

EXHIBIT "C"
(Proposed Order)

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 GRANTING MOTION FOR ENTRY OF ORDER (A) AUTHORIZING THE PRIVATE SALE OF REAL PROPERTIES AND ANY AND ALL ASSETS LOCATED THEREIN, PURSUANT TO 11 U.S.C. § 363, FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES; (B) AUTHORIZING EXECUTION OF ANY AND ALL DOCUMENTS TO EFFECTUATE CLOSING OF THE SALE; (C) AUTHORIZING PAYMENT OF ALL EXPENSES, FEES AND COSTS ASSOCIATED WITH THE SALE AND ANY OUTSTANDING LIABILITIES OF THE DEBTOR INCURRED POST CONFIRMATION THROUGH CLOSING DATE; AND (D) APPROVING DISTRIBUTION PROCEDURE FOR ALL UNIT-WEEK INTERESTS CO-OWNERS

THIS MATTER came before this Court on _____, 2022 at ____:____ a.m./p.m. (the "Sale Hearing") upon Debtor, Palm Beach Resort and Beach Club Condominium Association, Inc.'s (the "**Debtor**" or "**Association**") *Motion for Entry of Order (A) Authorizing the Private Sale of Real Properties and Any and All Assets Located*

Therein, Pursuant To 11 U.S.C. § 363, Free and Clear of All Liens, Claims, And Encumbrances; (B) Authorizing Execution of Any and all Documents to Effectuate Closing of The Sale; (C) Authorizing Payment of All Expenses, Fees and Costs Associated with the Sale and Any Outstanding Liabilities of The Debtor Incurred Post Confirmation through Closing Date; and (D) Approving Distribution Procedure for All Unit-Week Interests Co-Owners [ECF # __] (the “Motion”), seeking entry of an order: (a) directing the Debtor to timely perform its obligations under the Purchase and Sale Agreement, as amended and restated (collectively, the “Agreement”), by and between the Debtor and Copperline Partners, LLC, a Florida Limited Liability Company (the “Purchaser”), and attached as Exhibit “B” to the Motion; (b) authorizing the private sale of all the Property, other than Excluded Property, as defined in Section 1 of the Agreement, free and clear of all liens, claims, encumbrances, and other interests (the “Sale”) to the Purchaser; (c) authorizing the Debtor to execute any and all documents to effectuate closing of the Sale; (d) authorizing payment of all fees and costs associated with the Sale and any outstanding liabilities of the Debtor incurred post-confirmation through closing date; (e) approving distribution procedure for all unit-week interests co-owners; and (f) granting related relief set forth in the Motion. The Court having considered the Motion, the Court file, and the representations and arguments of counsel, and for the reasons stated on the record, finds good cause to grant the Motion. Accordingly, after due deliberation, the Court –

FINDS AND DETERMINES THAT:

JURISDICTION AND VENUE

A. This Court has jurisdiction over the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28

U.S.C. § 157(b)(2)(A) and (N). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

THE PURCHASE AND SALE AGREEMENT

B. Prior to the Petition Date, the Debtor and the Purchaser executed the Agreement under which the Debtor would sell and the Purchaser would purchase the Property as defined in Section 1 of the Agreement, including: (a) all Condominium Units (the “**Units**”) of The Palm Beach Resort and Beach Club Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 3464, at Page I 4 74, of the Public Records of Palm Beach County, Florida, (as amended, the “**Declaration**”), which Declaration encumbers the real property described on Exhibit “A” attached to the Agreement, together with all Common Elements appurtenant thereto (the “**Common Elements**”; all Units and Common Elements being collectively referred to herein as the “**Land**”); (b) all improvements located on the Land, including building, structures, and other facilities (the “**Improvements**,” and together with the Land as the “**Realty**”); (c) all fixtures, furnishings, equipment and items of personal property used or useful in the operation, repair and maintenance of the Realty, and situated on the Realty and owned by the Debtor, (collectively, the “**Personal Property**”; the Realty and the Personal Property are hereinafter collectively referred to as the “**Purchased Assets**”).

C. As of the Petition Date, June 4, 2021, the Debtor together with the tenant in common Unit-Week Interests Owners are the owners of all the Units¹ (including the personal property located thereon), as detailed in Exhibit “A” attached thereto the Motion.

