



ORDERED in the Southern District of Florida on November 16, 2021.

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In re: Case No. 21-15555 -EPK
PALM BEACH RESORT AND BEACH CLUB Chapter 11
CONDOMINIUM ASSOCIATION, INC.,
Debtor-in-Possession.

**ORDER CONFIRMING THE DEBTOR'S
PLAN OF LIQUIDATION**

This matter came before the Court on November 10, 2021 at 2:00 p.m., to consider confirmation of the *Plan of Liquidation* of Palm Beach Resort and Beach Club Condominium Association, Inc. (the "Plan") (ECF # 53) filed on September 2, 2021 by the Debtor, Palm Beach Resort and Beach Club Condominium Association, Inc. In connection with the confirmation of the Plan, the Court has considered the evidence presented as well as the record of this case, including: (i) the Confirmation Declaration of Donald M. Laing, Jr., President, pursuant to 28 U.S.C. § 1746 (ECF # 85), (ii) the certificate of proponent of plan (ECF # 84), (iii) the testimony of Donald M. proffered by

the Debtor, (iv) List of Tenant in Common Unit week Owners [ECF # 87], and (iv) the modification(s) to the Plan as well as clarification included therein, and the proffers stated on the record by the Debtor's counsel, Ido J. Alexander, Esq. Having considered that all classes of creditors were not required to vote on the Plan given that there are no classes of impaired creditors, and no objections to confirmation of the Plan have been filed whatsoever, after notice and a hearing, the Court finds and concludes as follows:

FINDINGS OF FACTS & CONCLUSIONS OF LAW

A. **Jurisdiction.** The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, the United States District Court's general order of reference, and other various applicable provisions of the Bankruptcy Code¹ and the Federal Rules of Bankruptcy Procedure ("FRBP").

B. **Venue.** Venue before the Court is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Notice.** Due, adequate, and sufficient notice of the Plan and the order setting a hearing on confirmation, including any amendments thereto ordered by the Court (ECF ## 54, 63, 68, and 86) were served (ECF ## 67,78, and 88) upon all creditors, interest holders, and parties requesting notice. Accordingly, the method of service and solicitation of acceptance of the Plan, notice of the hearing to consider confirmation of the Plan, and notices of all other deadlines or requirements relating thereto (collectively, the "Confirmation Deadlines") were in compliance with the FRBP, were adequate and reasonable under the circumstances of this case, and no further or additional notice of the confirmation hearing or the confirmation deadlines was necessary or required.

¹ The term "Bankruptcy Code" refers to the applicable section(s) of 11 U.S.C. § 101, *et. seq.* unless otherwise indicated.

D. **Objections to Confirmation.** Present at the hearing were Donald M. Laing, Jr., the Debtor's President, Scott M. MacGregor, Director, Ido J. Alexander, Esq., the Debtor's counsel, Maria Yip, the Subchapter V Trustee, and Heidi A. Feinman, counsel for the Office of the United States Trustee. No parties objected to confirmation of the Plan.

E. **Proper Classification of Claims – 11 U.S.C. §§ 1122 and 1123.** The Plan adequately and properly identifies and classifies all claims. Pursuant to 11 U.S.C. § 1122(a), the claims placed in each class are substantially similar to other claims in each such class. Pursuant to 11 U.S.C. § 1123(a)(1), valid legal and business reasons exist for the various classes of claims created under the Plan and such classification does not unfairly discriminate among holders of claims. The classification of claims in the Plan is reasonable.

F. **Specified Unimpaired Classes – 11 U.S.C. § 1123(a)(2).** The Plan specifies all classes or claims or interests that are not impaired under the plan.

G. **Specified Treatment of Impaired Classes – 11 U.S.C. § 1123(a)(3).** The Plan specifies that there are no impaired classes, and therefore this section is not applicable.

H. **No Discrimination – 11 U.S.C. § 1123(a)(4).** The Plan provides for the same treatment of claims or interests in each respective class unless the holder of a particular claim or interest has agreed to a less favorable treatment of such claim or interest.

I. **Implementation of the Plan – 11 U.S.C. § 1123(a)(5).** Article VII of the Plan provides adequate means for the Plan's implementation.

