the Bank's first priority lien against Grove Plaza under the GP-Cobb Loan Documents effective upon the later to occur of: (i) the Bank's payment to GP-Cobb of the sum of \$60,000 and (ii) the date this Order becomes final.

6. GP-Cobb, LLC shall submit an Order (the "**Dismissal Order**") to the Court dismissing its bankruptcy case according to the terms of the Agreement. The Dismissal Order shall include the terms and conditions for the distribution to creditors, and parties in interest, the \$60,000 paid to GP-Cobb by the Bank.

7. **In re Odyssey (III) DP XVII, LLC**, 8:10-bk-18715-CPM, **In re Paradise Shoppes at Apollo Beach, LLC**, 8:10-bk-18728-CPM, and **In re CRF-Panther IV, LLC**, 8:10-18720-CPM, together, the "**Selling Debtors**"). The Selling Debtors are authorized to undertake the process of selling the Sale Assets, individually or in combination pursuant to the general bidding and sale procedures set forth herein; provided, however, the sale of the Sale Assets to a Qualified Bidder shall not be deemed approved until the Sale Approval Hearing (as defined below) and entry of a Final Sale Order (as defined below).

8. **Bidding Procedures concerning Selling Debtors' sale of the Sale Assets**. The Court approves the following terms, conditions, and procedures (the "**Bid Procedures**") for the submission and consideration of bids by any competing bidder ("**Bidder**") for all or any of the Sale Assets:

- (a) Any Bidder desiring to make a bid ("**Bid**") for the Assets shall deliver the Bid, by electronic transmission, to Danny Finkle, Holliday Fenoglio Fowler, L.P., 2 Alhambra Plaza, Penthouse IIA, Coral Gables, FL 33134 ([dfinkle@hfflp.com](mailto:dfinkle@hfflp.com)), with a copy to counsel to the Selling Debtors, Edward J. Peterson, III, Esq., Stichter, Riedel, Blain & Prosser, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602 ([epeterson@srbp.com](mailto:epeterson@srbp.com)), and counsel to the Bank, Drew M. Dillworth, Esq., Stearns Weaver, Museum Tower, 150

W. Flagler Street, Suite 2200, Miami, Florida 33130 ([ddillworth@stearnsweaver.com](mailto:ddillworth@stearnsweaver.com)), **by no later than 12:00 noon (Eastern Standard Time) on April 15, 2011** (or such later date agreed to by the Bank and Debtors) (the “**Bid Deadline**”).

- (b) Prior to receipt by a prospective Bidder of any information (including business and financial information and access to the Selling Debtors) from the Selling Debtors, each such Bidder will be required to execute a confidentiality agreement in form and content acceptable to the Selling Debtors, to the extent not already executed.
- (c) A Bid shall include the following:
  - (i) A copy of the initial written purchase offer in the form of a term sheet (the “**Term Sheet**”) executed by such Bidder, in substantially the form attached hereto as Exhibit “2”;
  - (ii) A designation of any executory contracts or unexpired leases such Bidder desires the Selling Debtors to reject (the “**Designated Contracts**”)(executory contracts or unexpired leases, which are comprised of tenant leases of portions of the Sale Assets, that are not Designated Contracts shall be assumed and assigned to such Bidder);
  - (iii) A purchase price which is cash only (unless otherwise agreed by the Debtors); and
  - (iv) Relevant background and financial information reasonably satisfactory to the Bank and the Selling Debtors (including without limitation the latest available audited and unaudited financial statements) demonstrating the Bidder’s financial ability to close and to consummate an acquisition of the Assets, such as (1) evidence of the Bidder’s ability to assume or satisfy the terms and obligations of the Term Sheet, pay the purchase price provided for therein and provide adequate assurance of future performance as to the executory contracts and unexpired leases that are being assumed and assigned to it pursuant to Section 365 of the Bankruptcy Code, (2) an unconditional lending commitment from a recognized financial institution or cash sources in the amount of the Bid, (iii) a letter of credit from a recognized financial institution in the amount of the Bid, and/or (iv) proof of cash on deposit exceeding the amount of the Bid.
- (d) Upon receipt and based upon the content of the Bids, the Bank, exercising reasonable discretion, shall designate a group bidders that are qualified (the “**Qualified Bidders**”) to consummate the subject transactions and participate in the Auction described below.

- (e) **By no later than 5:00 p.m. (Eastern Standard Time) on April 22, 2011,** the Selling Debtors shall send to the Qualified Bidders a form purchase agreement (the “**Purchase Agreement**”) that matches the terms of the Term Sheet attached hereto as Exhibit “2”.
  
- (f) As final steps to qualify to bid at the auction sale described below, each Qualified Bidder shall submit the following on or before **May 9, 2011 at 12:00 eastern standard time:**
  - (i) A fully executed Purchase Agreement in an amount not less than such Bidder’s initial Bid; provided, however, that any Purchase Agreement which contains terms different from the form provided must be black-lined to show any changes made by such Bidder to the form of the Purchase Agreement, and must be signed by such Bidder and be subject to acceptance by the Selling Debtors solely by their execution thereof and necessary Court approval. The Selling Debtors and the Bank may accept modifications to the Purchase Agreement as submitted by a Bidder who otherwise complies with the Bid Procedures if the Selling Debtors and the Bank determine, in the exercise of business judgment, that the proposed modifications result in a higher and better offer for the Sale Assets; and
  
  - (ii) A good faith deposit in immediately available funds in the amount of ten percent of the total gross purchase price set forth in the Bid (the “**Bid Deposit**”), which shall be made payable to and delivered to Susan Fleming Bennett, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., 401 E. Jackson Street, Suite 2200, Tampa, Florida 33602, counsel to Bank (“**Stearns Weaver**”). The Bid Deposit shall be deposited into a non-IOTA interest-bearing trust account maintained by Stearns Weaver. Such Bid Deposit will be non-refundable to the Bidder in the event such Bidder’s Bid is approved by the Court at the Sale Hearing as the highest and best offer and such Bidder fails to close on the purchase of the Assets for any reason. The Bid Deposit will be applied against the purchase price at the closing. Within five (5) days following the entry of the Sale Order, Stearns Weaver will return the Bid Deposit (inclusive of any earned interest) of any Bidder (except the Backup Bidder) that is not selected as having the highest and best offer at the Sale Hearing.
  
- (g) An auction (“**Auction**”) to consider any competing bids in respect of the Sale Assets will be held on **May 17, 2011, at 10:00 a.m. (EST) at Marriot Tampa Airport, 4200 George J. Bean Parkway, Tampa, Florida 33607.** The Bank, after consultation with the Selling Debtors, shall select the highest and best offer(s) in its reasonable discretion. By participating in the Auction, each Qualified Bidder shall consent to being selected as the highest and best bidder as well as the second highest and best bidder (the “**Backup Bidder**”) for the Sale Assets. The Backup Bidder’s Purchase Agreement shall be a binding contract

with the Selling Debtors and shall close in the event the highest and best Bidder fails to consummate the acquisition of the Sale Assets in accordance with the provisions described above and in the Sale Order. Any closing with the Backup Bidder shall occur within five (5) days of notification that the successful Bidder failed to close.

(h) The Selling Debtors shall file one or more plans of reorganization to implement the sale of the Sale Assets under 11 U.S.C. § 363 on or before April 4, 2011. Any objections to such sales must be made in writing on or before May 16, 2011 at 5:00 p.m. (EST) (the “**Objection Deadline**”). Any objection must state the bases for the objection and must be delivered to Edward J. Peterson, III, Esq., Stichter, Riedel, Blain & Prosser, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602 ([epeterson@srbp.com](mailto:epeterson@srbp.com)), and Drew M. Dillworth, Esq., Stearns Weaver, Museum Tower, 150 W. Flagler Street, Suite 2200, Miami, Florida 33130 ([ddillworth@stearnsweaver.com](mailto:ddillworth@stearnsweaver.com)) on or before the Objection Deadline. Any objection that is not filed and delivered by the Objection Deadline will not be considered at the Sale Approval Hearing.

