


Patrick M. Flatley
United States Bankruptcy Judge
Dated: Monday, July 18, 2011 12:22:27 PM

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
(Martinsburg Division)

In re: *
FAIRFAX CROSSING LLC, et al.¹ * Case No: 10-01362-PMF
Debtors * (Chapter 11)
(Jointly Administered)
* * * * *

ORDER CONFIRMING DEBTORS' MODIFIED SECOND
AMENDED JOINT PLAN OF REORGANIZATION, AS AMENDED HEREBY

On May 10, 2011, Fairfax Crossing LLC (“Fairfax”) and Fairfax Crossing II LLC (“Fairfax II”), the debtors and debtors-in-possession herein (the “Debtors”) filed Debtors’ Second Amended Joint Plan of Reorganization and Request for Substantive Consolidation for Fairfax Crossing LLC and Fairfax Crossing II LLC Pursuant to Chapter 11 of the United States Bankruptcy Code (docket 145) (the “Second Amended Plan”), and filed a Second Amended Disclosure Statement for Debtors’ Second Amended Joint Plan of Reorganization and Request for Substantive Consolidation for Fairfax Crossing LLC and Fairfax Crossing II LLC Pursuant to Chapter 11 of the United States Bankruptcy Code (docket 146) (the Disclosure Statement”). After a hearing to consider approving the Disclosure Statement, the Court entered an Order approving the Disclosure Statement on June 6, 2011 (docket 163) (the “DS Approval Order”), subject to a modification of the Second Amended Plan and the Disclosure Statement to show

¹ The Debtors in these jointly administered Chapter 11 bankruptcy cases are Fairfax Crossing LLC and Fairfax Crossing II LLC (collectively, the “Debtors”).

revised treatment of certain Priority Tax Claims, and authorized the Debtors to solicit acceptances of the Second Amended Plan, as modified. The Debtors then filed a Line identifying the tax related modifications to the Second Amended Plan on June 10, 2011, (docket 171), and attached as an exhibit thereto the Debtor's Modified Second Amended Plan of Reorganization and Request for Substantive Consolidation for Fairfax Crossing LLC and Fairfax Crossing II LLC Pursuant to Chapter 11 of the United States Bankruptcy Code. This Modified Second Amended Plan, (the "Plan"), was sent to parties in interest as part of the Debtors' solicitation package and is the plan that is the subject of this Confirmation Order.

On June 10, 2011 the Debtors served on all parties in interest the DS Approval Order, the Disclosure Statement, the Plan, Ballots for voting on the Plan, and the Notice required by Bankruptcy Rule 2002. The Debtors filed a Tally of Ballots on and results of voting with respect to the Plan (the "Voting Declaration") on July 8, 2011, (docket 176), attesting to the tabulation of all ballots received from holders of claims in Classes 1, 3, 4, 5, 6 and 7. The Voting Declaration demonstrates that the Plan was accepted in accordance with the § 1125 of the Bankruptcy Code. The Court held the hearing on Confirmation of the Plan on July 13, 2011 and, at that hearing, reviewed and considered the entire record of the case, including the Plan, the Disclosure Statement, the DS Approval Order, the Voting Declaration, the testimony presented at the Confirmation Hearing and all related evidence and documents and heard the arguments of counsel. After due deliberation and sufficient cause appearing therefor, it is hereby found and determined that:

FINDINGS OF FACT AND CONCLUSIONS OF LAW²

A. Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). This Court has jurisdiction over the Debtor's Chapter 11 Case under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. §§ 157(b)(2) over which this Court has exclusive jurisdiction.

² Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed thereto in the Plan.

B. Judicial Notice. The Court takes judicial notice of the docket of these jointly administered Chapter 11 Cases maintained by the Clerk of the Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Court during these Chapter 11 Cases.

C. Burden of Proof. The Debtors, as proponent of the Plan, have met their burden of proving the elements of § 1129 of the Bankruptcy Code by a preponderance of the evidence.

D. Notice of Confirmation Hearing. Notice of the Plan Confirmation Hearing complied with the terms of the DS Approval Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code and the Bankruptcy Rules and no other or further notice is required.

E. The Plan is hereby modified by replacing the definition of “Confirmation Date” and paragraphs 5.2, 11.2, 12.1, 12.3 and 12.4.3 in their entirety with the following replacement paragraphs:

“Confirmation Date” means the date on which the Confirmation Order that is entered on the Docket by the Clerk becomes a final order.

5.2 Class 2: Secured Turf Guaranty Claim. Class 2 consists of the Secured Turf Guaranty Claim. In complete satisfaction, discharge and release of the Allowed Class 2 Secured Turf Guaranty Claim, the Holder thereof will retain its prepetition lien on the Turf Guaranty Collateral until such time as the Turf Notes are paid in full unless otherwise agreed to by such Holder.