J. **Non-Voting Equity Securities/Allocation of Voting Power – 11 U.S.C. § 1123(a)(6)**. Pursuant to the Plan, there are no equity owners as the Debtor is a not-for-profit entity, time share condominium association governed by applicable Florida laws.

K. **Interests of the Creditors, Equity Security Holders, & Public Policy – 11 U.S.C. § 1123(a)(7)**. The Plan contains only provisions that are consistent with the interests of creditors and equity security holders (not applicable given the not-for-profit nature of the entity and its governance), and with public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee.

L. **Assumption & Rejection – 11 U.S.C. § 1123(b)(2)**. Article VI of the Plan, pursuant to 11 U.S.C. § 365, provides for the assumption, rejection, or assignment of any executory contract or unexpired lease of the Debtor not previously rejected under such section.

M. **Additional Plan Provisions – 11 U.S.C. § 1123(b)(6)**. Each of the provisions of the Plan is appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code.

N. **Principal Purpose of the Plan – 11 U.S.C. § 1129(d)**. 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.

O. **Subchapter V Plan Requirements – 11 U.S.C. § 1189**. The Plan complies with 11 U.S.C. § 1189 because it was filed by the Debtor not later than 90 days after the order for relief under Chapter 11.

P. **Contents of a Subchapter V Plan – 11 U.S.C. § 1190.** In compliance with § 1190, the Plan includes: (1) a brief history of the business operations of the debtor, (2) a liquidation analysis, and (3) method and sources of funds with which the Debtor will make payments under the proposed plan of liquidation.

Q. **Satisfaction of Conditions – 11 U.S.C. § 1191(a).** The Court finds that the Plan satisfies the relevant provisions of 11 U.S.C. § 1129(a) and, as a result, is a consensual Subchapter V plan under 11 U.S.C. § 1191(a). With respect to the relevant provisions of 11 U.S.C. § 1129(a), the Court finds and concludes as follows:

1. **11 U.S.C. § 1129(a)(1) and (a)(2).** The Plan and the Plan proponent comply with the applicable provisions of the Bankruptcy Code.

2. **11 U.S.C. § 1129(a)(3).** The Plan was proposed in good faith and not by any means forbidden by law.

3. **11 U.S.C. § 1129(a)(4).** Any payment made or to be made by the Debtor, for services or for costs and expenses in or in connection with the case, or in connection with the Plan and incident to the case, has been approved by, or is subject to the approval of, the Court as reasonable.

4. **11 U.S.C. § 1129(a)(5).** The Plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the Debtor; and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders, and with public policy; and the Plan proponent has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider (if any).

5. **11 U.S.C. § 1129(a)(7)**. The requirements of 1129(a)(7) do not apply as there are no impaired classes..

6. **11 U.S.C. § 1129(a)(8)**. The requirements of 1129(a)(8) do not apply as there are no impaired classes.

7. **11 U.S.C. § 1129(a)(9)**. All priority and administrative claims are either being paid cash equal to the allowed amount of the claim on the Effective Date of the Plan, or have agreed to alternate treatment.

8. **11 U.S.C. § 1129(a)(10)**. The requirements of 1129(a)(10) do not apply as there are no impaired classes.

9. **11 U.S.C. § 1129(a)(11)**. Confirmation of the Plan is premised on liquidation as provided for under the Plan.

10. **11 U.S.C. § 1129(a)(12)**. Does not apply, as this is a Subchapter V case.

11. **11 U.S.C. § 1129(a)(13)**. The requirements of 11 U.S.C. § 1129(a)(13) do not apply because the case does not involve any retiree benefits.

12. **11 U.S.C. § 1129(a)(14)**. Not applicable as it is not a case of an individual. The Debtor does not have any Domestic Support Obligations.

13. **11 U.S.C. § 1129(a)(15)**. The requirements of 11 U.S.C. § 1129(a)(15) do not apply as it is not an individual case and need do not apply under § 1191(a).

14. **11 U.S.C. § 1129(a)(16)**. The requirements of 11 U.S.C. § 1129(a)(16) is satisfied as all transfers of property will be done in accordance with 11 U.S.C. §§ 363(h) and 363(f) and non bankruptcy laws applicable to the transfer.

Accordingly, the Court **ORDERS**:

1. **Confirmation.** The Plan is confirmed under 11 U.S.C. § 1191(a), as modified herein.