D. The purchase price of \$9,755,000 in the Agreement is fair and reasonable,

¹ Capitalized term not defined herein shall have the same ascribed meaning as in the Motion.

is in the best interest of the Debtor's estate, and constitutes full and adequate consideration and reasonably equivalent value for Purchased Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, the Uniform Fraudulent Conveyance Act, and any other applicable law for the Purchased Assets.

THE 363(H) ADVERSARY PROCEEDING

E. On December 23, 2021, the Court entered Summary Final Judgment [Adv. ECF # 79], Final Judgment Pursuant to Stipulation [ECF # 81], and Default Final Judgements [Adv. ECF # 77], against all tenants in common Unit-Week interest co-owners in the Units and authorized the Sale of all co-owned tenants in common Unit-Week interests, as well as apply to the co-owners' interest the associated fees and costs of the transaction, pursuant to Bankruptcy Code Section 363(h). Accordingly, the Debtor is authorized to sell all the Units, which include the Land and the Common Elements.

PLAN CONFIRMATION

F. On November 17, 2021, the Court entered the Order Confirming the Debtor's Plan of Liquidation [ECF # 97] (the "**Confirmation Order**") confirming the Debtor's Plan of Liquidation. The Debtor assumed the Agreement pursuant to the terms of the Plan [ECF # 53], as confirmed by this Court.

G. Based on the claim analysis included in the Plan, the sum of all claims to be paid pursuant to the Plan, including all administrative expenses incurred and authorized, are significantly less than the Debtor's interest from any net proceeds.

NOTICE

H. Proper, timely, adequate, and sufficient notice of the Motion and the

transaction described in the Agreement has been provided to all parties entitled to receive such notice under the applicable rules and provisions of the Bankruptcy Code, including sections 363 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the orders of this Court. Such notice was, and is, good, sufficient, and appropriate under the circumstances of this Chapter 11 case and provided a fair and reasonable opportunity for parties in interest to object and be in heard with respect to the foregoing. Accordingly, no other or further notice with respect to such matters is necessary or shall be required.

I. A reasonable opportunity to object or be heard with respect to the Agreement, Motion, and Sale Hearing has been afforded to all interested persons and entities, including, among others: (i) all parties entitled to receive notice as of the date hereof pursuant to Bankruptcy Rule 2002(a)(2); (ii) all parties whom the Debtor believes have an interest in acquiring the Purchased Assets; (iii) all entities listed on the Debtor's schedules as holding claims secured by, and all entities who recorded or filed proof(s) of claim secured by, the Property; and (iv) all entities who have recorded in the public record any lien, interest, or encumbrance in or upon the Property as of Petition Date.

SATISFACTION OF SECTION 363

J. The Debtor has demonstrated a sufficient basis to sell the Purchased Assets under 11 U.S.C. §§ 363(b), (f)(3), and (h), and such actions are appropriate and reasonable exercises of the Debtor's business judgment and is in the best interest of the Debtor, the estate and its creditors, as well as that of the tenant in common Unit-Week Interest co-owners. A valid business purpose exists for approval of the transactions contemplated by the Motion pursuant to section 363(b) of the Bankruptcy Code.

K. The transfer of the Purchased Assets is a legal, valid and effective transfer

of the Purchased Assets free and clear of all liens, claims, encumbrances, and interests, notwithstanding any requirement for approval or consent by any person under the Bankruptcy Code, applicable state law, or otherwise.

L. The Debtor may sell or otherwise transfer the Purchased Assets free and clear of all interests because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f) has been satisfied. Those holders of interests against the Debtor, its estate, or any of the Property who did not object, or who withdrew their objections, to the sale of the Property or the Motion are deemed to have consented thereto pursuant to section 11 U.S.C. § 363(f)(2). Those holders of such interests who did object, if any, fall within one or more of the other subsections of 11 U.S.C. § 363(f) and are adequately protected by the terms of this Order, including, as applicable, by having their interests, if any, attach to the proceeds of the sale attributable to the Purchased Assets in which such creditor or the Unit Owners alleges or asserts an Interest, in the same order of priority, with the same validity, force, and effect, that such creditor had against the Property immediately prior to consummation of the sale, subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