9. Notwithstanding anything in the contrary in this Order, the Bank shall enter a “credit bid” at the auction sale(s) of the Sale Assets in an amount no greater than 110% of the as-is fair market value of such Sale Assets, as set forth above; provided, however, at closing on any such credit bid, the Bank shall pay the Sale Closing Costs associated with such Sale Assets.

10. A hearing (the “**Sale Approval Hearing**”) to consider approval of the sale of the Sale Assets to the highest and best Bid received in connection with the Bidding Procedures outlined above, and to consider any timely filed objections thereto, shall be held before the Honorable Catherine Peek McEwen at the United States Bankruptcy Court, Courtroom 8B, Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida, on **May 18, 2011, at 1:30 p.m.** following the Auction. At the Sale Approval Hearing, the Selling Debtors will inform the Court of the differences between any Bids and the Purchase Agreement, and recommend to the Court the offer that the Bank considers to be the highest and best offer(s) to the Debtors’ estates for the Sale Assets, after taking into account all aspects of the Bids and the Purchase Agreement (including, without limitation, the amount of the purchase price, the method and timing of the payment of the purchase price, conditions to closing, the time for closing, the representations, warranties and covenants to be provided by the Selling Debtors, and the indemnification obligations

Debtors, if any). All potential Bidders or their authorized representatives must be present at the Auction and the Sale Hearing. The Court will determine the highest and best offer(s) at the Sale Hearing and if approval by the Court, the Court will enter an order approving the sale of the Sale Assets (the “**Final Sale Order**”).

11. The Court retains jurisdiction to interpret and enforce the terms of this Order.

**DONE** and **ORDERED** in Chambers at Tampa, Florida, on April 07, 2011.



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CATHERINE PEEK MCEWEN  
United States Bankruptcy Judge

# Exhibit “1”

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the “**Agreement**”) is made by and between Wells Fargo Bank, N.A. (“**Bank**”), on the one hand, and each of Walden Woods III, Ltd. (“**Walden Woods**”), GPP-Cobb, LLC (“**GPP-Cobb**”), Odyssey (III) DP XVII, LLC (“**Odyssey XVII**”), Paradise Shoppes at Apollo Beach, LLC (“**Paradise Shoppes**”), CRF-Panther IX, LLC (“**CRF-Panther**” and, together with Walden Woods, GPP-Cobb, Odyssey XVII, and Paradise Shoppes, the “**Wells Fargo Debtors**”), Lawrence W. Maxwell (“**Larry Maxwell**”), Lawrence T. Maxwell (“**Todd Maxwell**”), and Century Realty Funds, Inc. (“**Century Realty**” and together with Larry Maxwell and Todd Maxwell, the “**Guarantors**”), on the other. Collectively, the foregoing parties are individually referred to as “**Party**” or collectively referred to as the “**Parties**.”

### **Walden Woods**

WHEREAS, Walden Woods is a Florida limited liability company which owns fee simple title to that certain 235 lot mobile home park (the “**Walden Woods Project**”) located in Homosassa, Florida, and commonly known as Walden Woods;

WHEREAS, Bank is a secured creditor of Walden Woods and holds a duly perfected first priority mortgage lien and secured claim against the Walden Woods Project, which secured claim is evidenced by a note, mortgage and related loan documents (the “**Walden Woods Loan Documents**”);

WHEREAS, Larry Maxwell, Todd Maxwell, and Century Realty are guarantors of the obligations due the Bank by Walden Woods under the Walden Woods Loan Documents;

WHEREAS, on June 18, 2010, the Bank filed a complaint to foreclose its mortgage lien and collect on its claims against Walden Woods and the guarantors in the matter styled *Wells Fargo Bank, N.A. v. Walden Woods III, Ltd., et al.*, 2010 CA 3006 (5<sup>th</sup> Judicial Circuit in and for Citrus County, Florida) (the “**Walden Woods Foreclosure Case**”);

WHEREAS, on August 2, 2010, Walden Woods filed a voluntary chapter 11 bankruptcy case in the United States Bankruptcy Court for the Middle District of Florida (the “**Bankruptcy Court**”) in the matter styled *In re Walden Woods III, Ltd.*, 8:10-bk-18730-CPM (United States Bankruptcy Court, Tampa, Florida)(the “**Walden Woods Bankruptcy Case**”);

WHEREAS, as of August 2, 2010, Walden Woods owed the Bank the principal sum of \$7,000,000 under the Walden Woods Loan Documents;

WHEREAS, for purposes of this Agreement, the parties stipulate that the present as-is fair market value of the Walden Woods Project is \$2,800,000;

WHEREAS, Walden remains in possession and control of the Walden Woods Project and is managing its business and financial affairs as a debtor-in-possession in the Walden Woods Bankruptcy Case;

WHEREAS, the Bankruptcy Court set October 18, 2010, as the last date to file proofs of claim in the Walden Woods Bankruptcy Case;

WHEREAS, on October 15, 2010, the Bank timely filed its secured proof of claim in the Walden Woods Bankruptcy Case;

WHEREAS, the Bank owns and holds a valid, perfected, first priority lien against the Walden Woods Project to secure the obligations of Walden Woods to the Bank pursuant to the Walden Woods Loan Documents;

**GPP Cobb**

WHEREAS, GPP-Cobb is a Georgia limited liability company which owns fee simple title to that certain 30,600 square foot retail real estate plaza located in Marietta, Georgia, and commonly known as Grove Park ("**Grove Park**");

WHEREAS, Bank is a secured creditor of GPP-Cobb and holds a duly perfected first priority mortgage lien and secured claim against Grove Park, which secured claim is evidenced by a note, mortgage and related loan documents (the "**GPP-Cobb Loan Documents**");

WHEREAS, Larry Maxwell and Todd Maxwell are guarantors of the obligations due the Bank by GPP-Cobb under the GPP-Cobb Loan Documents;

WHEREAS, the Bank provided due notice to GPP-Cobb and the guarantors of a foreclosure sale of Grove Park pursuant to Georgia law (the "**Grove Park Foreclosure**");

WHEREAS, on August 2, 2010, GPP-Cobb filed a voluntary chapter 11 bankruptcy case in the Bankruptcy Court in the matter styled *In re GPP-Cobb, LLC*, 8:10-bk-18719-CPM (United States Bankruptcy Court, Tampa, Florida)(**GPP-Cobb Bankruptcy Case**);

WHEREAS, as of August 2, 2010, GPP-Cobb owed the Bank the principal sum of \$3,989,047 under the GPP-Cobb Loan Documents;

WHEREAS, for purposes of this Agreement, the parties stipulate that the present as-is fair market value of Grove Park is \$4,265,000;

WHEREAS, GPP-Cobb remains in possession and control of Grove Park and is managing its business and financial affairs as a debtor-in-possession in the GPP-Cobb Bankruptcy Case;

WHEREAS, the Bankruptcy Court set October 18, 2010, as the last date to file proofs of claim in the GPP-Cobb Bankruptcy Case;

WHEREAS, on October 15, 2010, the Bank timely filed its secured proof of claim in the GPP-Cobb Bankruptcy Case;

WHEREAS, the Bank owns and holds a valid, perfected, first priority lien against Grove Park to secure the obligations of GPP-Cobb to the Bank pursuant to the GPP-Cobb Loan Documents;



**Odyssey XVII**

WHEREAS, Odyssey XVII is a Florida limited liability company which owns fee simple title to that certain 65,000 square foot retail real estate plaza located in Davenport, Florida, and commonly known as St. Charles Plaza ("**St. Charles Plaza**");

WHEREAS, Bank is a secured creditor of Odyssey XVII and holds a duly perfected first priority mortgage lien and secured claim against St. Charles Plaza, which secured claim is evidenced by a note, mortgage and related loan documents (the "**Odyssey XVII Loan Documents**");

WHEREAS, Todd Maxwell and Century Realty are guarantors of the obligations due the Bank by Odyssey XVII under the Odyssey XVII Loan Documents;

WHEREAS, on June 28, 2010, the Bank filed a complaint to foreclose its mortgage lien and collect on its claims against Odyssey XVII and the guarantors in the matter styled *Wells Fargo Bank, N.A. v. Odyssey (III) DP XVII, LLC, et al.*, 53-2010 CA 5645 (10<sup>th</sup> Judicial Circuit in and for Polk County, Florida) (the "**Odyssey XVII Foreclosure Case**");