2. **Binding Effect of Plan.** Pursuant 11 U.S.C. § 1141(a), except as provided in §§ 1141(d)(2) and (3), the provisions of the Plan as of the Effective Date, bind the debtor, and any creditor, whether or not the claim or interest of such creditor, is impaired under the plan and whether or not such creditor has accepted the Plan.

3. **Re-vesting of Property.** Under 11 U.S.C. § 1141(b), except as otherwise provided in the Plan or in this Confirmation Order, as of the Effective Date, all of the property of the estate vests in the Debtor. Except as provided in 11 U.S.C. §§ 1141(d)(2) and (3) and except as otherwise provided in the Plan or in this Order, after confirmation of the Plan, the property dealt with by the Plan is free and clear of all claims and interests of creditors, and to extent provided for liquidation of under the Plan shall be subject to further order of this Court pursuant to 11 U.S.C. §§ 363(h) and (f).

4. **Post-Confirmation Operation of Business.** Except as otherwise provided in the Plan or in this Confirmation Order, on and after the Effective Date, the Debtor may operate its business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code and Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provisions of the Bankruptcy Code. The Debtor is entitled to retain and compensate professionals without the necessity of further approval of this Court, or unless otherwise provided for under a different order of this Court. Except as set forth in the Plan concerning objections to claims, the Debtor may also settle or compromise any claims without Court approval.

5. **Injunction and Discharge.** Except as otherwise expressly provided in the Plan or in this Confirmation Order, as of the Effective Date: (i) the Debtor shall be discharged from any debt to the fullest extent provided by 11 U.S.C. § 1141(d); and (ii) all holders of any discharged claims against the Debtor are enjoined from enforcing any such claim to the fullest extent provided by 11 U.S.C. § 524(a). To the extent the Plan discharge provisions set forth in Article VIII of the Plan are inconsistent with this Confirmation Order or the Bankruptcy Code, this Order and the Bankruptcy Code, including 11 U.S.C. § 1141(d), control.

6. **Disbursing Agent.** Except as otherwise modified herein or in the Plan, Maria Yip, upon her discharge as Subchapter V Trustee is named as Disbursing Agent and must make all payments as provided for under the Plan, and as modified herein.

7. **United States Trustee Guidelines.** The Debtor must comply with the guidelines set forth by the Office of the United States Trustee until the closing of this case by the issuance of a Final Decree by the Bankruptcy Court.

8. **Effect of Confirmation Order on Plan.** The failure to reference or address all or part of any particular provision of the Plan herein has no effect on the validity, binding effect, or enforceability of such provision and such provision has the same validity, binding effect, and enforceability as every other provision of the Plan. To the extent that any inconsistencies exist between the terms of the Plan and this Confirmation Order, the terms of this Confirmation Order shall control.

9. **Executory Contracts and Leases.** Except as otherwise provided in a separate order of the Court, all executory contracts and unexpired leases not otherwise assumed under the Plan are deemed rejected as of the Effective Date.

10. **Service of Confirmation Order.** Ido J. Alexander, Esq. is directed to serve a copy of this Order on all parties and file a certificate of service within five (5) days of the entry of this Order.

11. **Documents Required to Effectuate Plan.** The Debtor is authorized to execute any and all documents reasonably required to effectuate the provisions of the Plan or prior Orders of this Court.

12. **Modification of the Plan.** The Plan is modified as follows:

a. With respect to Class 2 Creditors, Debtor reserves the option to determine at its convenience whether to remit the payments prior to any sale closing date if deemed as appropriate under the circumstances.

b. Section 2.026 is modified to provide that distribution to TIC Unit Week Owner will be made to each Unit-Week, by one payment remittance in the name of all specific TIC Unit Owners of the Unit Week. For example, if X and Y own a unit together, the payment will be made out to X and Y collectively, with no divisions among X and Y. Further, the Disbursing Agent together with the board of directors of the Debtor will determine the best method by which to send such payment if multiple owners are located at different addresses. The mechanism by which a payment will be sent shall be included in any motion for sale pursuant to 11 U.S.C. § 363(f).