M. The Purchaser has not agreed to assume and shall not incur any of the debts, liabilities or obligations of the Debtor. The Purchaser would not have entered into the Agreement and would not consummate the Sale if the Purchased Assets were not being sold to the Purchaser pursuant to section 363(f) of the Bankruptcy Code, free and clear of (i) all liens (statutory or otherwise), claims, mortgages, deeds of trust, pledges, charges, security interests, charges, rights of first refusal, hypothecations, encumbrances, royalties, easements, leases or subleases, rights-of-way,

encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, rights of offset or recoupment, subleases, leases or conditional sale arrangements, (ii) all claims as defined in section 101(5) of the Bankruptcy Code, including all rights or causes of action (whether in law or in equity), Proceedings, warranties, guarantees, indemnities, rights of recovery, setoff, recoupment, indemnity or contribution, obligations, demands, restrictions, indemnification claims or liabilities relating to any act or omission of the Selling Debtors or any other person prior to the Closing, consent rights, options, contract rights, covenants and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued or contingent and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of this Chapter 11 case, and whether imposed by agreement, understanding, law, equity or otherwise, and (iii) all debts, liabilities, obligations, contractual rights and claims and labor, employment and pension claims, in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or un-matured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the this Chapter 11 case, and whether imposed by agreement, understanding, law, equity or otherwise.

N. The Purchaser is not and will not be liable to any agent, broker, person, or firm acting or purporting to act on behalf of either the Debtor or the Purchaser for any commission, broker's fee, or finder's fee respecting the Sale, including, without limitation, payment of the real estate brokerage commission in an amount equal to One Percent

(1.0%) of the Purchase Price to Share Trust, Inc. (the “**Broker Fee**”).

GOOD FAITH PURCHASER

O. The Purchaser is not an “insider” of the Debtor, as that term is defined in 11 U.S.C. § 101(31) and the decisions thereunder.

A. The Purchaser is a “good faith purchaser,” as that term is used in the Bankruptcy Code and the decisions appurtenant thereto and is entitled to the protections in 11 U.S.C. § 363(m) with respect to the Purchased Assets and the purchase of the Purchased Assets. Neither the Debtor nor the Purchaser has engaged in any conduct that would prevent the application of 11 U.S.C. § 363(m). Specifically, the Agreement has been negotiated by the Debtor and the Purchaser in good faith, at arm’s length and without collusion or fraud. The terms and conditions of the Agreement is fair and reasonable, and the Sale of the Purchased Assets pursuant to its terms is in the best interest of the Debtor, the estate and its creditors, as well as the tenants in common Unit-Week interest co-owners. The Purchaser is deemed a “good faith purchaser” entitled to the full rights, benefits, privileges, immunities and protections of 11 U.S.C. § 363(m) with respect to the Sale of the Purchased Assets.

P. The Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors. Neither the Debtor, the Purchaser, nor any of their respective representatives have engaged in any conduct that would cause or permit the Agreement, or the consummation of the Sale, to be avoidable or avoided, or for costs or damages to be imposed, under 11 U.S.C. § 363(n), or has acted in any improper or collusive manner with any Person in connection therewith.

NOT A SUCCESSOR

Q. The Purchaser is not, and shall not be deemed to, as a result of any action taken in connection with the Sale: (1) be a successor to or a mere continuation or substantial continuation (or other such similarly situated party) to the Debtor or its estate; or (2) have, *de facto* or otherwise, merged or consolidated with or into the Debtor, regardless of the Purchaser's use of the Purchased Assets after consummating the Sale. The Purchaser shall not assume or in any way be responsible for any liability or obligation of any of the Debtor and/or its estate, other than to the extent expressly provided in the Agreement or in this Order.

CORPORATE AUTHORITY

R. The Debtor, by and through its appointed board of directors (the "**Board**") and its president have full corporate power and authority to consummate the transaction contemplated in this Order, the Agreement, and all other documents contemplated thereby. No consents or approvals, other than as expressly provided for in the Agreement, are required by the Debtor to consummate such transactions.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is **GRANTED**.
2. Pursuant to 11 U.S.C. § 363(b) and (f)(3), the Debtor is authorized to sell and transfer the Purchased Assets to Purchase, free and clear of all liens, claims, encumbrances and interests in the Units, whether known or unknown, with all such liens, claims, encumbrances and interest attaching to the proceeds of the Sale as provided herein. As of the Closing (as defined in the Agreement), the Sale of the Purchased Assets by the Debtor (and its tenant in common Unit-Week Interest co-owners) to the Purchaser

shall constitute a legal, valid, and effective transfer of the Purchased Assets, notwithstanding any requirement for approval or consent by any person and shall vest the Purchaser with all right, title and interest in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and interests, pursuant to 11 U.S.C. § 363(f)(3). The liens, claims, and interest shall attach to the proceeds of the Sale.