WHEREAS, on August 2, 2010, Odyssey XVII filed a voluntary chapter 11 bankruptcy case in the Bankruptcy Court in the matter styled *In re Odyssey (III) DP XVII, LLC.*, 8:10-bk-18715-CPM (United States Bankruptcy Court, Tampa, Florida);

WHEREAS, as of August 2, 2010, Odyssey XVII owed the Bank the principal sum of \$10,795,500 under the Odyssey XVII Loan Documents;

WHEREAS, for purposes of this Agreement, the parties stipulate that the present as-is fair market value of St. Charles Plaza is \$6,300,000;

WHEREAS, Odyssey XVII remains in possession and control of St. Charles Plaza and is managing its business and financial affairs as a debtor-in-possession in the Odyssey XVII Bankruptcy Case;

WHEREAS, the Bankruptcy Court set October 18, 2010, as the last date to file proofs of claim in the Odyssey XVII Bankruptcy Case;

WHEREAS, on October 15, 2010, the Bank timely filed its secured proof of claim in the Odyssey XVII Bankruptcy Case;

WHEREAS, as of January 31, 2011, Odyssey XVII is in possession of approximately \$347,603 (the "**Odyssey XVII Cash Collateral**") of net operating income from the post-petition operation of St. Charles Plaza which funds constitute the Bank's cash collateral within the meaning of 11 U.S.C. § 361;

WHEREAS, the Bank owns and holds valid, perfected, first priority liens and secured claims against St. Charles Plaza and the Odyssey XVII Cash Collateral to secure the obligations of Odyssey XVII to the Bank pursuant to the Odyssey XVII Loan Documents;

**Paradise Shoppes**

WHEREAS, Paradise Shoppes is a Florida limited liability company which owns fee simple title to that certain 99,687 square foot retail real estate plaza located in Apollo Beach, Florida, and commonly known as Paradise Shoppes (the “**Paradise Shoppes Project**”);

WHEREAS, Bank is a secured creditor of Paradise Shoppes and holds a duly perfected first priority mortgage lien and secured claim against the Paradise Shoppes Project, which secured claim is evidenced by a note, mortgage and related loan documents (the “**Paradise Shoppes Loan Documents**”);

WHEREAS, Larry Maxwell and Todd Maxwell are guarantors of the obligations due the Bank by Paradise Shoppes under the Paradise Shoppes Loan Documents;

WHEREAS, on June 17, 2010, the Bank filed a complaint to foreclose its mortgage lien and collect on its claims against Paradise Shoppes and the guarantors in the matter styled *Wells Fargo Bank, N.A. v. Paradise Shoppes at Apollo Beach, LLC, et al.*, 2010 CA 12744 (Division G)(13<sup>th</sup> Judicial Circuit in and for Hillsborough County, Florida) (the “**Paradise Shoppes Foreclosure Case**”);

WHEREAS, on August 2, 2010, Paradise Shoppes filed a voluntary chapter 11 bankruptcy case in the Bankruptcy Court in the matter styled *In re Paradise Shoppes at Apollo Beach, LLC*, 8:10-bk-18728-CPM (United States Bankruptcy Court, Tampa, Florida)(the “**Paradise Shoppes Bankruptcy Case**”);

WHEREAS, as of August 2, 2010, Paradise Shoppes owed the Bank the principal sum of \$12,828,860 under the Paradise Shoppes Loan Documents;

WHEREAS, for purposes of this Agreement, the parties stipulate that the present as-is fair market value of the Paradise Shoppes Project is \$10,200,000;

WHEREAS, Paradise Shoppes remains in possession and control of the Paradise Shoppes Project and is managing its business and financial affairs as a debtor-in-possession in the Paradise Shoppes Bankruptcy Case;

WHEREAS, the Bankruptcy Court set October 18, 2010, as the last date to file proofs of claim in the Paradise Shoppes Bankruptcy Case;

WHEREAS, on October 15, 2010, the Bank timely filed its secured proof of claim in the Paradise Shoppes Bankruptcy Case;

WHEREAS, as of January 31, 2011, Paradise Shoppes is in possession of approximately \$322,365 (the “**Paradise Shoppes Cash Collateral**”) of net operating income from the post-petition operation of the Paradise Shoppes Project which funds constitute the Bank’s cash collateral within the meaning of 11 U.S.C. § 361;

WHEREAS, the Bank owns and holds valid, perfected, first priority liens and secured claims against the Paradise Shoppes Project and the Paradise Shoppes Cash Collateral to secure the obligations of Paradise Shoppes to the Bank pursuant to the Paradise Shoppes Loan Documents;

**CRF-Panther**

WHEREAS, CRF-Panther is a Florida limited liability company which owns fee simple title to that certain 99,839 square foot retail real estate plaza located in Vero Beach, Florida, and commonly known as Century Town Center ("**Century Town Center**");

WHEREAS, Bank is a secured creditor of CRF-Panther and holds a duly perfected first priority mortgage lien and secured claim against the Century Town Center, which secured claim is evidenced by a note, mortgage and related loan documents (the "**CRF-Panther Loan Documents**");

WHEREAS, Todd Maxwell and Century Realty are guarantors of the obligations due the Bank by CRF-Panther under the CRF-Panther Loan Documents;

WHEREAS, on June \_\_, 2010, the Bank filed a complaint to foreclose its mortgage lien and collect on its claims against CRF-Panther and the guarantors in the matter styled *Wells Fargo Bank, N.A. v. CRF-Panther IX, LLC, et al.*, 2010 CA 73157 (19<sup>th</sup> Judicial Circuit in and for Indian River County, Florida) (the "**CRF-Panther Foreclosure Case**");

WHEREAS, on August 2, 2010, CRF-Panther filed a voluntary chapter 11 bankruptcy case in the Bankruptcy Court in the matter styled *In re CRF-Panther IX, LLC*, 8:10-bk-18720-CPM (United States Bankruptcy Court, Tampa, Florida)(the "**CRF-Panther Bankruptcy Case**" and, when referred to with the Walden Woods Bankruptcy Case, the GB-Cobb Bankruptcy Case, the Odyssey XVII Bankruptcy Case, and the Paradise Shoppes Bankruptcy Case, the "**Wells Fargo Debtor Bankruptcy Cases**");

WHEREAS, as of August 2, 2010, CRF-Panther owed the Bank the principal sum of \$18,662,481 under the CRF-Panther Loan Documents;

WHEREAS, for purposes of this Agreement, the parties stipulate that the present as-is fair market value of the Century Town Center is \$12,190,000;

WHEREAS, CRF-Panther remains in possession and control of Century Town Center and is managing its business and financial affairs as a debtor-in-possession in the CRF-Panther Bankruptcy Case;

WHEREAS, the Bankruptcy Court set October 18, 2010, as the last date to file proofs of claim in the CRF-Panther Bankruptcy Case;

WHEREAS, on October 15, 2010, the Bank timely filed its secured proof of claim in the CRF-Panther Bankruptcy Case;

WHEREAS, as of January 31, 2011, CRF-Panther is in possession of approximately \$520,614 (the “**CRF-Panther Cash Collateral**,” and, together with the Odyssey XVII Cash Collateral, the Paradise Shoppes Cash Collateral and cash collateral accruing each of such cases during the term of this Agreement, the “**Wells Fargo Cash Collateral**”) of net operating income from the post-petition operation of Century Town Center which funds constitute the Bank’s cash collateral within the meaning of 11 U.S.C. § 361;

WHEREAS, the Bank owns and holds valid, perfected, first priority liens and secured claims against Century Town Center and the CRF-Panther Cash Collateral to secure the obligations of CRF-Panther to the Bank pursuant to the CRF-Panther Loan Documents;

**General**

WHEREAS, the Wells Fargo Debtor Bankruptcy Cases are being jointly administered in the Bankruptcy Court along with certain other debtor entities;

WHEREAS, on November 22, 2010, the Bankruptcy Court entered an Order (the “**SARE Order**”) in the Wells Fargo Debtor Bankruptcy Cases determining that each of the Wells Fargo Debtors constitute single asset real estate debtors within the meaning of 11 U.S.C. § 101(51B); provided, however, by agreement among the Parties, the time periods for the Wells Fargo Debtors to comply with the provisions of 11 U.S.C. § 362(d)(3) were tolled pending further notice by the Bank to the Wells Fargo Debtors;

WHEREAS, on December 9, 2010, the Wells Fargo Debtors filed a motion in the Bankruptcy Court to submit all issues involved in the Wells Fargo Debtor Bankruptcy Cases and related foreclosure proceedings to mediation;

WHEREAS, on January 10, 2011, the Bankruptcy Court entered an Order requiring the Parties to participate in a judicial settlement conference;

WHEREAS, on January 10, 2011, the Bank gave notice to the Wells Fargo Debtors and filed a Notice of Cancellation of the tolling period provided in the SARE Order;

WHEREAS, on January 27, 2011, the Parties participated in a judicial settlement conference with the Honorable Paul G. Hyman, Chief Bankruptcy Judge for the United States Bankruptcy Court for the Southern District of Florida;

WHEREAS, at the conclusion of the judicial settlement conference, the Parties executed a Term Sheet setting forth the material terms and conditions of this Agreement;

WHEREAS, the Parties mutually desire to resolve the claims asserted or that could be asserted in the Adversary Proceeding.