c. Section 9.01 is modified such that the Debtor on the effective date will directly pay the sums due to Class I creditors. Thereafter, and upon the consummation of the contemplated Section 363(f) sale of the property, the Debtor will remit to the Disbursing Agent all appropriate amounts for the Disbursing Agent to remit to

administrative expense claimants, Class II (if not already paid by the association prior to) and TIC Unit Owners under this Plan.

d. Section 9.012 of the Plan is modified such that the estate shall continue normal business operations including its normal governance by and through its elected board and management company until such time as the Section 363(f) sale is approved, and consummated/closed. Upon consummation of the contemplated sale transaction, the disbursing agent will manage all the remaining wind-down affairs of the Debtor's estate, as will be detailed in the forthcoming sale motion.

e. Upon the Effective Date of the Plan the SubChapter V trustee shall be formally discharged upon confirmation effective date. At which point Maria Yip, will assume the role as Disbursing Agent under the terms of the Plan. Any reference to Maria Yip as Sub Chapter V Trustee in context of disbursing agent shall be replaced with the word "Disbursing Agent".

f. Section 2.017 Plan is modified to delete "and" at the end of the paragraph and is hereby replace with a "." It is otherwise deemed a scrivener's error.

g. The mention of any action, term and/or condition provided for in the Plan and described in number of days in digits shall control the terms of the Plan rather than the associated words.

h. All other terms and conditions set forth in the Plan, which are not otherwise modified by this paragraph, shall remain in full force and effect.

13. **Modification After Confirmation.** Under 11 U.S.C. § 1193(b), the Debtor may modify the Plan at any time after confirmation of the Plan and before substantial consummation of the Plan, but may not modify the Plan so that the Plan as modified fails

to meet the requirements of 11 U.S.C. §§ 1122 and 1123, with the exception of 11 U.S.C. § 1123(a)(8). The Plan, as modified, becomes the Plan only if circumstances warrant the modification and the Court, after notice and a hearing, confirms the Plan as modified under 11 U.S.C. § 1191(a). Under 11 U.S.C. § 1193(d), any holder of a claim or interest that has accepted or rejected the Plan is deemed to have accepted or rejected, as the case may be, the Plan as modified, unless, within the time fixed by the Court, such holder changes the previous acceptance or rejection of the holder.

14. **Discharge of the Subchapter V Trustee.** Under 11 U.S.C. § 1183, the service of the Subchapter V Trustee in the case shall terminate when the Plan has been substantially consummated (closing and consummation of the sale and transfer of funds to the Distribution Agent), except that the United States trustee may reappoint a trustee as needed for performance of duties under § 1183(b)(3)(C) and § 1185(a). Not later than 14 days after the Plan is substantially consummated, the Debtor shall file with the Court and serve on the Subchapter V Trustee, the United States trustee, and all parties in interest notice of such substantial consummation. The Debtor must file the Local Form “Final Report and Motion for Entry of Final Decree” on the later of: (a) substantial consummation of the Plan, or (b) entry of a final order resolving all disputed claims. Prior to the discharge of the Subchapter V Trustee, the Subchapter V Trustee shall comply with 11 U.S.C. § 1194, if applicable under the terms of the Plan.

15. **Jurisdiction.** The Bankruptcy Court retains jurisdiction to:

- a. Resolve issues with respect to the Debtor’s substantial consummation of the Plan and to the extent the Debtor seeks to amend or modify the plan;
- b. Resolve any motions, adversary proceedings, or contested matters, that are pending as of the date of substantial consummation;

- c. Adjudicate objections to claims;
- d. Resolve disputes with respect to any and all injunctions created as a result of confirmation of the Plan;
- e. Adjudicate modifications of the plan under 11 U.S.C. § 1193;
- f. Review and consider issues associated with the Debtor's final report and entry of final decree, and to enter a final decree; and
- g. Enter such orders as the Court deems necessary or appropriate with respect to enforcement of the Plan.

###

Submitted by:

Ido J. Alexander, Esq.
Leiderman Shelomith Alexander +
Somodevilla, PLLC
2699 Stirling Rd # C401
Ft. Lauderdale, FL 33312
Telephone (954) 920-5355
Facsimile (954) 920-5371
ija@lsaslaw.com

Copies furnished to:

Ido J Alexander, Esq.

Attorney ALEXANDER must serve a copy of the signed order on all parties served with the motion and must file with the court a certificate of service conforming with Local Rule 2002-1(F).