3. The Sale of the Purchased Assets to Purchaser under the Agreement will constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and all applicable law. Further, for avoidance of doubt, the Debtor, its creditors, and all tenant in common Unit-Week Interest co-owners shall be forever barred, estopped and permanently enjoined from taking any action of any kind against the Purchaser or the Purchased Assets on account of any claim against the Debtor or the Purchased Assets. All Persons are forever prohibited and barred from taking any action that would adversely affect or interfere (a) with the ability of the Debtor to sell and transfer the Property to Purchaser in accordance with the terms of the Agreement and this Order, and (b) with the ability of the Purchaser to acquire, take possession of, use and operate the Purchased Assets in accordance with the terms of the Agreement and this Order.

4. Notwithstanding any action taken in connection with the Sale contemplated by the Agreement, or the operation and use of the Purchased Assets acquired from the Debtor, it shall be deemed that the Purchaser (i) is not the successor of the Debtor, (ii) has not, *de facto*, or otherwise, merged with or into the Debtor, (iii) is not a mere continuation or substantial continuation of the Debtor or the enterprise(s) of the Debtor, (iv) is not a successor employer as defined in the Bankruptcy Code or under other applicable law, and (v) is not liable for any acts or omissions of the Debtor in the conduct

of the its business or arising under or related to the Property. The Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Purchased Assets or any interests in respect of the Debtor arising prior to the Closing. Nothing in this Order shall prohibit the Purchaser from operating or otherwise using the Purchased Assets to operate a timeshare.

5. The Debtor is **AUTHORIZED**, by and through its Board and its duly authorized officer, to execute, deliver, perform, consummate, and implement all of the terms and conditions of the Agreement, to execute any and all documents associated therewith, and to take all actions necessary or appropriate to effectuate the transactions contemplated therein. Upon and Effective of the Closing (as defined in the Agreement) on the Sale, the Debtor shall have delivered to the Company a letter of resignation for any and all directors or officers of the Debtor, including without limitation, the members of the Board and the President.

6. The transfer of the Purchased Assets to the Purchaser pursuant to the Agreement shall not result in the Purchaser having any liability or responsibility for, or being required to satisfy in any manner, whether in law or in equity, whether by payment, setoff, or otherwise, directly or indirectly, any claim against the Debtor or against any insider of the Debtor or Interests.

7. The Purchaser shall be entitled to the protection of the good faith purchaser for value under 11 U.S.C. § 363(m), if this Order or any authorization contained herein is reversed or modified on appeal. The Sale is not subject to avoidance pursuant to 11 U.S.C. § 363(n).

8. Debtor is authorized to sell all associated personal property located therein the Units to the Purchaser.

9. Upon closing, all liquid financial assets held in the Debtor's estate bank accounts, all of which have been excluded from the Sale in the Agreement and are specifically designated as additional assets of the Debtor's estate that shall be transferred to the Disbursing Agent at closing.

10. Debtor is **AUTHORIZED** to pay all fees and costs associated with the Sale, including any broker fee as detailed in the Motion, and disburse the net sales proceeds to distribution agent, Maria Yip, pursuant to the confirmed Plan, who shall distribute the net amounts pursuant to the Plan. Each tenant in common Unit-Week Interest co-owners shall receive their interest pursuant to the procedure outlined in the Plan and as supplemented and/or modified herein. Further, Debtor is **AUTHORIZED** to pay, by and through the Disbursing Agent, all such outstanding liabilities incurred by the Debtor post-confirmation and through closing. Such payments are in addition to any distributions to be made pursuant to the confirmed Plan and any outstanding order by this Court. The Disbursing Agent shall include such information in any reports required to be filed with the Court.