NOW THEREFORE, in consideration of the foregoing and the mutual promises, undertakings and agreements contained herein, subject to Bankruptcy Court approval, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

2. Settlement of Walden Woods Bankruptcy Case. The Parties agree to resolve the issues between them in connection with the Walden Woods Bankruptcy Case on the following terms:

a. the Bank shall be granted stay relief to pursue the Walden Woods Foreclosure Case effective ninety-one (91) days after the date that the Bankruptcy Court approves this Agreement;

b. on or before ninety (90) days after the date that the Bankruptcy Court approves this Agreement, Larry Maxwell or his designee shall purchase the Walden Woods Loan Documents and all claims arising thereunder for the sum of \$3,800,000;

c. within thirty (30) days after closing on the purchase described in subparagraph 2b above, the purchaser, represented by independent counsel, shall intervene and substitute as plaintiff in the Walden Woods Foreclosure Case; and

d. in the event that the transaction described in subparagraph 2c fails to timely close, then Walden Woods shall cooperate with the Bank to expedite the foreclosure of the Bank's first priority lien against the Walden Woods Project in the Walden Woods Foreclosure Case; provided, however, in such event, the Parties reserve all of their respective rights with respect to any deficiency claims under the Walden Woods Loan Documents.

3. Settlement of GPP-Cobb Bankruptcy Case. The Parties agree to resolve the issues between them in connection with the GPP-Cobb Bankruptcy Case on the following terms:

a. the GPP-Cobb Bankruptcy Case shall be dismissed immediately in conjunction with the Bankruptcy Court's approval of this Agreement;

b. the Bank shall pay GPP-Cobb the sum of \$60,000 within ten (10) calendar days of the date of the Order dismissing the GPP-Cobb Bankruptcy Case;

c. upon dismissal of the GPP-Cobb Bankruptcy Case, the Bank shall forthwith immediately exercise its foreclosure remedies against Grove Plaza as provided in the GPP-Cobb Loan Documents and as available pursuant to the laws of the State of Georgia;

d. the Parties will cooperate to ensure the orderly transition of Grove Park through the foreclosure process from GPP-Cobb to the Bank; and

e. if not previously provided, in connection with the Bank obtaining title to Grove Plaza and turnover of all assets related to the operation thereof, including all leases, accounts receivable and other intangible assets, the Bank shall deliver a release to the guarantors under the GPP-Cobb Loan Documents.

4. Settlement of Bankruptcy Cases of Odyssey XVII, Paradise Shoppes, and CRF-Panther. The Parties agree to resolve the issues between them in connection with the

Odyssey XVII Bankruptcy Case, the Paradise Shoppes Bankruptcy Case, and the CRF-Panther Bankruptcy Case on the following terms:

- a. The Parties shall work together collaboratively to prepare and prosecute a plan or plans of liquidation which plan(s) will incorporate and provide for: (i) the terms of this Agreement, as applicable; (ii) bankruptcy auction sales of St. Charles Plaza, Paradise Shoppes, and Century Town Center and all assets thereof; and (iii) the distribution of sale proceeds and the Bank's Cash Collateral as provided herein;
- b. The Wells Fargo Debtors shall retain Dan Finkle and Holliday Fenoglio & Fowler, L.P., on terms and conditions reasonably acceptable to the Bank, to act as real estate broker in the marketing and auction sale of St. Charles Plaza, Paradise Shoppes, and Century Town Center and all assets thereof;
- c. The auction sale(s) of St. Charles Plaza, Paradise Shoppes, and Century Town Center and all assets thereof (the "**Sale Assets**") shall close (the "**Effective Date**") on or before four (4) months after the date that the Court enters an Order approving this Agreement;
- d. The auction sale(s) of the Sale Assets shall be made pursuant to the bidding procedures and related matters attached hereto as Exhibit "A;"
- e. All customary and reasonable closing costs associated with the sale of the Sale Assets, including a reasonable broker's commission and customary prorated expenses (the "**Sale Closing Costs**"), shall be paid at closing on the sale of the Sale Assets;
- f. After payment of the Sale Closing Costs, the proceeds of the sale(s) of the Sale Assets shall be distributed on the Effective Date as follows: (i) the Bank shall receive 100% of the proceeds from the sale of the Sale Assets from all sales equal to or less than 110% of the as-is fair market value of such Sale Assets; (ii) the Bank shall receive 90% of the next 10% of proceeds (i.e. from sales between 110% and 120% of the as-is fair market value of such Sale Assets) with the remaining 10% of such proceeds remaining with the estate; (iii) the Bank shall receive 80% of the next 10% of proceeds (i.e. from sales between 120% and 130% of the as-is fair market value of such Sale Assets) with the remaining 20% of such proceeds remaining with the estate; and (iv) the Bank shall receive 70% of all proceeds from sales above 130% of the as-is fair market value of such Sale Assets with the remaining 30% of such proceeds remaining with the estate;
- g. Notwithstanding the provisions of subparagraph f above, the Bank shall enter a "credit bid" at the auction sale(s) of the Sale Assets in an amount no greater than 110% of the as-is fair market value of such Sale Assets, as set forth above; provided, however, at closing on any such credit bid, the Bank shall pay the Sale Closing Costs associated with such Sale Assets;

- h. The Wells Fargo Cash Collateral shall be distributed as follows: (i) on the Effective Date, a carve-out for non-insider general unsecured creditors holding allowed claims in an aggregate amount not to exceed \$150,000 and estimated as follows: (1) \$33,000 for Odyssey XVII, (2) \$16,500 for Paradise Shoppes, and (3) \$99,000 for CRF-Panther; (ii) a carve-out not to exceed \$425,000 for payment of allowed claims for (1) attorneys fees and costs for Stichter Riedel et al. relating to the Wells Fargo Debtor Bankruptcy Cases (excluding retainers of \$20,000 for each such case which retainers shall be returned to the appropriate party), and (2) reimbursement of costs and fees of Clark, Campbell, MaWhinney, P.A. and The Hollingsworth Group, Inc. (Bob Madden); (iii) on the applicable Effective Date for each estate, a carve-out equal to (1) \$63,000 for the estate of Odyssey XVII; (2) \$102,000 for the estate of Paradise Shoppes; and (3) \$121,900 for estate of CRF-Panther; (iv) repayment of any DIP loans made by OC DIP, LLC; and (v) the balance to the Bank. The Bank acknowledges and agrees that the plan(s) will provide that the estate carve-outs referenced in (h)(iii) shall be disbursed to the equity owner of such estate;
- i. The Wells Fargo Debtors shall use their best efforts to conduct the auction sale(s) of St. Charles Plaza, Paradise Shoppes, and Century Town Center and all assets related thereto pursuant to confirmed plan(s) of liquidation incorporating the terms of this Agreement such that the Effective Date will take place after confirmation of such plan(s) and constitute the effective date of such plan(s), if possible;
- j. Any plan(s) of liquidation filed in this case shall be approved by the Bank, as sponsor thereof, which approval shall not be unreasonably withheld;

5. SARE Order. Notwithstanding the Bank's prior Notice of Cancellation, the provisions of the SARE Order shall be tolled and suspended during the pendency of this Agreement.

6. Mutual Releases. Mutual releases shall be exchanged by and between Wells Fargo Debtors, the Guarantors, and Wells Fargo shall be exchanged with respect to all of the claims relating to the loan documents described herein, except those relating to the Walden Woods Loan Documents.

7. Necessary Additional Documents. The Parties agree to cooperate in executing any additional documents necessary to effectuate the terms of this Agreement.

8. Bankruptcy Court Approval and Effect of Agreement. The Parties acknowledge and understand that this Agreement must be approved by the Bankruptcy Court and shall not be effective until such approval is obtained. Should the Bankruptcy Court not approve the terms of this Agreement, the Agreement is null and void and shall have no force or effect and shall not be enforceable by or against the Parties hereto and the Parties shall be restored to their prior position without any prejudice.

9. Bankruptcy Court Retention of Jurisdiction. The Parties shall request that the Bankruptcy Court retain jurisdiction to interpret and enforce all the terms of this Agreement. The Parties shall consent to the jurisdiction of the Bankruptcy Court in any action, including an adversary proceeding or other proceeding, brought to enforce the terms of this Agreement. Such retention of jurisdiction shall be requested to be memorialized in the Order approving this Agreement and any Order dismissing the Bankruptcy Case.

10. Authority to Enter Into Agreement. Other than as referenced herein regarding Bankruptcy Court approval, the Parties represent that they have the authority to enter into, execute and perform this Agreement and to compromise the claims or potential claims referred to herein.

11. Acknowledgement of Terms. The Parties acknowledge and agree that they have been represented by legal counsel and: (i) they have completely read and fully understand this Agreement and have voluntarily accepted the terms contained herein for the purposes of making a full and final compromise, adjustment and settlement; and (ii) they have determined that this settlement is fair and reasonable under all the circumstances and that this determination is based solely upon their independent judgment after an opportunity to consult with counsel of their choice and, that in making this determination, they have had an adequate opportunity to discuss and assess the merits of all claims or potential claims.

12. Savings Clause. To the extent that any provision of this Agreement is deemed by a court of competent jurisdiction to be unenforceable, void or voidable, this Agreement is modified to the minimum extent necessary to exclude or strike herefrom only that discrete portion hereof that is deemed by such court to be unenforceable, void or voidable and the remainder of this Agreement shall continue to remain in full force and effect and be valid and binding on the Parties.

13. Counterparts and Copies. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. A facsimile, .pdf or electronic copy of this Agreement and any signature hereon shall be considered for all purposes as originals and delivery of an executed counterpart.

14. Merger Clause. This Agreement constitutes the entire agreement of the Parties. All prior oral and written agreements for all Parties are only those that are set forth herein and none of the Parties is relying on any promise or representation not set forth in this Agreement. This Agreement can be amended only in writing, signed by all Parties, and none of the terms, conditions or provisions of the Agreement can be waived, changed, altered or modified except by an instrument in writing signed by all the Parties against whom enforcement of such change is sought.

15. Choice of Law and Jurisdiction. The Parties agree that the Agreement is governed by Florida law and federal law relating to the Bankruptcy Code and consent to and agree to the Bankruptcy Court retaining and having exclusive jurisdiction to interpret and enforce the terms of this Agreement and the transactions to be completed or entered hereunder.

16. Opportunity to Review. Each of the Parties acknowledge that he, she or it has read all of the terms of this Agreement, has had an opportunity to consult with counsel of their own



choosing, or has voluntarily waived such right and enters into this Agreement voluntarily and without duress.

17. Joint Drafting. This Agreement shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Agreement, no provisions shall be construed and interpreted for or against any of the Parties because such provisions or any other provision of the Agreement as a whole is purportedly prepared or requested by such Party.

18. Parties Cooperation. The Parties agree to cooperate to effectuate the terms of this Agreement, including Bankruptcy Court Approval.

19. Captions. Captions in this agreement are included for identification and shall not be used to interpret the Agreement.

# Exhibit “2”

April \_\_\_\_, 2011

Paradise Shoppes at Apollo Beach, LLC  
c/o Holliday Fenoglio Fowler, L.P.  
Attention: Daniel Finkle  
2 Alhambra Plaza, Penthouse II-A  
Coral Gables, Florida 33134  
dfinkle@hfflp.com

**Re: Shoppes of Apollo Beach, Apollo Beach, Florida**

Dear Daniel:

This term sheet (“**Term Sheet**”) sets forth certain proposed terms for the purchase of the Property referenced below from Paradise Shoppes at Apollo Beach, LLC (“**Seller**”).

This letter evidences Purchaser’s intent to enter into an agreement with Seller to acquire the Property. The transaction shall be upon the following general terms and conditions, which are binding upon the parties:

**Binding Provisions**

**Purchase Price.** The purchase price for the Property shall be \_\_\_\_\_.

**363 Bankruptcy Sale.** With the exception of future real estate taxes and certain easements, restrictions, and dedications shown in the pro forma owner’s title insurance policy for the Property provided in the Due Diligence Documents, marketable fee simple title to the Property and related improvements will be sold free and clear of all mortgages, liens, pledges, charges, security interests, encumbrances, claims (as defined in 11 U.S.C. § 101(5)), and interests of any kind whatsoever (collectively, the “**Encumbrances**”), with all valid Encumbrances attaching to the proceeds of the sale, pursuant to 11 U.S.C. § 363(f), and all holders of Encumbrances being enjoined from asserting any such claims against the Purchaser.

**As Is Where Is.** Purchaser shall purchase and acquire the Property in its “as-is/where is” shape and condition, with any and all faults, if any, and based solely on Purchaser’s own inspection, investigation and evaluation of the Property, without representation or warranty, whether express or implied; and neither Seller nor any agent of Seller has made any representations or warranties, express or implied, concerning the Property, including, but not limited to, any warranties or representations as to habitability, merchantability, fitness or suitability for a particular purpose, or the compliance of the Property with governmental laws.

**No Financing or Other Contingencies.** Purchaser has no financing or other contingencies to closing the purchase of the Property as set forth herein.

**Effective Date.** The Effective Date shall be the date this Term Sheet is executed by both Purchaser and Seller.

**Proof of Funds.** Exhibit A attached hereto contains a statement detailing Purchaser’s proof of

funds in the amount of the Purchase Price.

**Deposit.** On or before **May 9, 2011**, Purchaser shall deposit 10% of the total Purchase Price (the “**Deposit**”) with Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Attention: Susan Fleming Bennett, Esq., 401 E. Jackson Street, Suite 2200, Tampa, FL 33602 (Telephone: 813-222-5072 / Facsimile: 813-222-5089), which party shall serve as escrow agent in connection with this transaction. The Deposit shall be non-refundable if Purchaser is determined to submit the “Highest and Best” proposal as determined at the time of the Auction and subject to approval by the United States Bankruptcy Court for the Middle District of Florida, Tampa Division (the “**Bankruptcy Court**”).

**Auction Date.** The Auction for this Property will commence on **May 17, 2011 at 10:00 a.m. (EST)** and will be conducted at the Marriot Tampa Airport at Tampa International Airport, 4200 George J. Bean Parkway, Tampa, Florida 33607. This location is subject to change.

**Closing Date.** The closing shall occur on or before June 10, 2011.

**Due Diligence Period.** Purchaser is required to complete due diligence prior to the Auction Date. No property and/or additional inspections will be allowed after the Auction.

**Due Diligence Documents.** Purchaser acknowledges it has received and reviewed the following due diligence items with respect to the Property:

**[ITEMIZATION OF ALL DILIGENCE MATERIAL PROVIDED TO PARTIES IN DILIGENCE ROOM AND OTHERWISE – TO BE FINALIZED].**

**Standard Prorations.** Pro-rations shall occur as of the closing date and shall include, but not be limited to utility fees, real estate taxes, and rents.

**Brokers.** Purchaser and Seller agree that no broker is involved with this transaction except Holliday Fenoglio & Fowler (collectively “**HFF**”). Seller shall be responsible for compensating HFF.