11. In addition to the previously approved distribution process as part of the Plan, the Court **APPROVES** the following administrative process to further enhance and facilitate the distribution process to the tenant in common Unit-Week Interest co-owner:

A) Checks Payees and Address of Payee: Checks issued to Unit-Week Owners by the Disbursing Agent shall be made to **all named** owners of a particular Unit-Week as appearing on the Debtor's records and on title to the Unit-Week. Checks issued to multiple owners shall be sent, via U.S. Mail or like-kind delivery method, to the primary address of record as appearing on the Debtor's books and records. In the event of multiple addresses on

record and/or multiple owners, the check in the name of all owners shall be sent to the address of only one of the owners who has been the **primary** responsible party for payment of Association dues/assessment in the 12-month period prior to commencement of the bankruptcy case. Primary shall mean the majority of all payments made to the Association during the foregoing period. To the extent the Disbursing Agent cannot determine an address to send the check considering multiple conflicting addresses and unclear assessment payment history, the Disbursing Agent shall exercise her business judgement in sending the payment to an address she determines.

B) Distribution Payment to Owners of Multiple Unit-Week Ownership Interests: To the extent a single entity or person own multiple Unit-Week Interests, the Disbursing Agent, in her business judgment, may issue a single check and/or facilitate such distribution payment via electronic means rather than multiple check payments so as to save the estate the costs associated with payment of those funds.

C) Distribution to Unit-Week Interest Owners: The Disbursing Agent shall distribute to Unit-Week Owners in two or more rounds. Prior to first round distribution, Disbursing Agent shall e-mail/mail a notice to all **primary** Unit-Week Owners of record with a request for address confirmation (the address to which payment will be sent) with a 30-day period to update payee information (to be determined pursuant to the administrative process outlined in this Motion). To the extent no response shall be received, the payee address shall be the address identified by the Disbursing Agent pursuant to the process outlined in this Motion. First, Disbursing Agent shall remit the net amount owed to any Unit-Week owner (less any sums owed to the Estate, as provided for under the Plan) for their Unit-Week Interest based on the Declaration's common elements percentage, per unit type and a 1/52 allocation. Then, the Disbursing Agent may, in her business judgment, distribute in one or more additional distributions, the Debtor's interests in Unit-Weeks together with all other sums held in reserve accounts, operating accounts, or any other account of the Estate, after accounting for fees and costs of administration of the remaining estate, and while providing for adequate sums as reserves to ensure the operation of the estate through the final distribution and closure of the Estate.

D) Estate Distributions: To the extent any final distribution of estate funds to co-owners is determined by the Disbursing Agent in her business judgment to be de minimis so as to render the such distribution to be less than the administrative costs and fees associated with facilitating such distribution, then such funds shall be tendered to the Bankruptcy Bar Association for the Southern District of Florida, after first deducting for any remaining fees and costs incurred by the Disbursing Agent and her professionals in closing the case.

E) Distribution to Unknown Heirs: To extent a payment is to be made to unknown heirs of a Unit-Week Interest owner, without any other co-owner on said Unit-Week, such payment shall be held by the Disbursing Agent for a period of up to 180 days, subject to demands and proof by the lawful heirs², after which, if no demand and adequate proof is provided, such payment shall be sent to the State of Florida Unclaimed Funds. If a distribution payment is to be made to a known Unit-Week Interest owner and an Unknown Heir, then such payment shall be made in the name of the known Unit-Week Interest Owner party and the Unknown Heir of the other co-owner of the Unit-Week, and such payment shall be sent to the known party.

F) Undelivered Payments: Undelivered payments shall be governed in accordance with the terms of the Plan, as confirmed.

12. The Debtor shall be responsible for payment of Broker Free to Share Trust, Inc., which shall be paid as part of the closing costs charged to the Debtor, as authorized in paragraph 10 of this Order.

13. Upon Closing of the Sale, the Association shall no longer be considered a debtor or debtor-in-possession in this proceeding and shall have no further duties or obligations in connection with the Chapter 11 case. The Disbursing Agent shall continue performance of any and all obligations of the Estate.

14. The provisions of this Sale Order are non-severable and mutually dependent.

15. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b), to, among other things, (i) interpret, implement, and enforce the terms and provisions of this Order, the Agreement, and any amendments thereto and any waivers and consents given thereunder, (ii) compel delivery of the Purchased Assets to the Purchaser, (iii) enforce the injunctions and limitations of liability set forth in this Order,

² Lawful Heir is an heir pursuant to probate court order or other proof of lawful transfer of ownership by a decedent.

and (iv) enter any orders under 11 U.S.C. § 363.

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Submitted by:

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