**Closing Costs.** **Transfer taxes, documentary stamps, and related costs to record the instruments necessary to effectuate the sale of the Property, if any, shall be paid by Seller. Seller shall also pay for the ALTA 1 survey, Phase I environmental, and the inspection report.** Purchaser shall be responsible for the costs and premiums associated with obtaining a title insurance policy. Purchaser shall also be responsible for the payment of all of its due diligence costs. Each party will be responsible for its own attorneys' fees.

**Purchase and Sale Agreement.** Purchaser agrees to review and execute a Purchase and Sale Agreement to acquire the Property on or before **May 9, 2011**. In the event Purchaser’s final offer is determined to be the Highest and Best, the Purchase and Sale Agreement will be binding. Purchaser further agrees to serve as a back-up bidder in the event that its Bid is the second Highest and Best.

**Binding Provision.** For and in consideration of the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree to maintain the existence and terms of this Term Sheet and all negotiations relating to the 363 Bankruptcy Sale as confidential between the parties. Purchaser acknowledges and agrees that it may not communicate with the Seller, Creditors or any third party (with the exception of HFF) in connection with this Term Sheet and its due diligence review.

Except for the provisions contained in the “Binding Provision” section above, which is intended

to be binding upon the parties, this letter is non-binding and is intended to be solely an expression of Purchaser's intent to purchase the Property and is subject to the execution by all parties of the binding Purchase Agreement and any ancillary documents. Notwithstanding, if Seller and Purchaser are unable to agree upon and execute a binding Purchase Agreement, then neither party shall have any obligation to the other under this term sheet. At all times, Seller shall have the right to solicit back-up letters of intent and contracts in connection with the sale of the Property.

[SIGNATURES ON NEXT PAGE]

AGREED and ACCEPTED this      day of April, 2011.

**PURCHASER**

**SELLER**

**Paradise Shops at Apollo Beach, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A

**PROOF OF FUNDS**

[To be submitted with bid.]

# **EXHIBIT B**



Legal description for property owned by Odyssey (III) DP XVII, LLC:

PARCEL 1: Tracts 1 and 2, AND the North 1/2 of Tracts 15 and 16 in the Southwest 1/4 of Section 32, Township 26 South, Range 27 East, FLORIDA DEVELOPMENT CO. TRACT, according to the map or plat thereof as recorded in Plat Book 3, Page 60 through 63 inclusive, of the Public Records of Polk County, Florida;  
LESS AND EXCEPT roadways.

PARCEL 2: Tract 3 and 14 and the South Half of Tract 15 and the South Half of Tract 16, in the Southwest 1/4 of Section 32, Township 26 South, Range 27 East, as per the subdivision of the FLORIDA DEVELOPMENT COMPANY; being in the West 1/2 of the East 1/2 of the Northwest 1/4 of the Southwest 1/4; and the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section, Township and Range;

LESS .76 acres conveyed to the State of Florida for right of way purposes, which is described as: That part of the South 1/2 of said Tract 16 which lies East of and within 125 feet of the survey line which begins on the South boundary of Northwest 1/4 of Southwest 1/4 of said Section 32, at a point 7.2 feet East from the Southwest corner of said forty, and runs thence North 0° 11' West, 1319.65 feet to the North boundary of said forty, to a point 6.0 feet East from the Northwest corner thereof;

LESS and EXCEPT that part taken by that certain Order of Taking recorded in Official Records Book 6109, Page 949 of the Public Records of Polk County, Florida;

ALSO LESS AND EXCEPT the following described land: ("Florida Department of Transportation Taking") Those portions of Tracts 14, 15 and 16, Map of Florida Development Co. Tract lying in the Southwest 1/4 of Section 32, Township 26 South, Range 27 East, as per plat thereof recorded in Plat Book 3, Page 60, of the Public Records of Polk County, Florida, being described as follows: Commence at the Southwest corner of said Section 32; thence along the South line of said Section 32, South 89° 58' 08" East a distance of 43.36 feet to the survey base line of State Road 25 (U.S. 27); thence along said survey base line North 00° 21' 27" West a distance of 1,339.49 feet; thence South 89° 52' 10" East a distance of 93.00 feet to the intersection of the Easterly existing right of way line of said State Road 25 (per Section 1618-203) and the South line of said Tract 16 for a POINT OF BEGINNING; thence along said Easterly existing right of way line North 00° 21' 27" West a distance of 36.46 feet to the Easterly existing right of way line of said State Road 25 (per Section 16180-2505); thence along said Easterly existing right of way line the following two (2) courses: 1) North 89° 19' 18" East a distance of 15.00 feet; 2) North 00° 21' 27" West a distance of 286.90 feet to end said courses; thence South 89° 50' 41" East a distance of 588.12 feet; thence South 00° 05' 24" East a distance of 323.31 feet to the South line of said Tract 14; thence along the South line of said Tracts 14, 15 and 16, North 89° 52' 10" West a distance of 601.61 feet to the POINT OF BEGINNING.

ALSO LESS AND EXCEPT FROM PARCELS 1 AND 2 the following described land: ("Conveyance to Polk County") A portion of Tracts 1, 2 and 3 of Florida Development Company as recorded in Plat Book 3, Pages 60-63, of the Public Records of Polk County, Florida, also being a portion of the Southwest Quarter of Section 32, Township 26, South, Range 27 East, being more particularly described as follows: BEGIN at the Northeast corner of said Tract 3; thence South 00° 11' 31" East along the East line of said Tract 3 a distance of 34.98 feet; thence South 89° 52' 09" West parallel to and 35 feet distant from the North line of said Tracts 1, 2 and 3 a distance of 836.57 feet to the East right of way line of U.S. Highway 27 as shown on State Road Department Right of Way Map Section 16180-2505; thence along said right of way for the following three (3) calls; (1) North 00° 21' 24" West a distance of 12.44 feet; (2) thence North 89° 40' 36" East a distance of 99.98 feet; (3) thence North 00° 19' 24" West a distance of 22.20 feet to the North line of said Tract 1 and the South right of way of Holly Hill Road; thence North 89° 52' 09" East

Continued legal description for property owned by Odyssey (III) DP XVII, LLC:

along the North line of said Tracts 1, 2 and 3 and the South right of way of Holly Hill Road a distance of 736.68 feet to the POINT OF BEGINNING.

ALSO LESS AND EXCEPT the following described land: Out Parcel A as conveyed by Warranty Deed recorded in Official Records Book 7721, Page 614, of the Public Records of Polk County, Florida being more particularly described as follows: A portion of Tracts 1, 2, 15 and 16 of Florida Development Company as recorded in Plat Book 3, Pages 60-63 of the Public Records of Polk County, also being a portion of the Southwest 1/4 of Section 32, Township 26 South, Range 27 East being more particularly described as follows: Commence at the Southwest corner of said Section 32; thence S 89° 58' 10" E along the South line of said Section 32, a distance of 43.36 feet to the survey base line of State Road 25 (U.S. 27); thence N 00° 21' 58" W along said survey base line a distance of 1339.49 feet; thence S 89° 54' 33" E a distance of 93.00 feet to the intersection of the easterly existing right of way line of State Road 25 (per Section 1618-203) and the South line of said Tract 16; thence Northerly along said East right of way for the following five calls: (1) N 00° 21' 24" W a distance of 36.07 feet; (2) N 89° 38' 36" E a distance of 15.00 feet; (3) thence N 00° 21' 24" W a distance of 500.00 feet; (4) thence N 89° 38' 36" E a distance of 10.00 feet; (5) thence N 00° 21' 24" W a distance of 46.96 feet to the POINT OF BEGINNING; thence continue N 00° 21' 24" W along said right of way a distance of 236.86 feet; thence N 89° 38' 36" E a distance of 256.00 feet; thence S 00° 21' 24" E a distance of 163.35 feet to the beginning of a curve concave to the Northwest and having a radius of 5.00 feet; thence along said curve to the right through a central angle of 72° 43' 13" an arc distance of 6.35 feet (chord = 5.93 feet; chord bearing = S 36° 00' 13" W) to a point of reverse curvature with a curve concave to the Southeast and having a radius of 435.00 feet; thence along said curve to the left through a central angle of 9° 54' 16" an arc distance of 75.20 feet (chord = 75.10 feet; chord bearing = S 67° 24' 42" W) to a point of reverse curvature with a curve concave to the North and having a radius of 365.00 feet; thence along said curve to the right through a central angle of 27° 11' 02" an arc distance of 173.17 feet (chord = 171.55 feet, chord bearing = S 76° 03' 05" W); thence S 89° 38' 36" W a distance of 16.22 feet to the POINT OF BEGINNING.

# **EXHIBIT C**

## Legal description for property owned by Paradise Shoppes at Apollo Beach, LLC

### PARCEL B

A portion of Tract 31, of RUSKIN TOMATO FARMS, as recorded in Plat Book 27, Page 110, of the public records of Hillsborough County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 22, Township 31 South, Range 19 East, Hillsborough County, Florida; thence South 89 degrees 20'51" West on the North boundary thereof, a distance of 719.68 feet to the intersection with the Westerly right-of-way line of U.S. Highway 41 (S.R. 45); thence South 27 degrees 17'16" West on the said right-of-way line a distance of 3,401.44 feet; thence North 62 degrees 41'34" West, a distance of 467.95 feet to the Point of Beginning; thence South 27 degrees 18'26" West, a distance of 303.35 feet to the Easterly right-of-way line of Apollo Beach Boulevard; thence on said right-of-way line of a curve concave Northeasterly having a radius of 695.49 feet and a central angle of 22 degrees 45'27" an arc distance of 276.34 feet, said arc subtended by a chord which bears North 30 degrees 14'02" West, a distance 274.53 feet to a point of tangency; thence North 18 degrees 51'04" West, continuing on said right-of-way line, a distance 15.00 feet; thence departing from said right-of-way line North 71 degrees 08'56" East, a distance of 201.90 feet; thence South 62 degrees 41'34" East, a distance of 102.61 feet to the Point of Beginning.

### PARCEL D

A portion of Tracts 29, 30 and 31, of RUSKIN TOMATO FARMS, as recorded in Plat Book 27, Page 110, of the public records of Hillsborough County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 22, Township 31 South, Range 19 East, Hillsborough County, Florida; thence South 89 degrees 20'51" West on the North boundary thereof, a distance of 719.68 feet to the intersection with the Westerly right of way line of U.S. Highway 41 (S.R. 45); thence South 27 degrees 17'16" West on the said right of way line a distance of 2882.28 feet to the Point of Beginning, thence South 27 degrees 17'16" West, continuing on aforesaid Westerly right of way line a distance of 499.16 feet; thence departing from said right of way line North 62 degrees 41'34" West, a distance of 217.94 feet; thence South 27 degrees 18'28" West, a distance of 20.00 feet; thence North 62 degrees 41'34" West, a distance of 352.61 feet; thence South 71 degrees 08'56" West, a distance of 201.90 feet to the Easterly right of way line of Apollo Beach Boulevard; thence on said right of way line North 18 degrees 51'04" West, a distance of 60.00 feet; thence departing said right of way line, North 71 degrees 08'56" East, a distance of 250.00 feet; thence North 33 degrees 40'04" East, a distance of 139.54 feet; thence North 27 degrees 17'16" East, a distance of 304.12 feet; thence South 62 degrees 42'44" East, a distance of 565.00 feet to the Point of Beginning.

### PARCEL E

A portion of Tracts 29, 30 and 31, of RUSKIN TOMATO FARMS, as recorded in Plat Book 27, Page 110, of the public records of Hillsborough County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 22, Township 31 South, Range 19 East, Hillsborough County, Florida; thence South 89 degrees 20'51" West on the North boundary thereof, a distance of 719.68 feet to the intersection with the Westerly right of way line of U.S. Highway 41 (S.R. 45); thence South 27 degrees 17'16" West on the said right of way line a distance of 2674.52 feet to the Point of Beginning; thence South 27 degrees 17'16" West continuing on aforesaid Westerly right of way line, a distance of 207.76 feet; thence departing from said right of way line North 62 degrees 42'44" West, distance of 565 feet, thence North 27 degrees 17'16" East, a distance of 307.76 feet; thence South 62

Continued legal description for property owned by Paradise Shoppes at Apollo Beach, LLC:

degrees 42'44" East, distance of 365.00 feet; thence South 27 degrees 17'16" West, a distance of 100 feet; thence South 62 degrees 42'44" East, a distance of 200.00 feet to the Point of Beginning.

ADDITIONAL PARCEL:

A portion of Tract 30, RUSKIN TOMATO FARMS, as recorded in Plat Book 27, Page 110, of the public records of Hillsborough County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 22, Township 31 South, Range 19 East, Hillsborough County, Florida; thence South 89 degrees 20'51" West on the North boundary thereof, a distance of 719.68 feet to the intersection with the Westerly right of way line of U.S. Highway 41 (S.R. 45); thence South 27 degrees 17'16" West on said right of way line a distance of 2,575.29 feet; thence North 62 degrees 42'44" West, a distance of 239.93 feet to the Point of Beginning; thence continue North 62 degrees 42'44" West, a distance of 192.40 feet; thence North 27 degrees 17'16" East, a distance of 2.48 feet; thence South 62 degrees 42'44" East, a distance of 192.40 feet; thence South 27 degrees 17'16" West, a distance of 2.48 feet to the Point of Beginning.

AND LESS THE FOLLOWING:

A portion of Tract 29 and 31 of RUSKIN TOMATO FARMS, as recorded in Plat Book 27, Page 110 of the public records of Hillsborough County, Florida, more particularly described as follows: Commence at the NE corner of Section 22, Township 31 South, Range 19 East, Hillsborough County, Florida; thence South 89 degrees 20'51" West, on the North boundary thereof, a distance of 719.68 feet to the intersection with the Westerly right-of-way line of U.S. Highway 41 (S.R. 45); thence South 27 degrees 17'16" West, on said right-of-way line a distance of 3,325.18 feet; thence departing said right-of-way-line, North 62 degrees 41' 34" West, a distance of 580.49 feet to a point herein known as Point "A" for a Point of Beginning; thence North 33 degrees 40'04" East, a distance of 54.60 feet; thence South 27 degrees 26'29" West, a distance of 50.00 feet; thence South 09 degrees 08'07" West, a distance of 11.33 feet to a point on a curve concave northwesterly having a radius of 50.00 feet and a central angle of 16 degrees 10'02"; thence on the arc of said curve a distance of 14.11 feet, said arc subtended by a chord which bears South 62 degrees 48'43" West a distance of 14.06 feet; thence South 70 degrees 53'44" West, a distance of 166.40 feet; thence South 70 degrees 49'36" West, a distance 54.73 feet to a point on a curve concave northeasterly having a radius of 25.00 feet and a central angle of 42 degrees 08'09"; thence on the arc of said curve a distance of 18.39 feet, said arc subtended by a chord which bears North 88 degrees 06'20" West a distance of 17.97 feet; thence North 18 degrees 51'04" West, a distance of 8.05 feet; thence North 71 degrees 08'56" East, a distance of 250.00 feet to the Point of Beginning. Together With Commence from said Point "A"; thence North 33 degrees 40'04" East, a distance of 76.73 feet for a Point of Beginning; thence continue North 33 degrees 40'04" East, a distance of 62.71 feet; thence South 62 degrees 42'44" East, a distance of 7.65 feet; thence South 28 degrees 53'05" West, a distance of 12.55 feet to a point on a curve concave northwesterly having a radius of 10.00 feet and a central angle of 28 degrees 06'01"; thence on the arc of said curve a distance of 4.90 feet, said arc subtended by a chord which bears South 42 degrees 56'06" West a distance of 4.86 feet; thence South 56 degrees 59'07" West, a distance of 3.49 feet to a point on a curve concave southeasterly having a radius of 25.00 feet and a central angle of 28 degrees 49'01"; thence on the arc of said curve a distance of 12.57 feet, said arc subtended by a chord which bears South 42 degrees 34'36" West, a distance of 12.44 feet; thence South 28 degrees 10'05" West, a distance of 16.21 feet; thence South 56 degrees 20'32" West, a distance of 15.86 feet to the Point of Beginning.

Continued legal description for property owned by Paradise Shoppes at Apollo Beach, LLC:

EASEMENT PARCEL 1:

Easement for ingress, egress, drainage and utilities for the benefit of PARCELS B, D and E described above, as created by Reciprocal Easement Agreement recorded in Official Records Book 13026, Page 1396, of the public records of Hillsborough County, Florida, over land described in Exhibit A of said instrument.

EASEMENT PARCEL 2:

Easements for ingress, egress and water line for the benefit of PARCELS B, D and E described above, as created by Reciprocal Easement Agreement with Covenants, Conditions and Restrictions recorded in Official Records Book 13693 , Page 1596, of the public records of Hillsborough County, Florida, over land described in Exhibits B and C of said instrument.

EASEMENT PARCEL 3:

Easements for ingress and egress for the benefit of PARCELS B, D and E described above, as created by Reciprocal Easements and Restrictive Covenant recorded in Official Records Book 10675, Page 1520, of the public records of Hillsborough County, Florida and as described in Exhibit "A" of said instrument.

THE ABOVE DESCRIBED PARCELS, EXCLUDING THE EASEMENT PARCELS, ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

OVERALL DESCRIPTION:

A portion of Tract 28, 29 and 30, of RUSKIN TOMATO FARMS, as recorded in Plat Book 27, Page 110, of the public records of Hillsborough County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 22, Township 31 South, Range 19 East, Hillsborough County, Florida; thence South 89 degrees 20'51" West on the North boundary thereof, a distance of 719.68 feet to the intersection with the Westerly right of way line of U.S. Highway 41 (State Road 45); thence South 27 degrees 17'16" West on the said right of way line a distance of 2,575.29 feet for the Point of Beginning; thence continue South 27 degrees 17'16" West, along said Right of Way line, a distance of 806.98 feet; thence departing said right of way line, North 62 degrees 41'34" West, a distance of 217.94; thence South 27 degrees 18'28" West, a distance of 20.00 feet; thence North 62 degrees 41'34" West, a distance of 250.01 feet; thence South 27 degrees 18'26" West, a distance of 303.35 feet to the Easterly right of way line of Apollo Beach Boulevard; thence on said right of way line along a curve concave Northeasterly having a radius of 695.49 feet and a central angle of 22 degrees 45'27", an arc distance of 276.34 feet, said arc subtended by a chord which bears North 30 degrees 14'02" West, a distance 274.53 feet to a point of tangency; thence continuing on said right of way line, North 18 degrees 51'04" West, a distance of 66.95 feet; thence departing from said right of way line, along a non-tangent curve concave Northeasterly, having a radius of 25.00 feet and a central angle of 42 degrees 08'09", an arc distance of 18.39 feet, said arc subtended by a chord which bears South 88 degrees 06'20" East, a distance 17.97 feet to a point of tangency; thence North 70 degrees 49'36" East, a distance of 54.73 feet; thence North 70 degrees 53'44" East, a distance of 166.40 feet to tangent curve concave Northwesterly having a radius of 50.00 feet and a central angle of 16 degrees 10'02", an arc distance of 14.11 feet, said arc subtended by a chord which bears North 62 degrees 48'43" East, a distance of 14.06 feet; thence non-

Continued legal description for property owned by Paradise Shoppes at Apollo Beach, LLC:

tangent, North 09 degrees 08'07" East, a distance of 11.33 feet; thence North 27 degrees 26'29" East, a distance of 50.00 feet; thence North 33 degrees 40' 04" East, a distance of 22.13 feet; thence North 56 degrees 20'32" East, a distance of 15.86 feet; thence North 28 degrees 10'05" East, a distance of 16.21 feet to a tangent curve concave Southeasterly having a radius of 25.00 feet and a central angle of 28 degrees 49'01", an arc distance of 12.57 feet, said arc subtended by a chord which bears North 42 degrees 34'36" East, a distance 12.44 feet to a point of tangency; thence North 56 degrees 59'07" East, a distance of 3.49 feet to a tangent curve concave Northwesterly having a radius of 10.00 feet and a central angle of 28 degrees 06'01", an arc distance of 4.90 feet, said arc subtended by a chord which bears North 42 degrees 56'06" East, a distance 4.86 feet to a point of tangency; thence North 28 degrees 53'05" East, a distance of 12.55 feet; thence North 62 degrees 42'44" West, a distance of 7.65 feet; thence North 27 degrees 17'16" East, a distance of 611.88 feet; thence South 62 degrees 42'44" East, a distance of 132.81 feet; thence North 27 degrees 17'16" East, a distance of 2.48 feet; thence South 62 degrees 42'44" East, a distance of 192.40 feet; thence South 27 degrees 17'16" West, a distance of 2.48 feet; thence South 62 degrees 42'44" East, a distance of 239.93 feet to the Point of Beginning.

LESS AND EXCEPT THE FOLLOWING:

PARCEL F:

A portion of Tract 30 of RUSKIN TOMATO FARMS, as recorded in Plat Book 27, Page 110, of the public records of Hillsborough County, Florida, more particularly described as follows:

Commence at the NE corner of Section 22, Township 31 South, Range 19 East, Hillsborough County, Florida; thence South 89 degrees 21'45" West, on the North boundary thereof, a distance of 718.70 feet to the intersection with the Westerly right-of-way line of U.S. Highway 41 (S.R. 45); thence South 27 degrees 17'16" West, on said right-of-way line a distance of 2,575.29 feet to the Point of Beginning; thence continue on said right-of-way line, South 27 degrees 17'16" West, a distance of 100 feet; thence North 62 degrees 42'44" West, a distance of 200 feet; thence North 27 degrees 17'16" East, a distance of 100 feet; thence South 62 degrees 42'44" East, a distance of 200.00 feet to the Point of Beginning.

# **EXHIBIT D**



Legal description for property owned by CRF-Panther IX, LLC:

PARCEL 1:

The West 20 acres of Tract 9, Section 5, Township 33 South, Range 39 East, according to last general plat of lands of Indian River Farms Company, filed in the Office of the Clerk of the Circuit Court of St. Lucie County, Florida, in Plat Book 2, Page 25, now lying and being in Indian River County, Florida.

Now Known As:

The plat of CENTURY TOWN CENTER, according to the plat thereof as recorded in Plat Book 24, Pages 64 through 69, of the Public Records of Indian River County, Florida, which consists of Lots 1, 2, 3 and Stormwater Tract.

LESS AND EXCEPT THEREFROM, Lot 3 of said CENTURY TOWN CENTER, according to the plat thereof as recorded in Plat Book 24, Pages 64 through 69, of the Public Records of Indian River County, Florida.

AND

PARCEL 2a:

That part of the West 10.3 acres of Tract 8, Section 7, Township 33 South, Range 39 East, lying South of the South right of way of the Main Canal, according to last general plat of lands of Indian River Farms Company Subdivision, filed in the Office of the Clerk of the Circuit Court of St. Lucie County, Florida, in Plat Book 2, Page 25, said land now lying and being in Indian River County, Florida, LESS AND EXCEPTING the following described property:

The South 531.67 feet of the West 434.15 feet of Tract 8, Section 7, Township 33 South, Range 39 East, according to last general plat of lands of Indian River Farms Company Subdivision, filed in the Office of the Clerk of the Circuit Court of St. Lucie County, Florida, in Plat Book 2, Page 25, said land now lying and being in Indian River County, Florida.

AND

PARCEL 2b:

All that part of the East 477.76 feet of the West 911.91 feet of Tract 8, Section 7, Township 33 South, Range 39 East, lying South of the South right of way of the Main Canal, according to last general plat of lands of Indian River Farms Company Subdivision, filed in the Office of the Clerk of the Circuit Court of St. Lucie County, Florida, in Plat Book 2, Page 25, said land now lying and being in Indian River County, Florida, LESS AND EXCEPTING the South 813.14 feet of the above described land.

LESS AND EXCEPT the following described tract of land: The East eight feet of the West 911.11 feet of Tract 8, Section 7, Township 33 South, Range 39 East, Indian River County, Florida, lying South of the South right of way line of the Main Canal, according to last general plat of lands of Indian River Farms Company Subdivision, filed in the Office of the Clerk of the Circuit Court of St. Lucie County, Florida, in Plat Book 2, Page 25, said land now lying and being in Indian River County, Florida, LESS the South 813.14 feet thereof.