11.2 Effect of Substantive Consolidation. As a result of the substantive consolidation of the Debtors, (a) the Bankruptcy Cases shall be consolidated into the Bankruptcy Case of Fairfax as a single consolidated case; (b) all Property of the Estate of each Debtor shall be deemed to be Property of the consolidated Estate; (c) all Claims against each Estate shall be deemed to be Claims against the consolidated Estate, any Proof of Claim filed against one or more of the Debtors or listed by either Debtor on its Schedules and not reflected as disputed, contingent, or unliquidated shall be deemed to be a single Claim filed against the consolidated Estate, all duplicate Proofs of Claim for the same Claim filed against more than one of the Debtors shall be deemed

expunged, and all duplicate Claims for the same Claim scheduled against more than one of the Debtors shall be deemed expunged; (d) all indebtedness between the Debtors shall be deemed cancelled, annulled and extinguished, and no distributions under the Plan shall be made on account of any such indebtedness; (e) except as provided in Section 12.4 of the Plan, all guarantees by one Debtor of the obligations of the other Debtor shall be deemed cancelled, annulled and extinguished (provided, however, that the liens granted by Fairfax II under the BB&T \$7.6 Million Loan Documents, the Turf Notes and the Turf Guaranty Documents shall continue in full force and effect), and, except as expressly provided otherwise in the Plan, no distributions under the Plan shall be made on account of Claims based upon such guarantees; and (f) for purposes of determining the availability of the right of setoff under § 553 of the Bankruptcy Code, each of the Debtors shall be treated as one consolidated entity so that, subject to the other provisions of § 553 of the Bankruptcy Code, debts due to one of the Debtors may be set off against the debts of the other Debtor.

12.1 Discharge of Claims. Except as otherwise expressly provided in Section 12.4 and all other sections of the Plan or in the Confirmation Order, the Confirmation Order shall operate as a discharge, pursuant to § 1141(d) of the Bankruptcy Code, to the fullest extent permitted by applicable law, as of the Effective Date, of the Debtors, the Reorganized Debtor, the Estates, or any Guarantor, or any of their respective successors and assigns, or the assets or Property of any of them, from any and all Debts, Liabilities or Claims of any nature whatsoever against the Debtors that arose at any time prior to the Effective Date, including any and all Claims for principal and interest, whether accrued before, on or after the Petition Date. Except as otherwise expressly provided in Section 12.4 and all other sections of the Plan or in the Confirmation Order, but without limiting the generality of the foregoing, on the Effective Date, the Debtors, the Reorganized Debtor, the Estates, or any Guarantor, or any of their respective successors and assigns, or the assets or Property of any of them, shall be discharged, to the fullest extent permitted by applicable law, from any Claim or Debt that arose prior to the Effective Date and from any and all Debts of the kind specified in §§ 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based on such Debt was filed pursuant to § 501 of the Bankruptcy Code, (b) a Claim based on such Debt is an Allowed Claim pursuant to § 502 of the Bankruptcy Code, or (c) the Holder of a Claim based on such Debt has voted to accept the Plan. As of the Effective Date, except as otherwise expressly provided in Section 12.4 and all other sections of the Plan or in the Confirmation Order, all Persons and Entities, including all Holders of Claims or Equity Interests, shall be forever precluded and permanently enjoined to the fullest extent permitted by applicable law from asserting directly or indirectly against the Debtors, the Reorganized Debtor, the Estates, or any Guarantor, or any of their respective successors and assigns, or the assets or Property of any of them, any other or further Claims, Debts, rights, causes of action, remedies, Liabilities or Equity Interests based upon any act,

omission, document, instrument, transaction, event, or other activity of any kind or nature that occurred prior to the Effective Date, and the Confirmation Order shall contain appropriate injunctive language to that effect. In accordance with the foregoing, except as otherwise expressly provided in Section 12.4 and all other sections of the Plan or in the Confirmation Order, the Confirmation Order shall be a judicial determination of the discharge or termination of all such Claims and other Debts and Liabilities against the Debtors, pursuant to §§ 524 and 1141 of the Bankruptcy Code, to the fullest extent permitted by applicable law, and such discharge shall void any judgment obtained against the Debtors, at any time, to the extent that such judgment relates to a discharged or terminated Claim, Liability, Debt or Equity Interest. Notwithstanding the foregoing, Reorganized Debtor shall remain obligated to make payments and distributions to Holders of Allowed Claims as required pursuant to the Plan.

12.3 General Injunction. Pursuant to §§ 105, 1123, 1129 and 1141 of the Bankruptcy Code, in order to preserve and implement the various transactions contemplated by and provided for in the Plan, as of the Confirmation Date, except as otherwise expressly provided in Section 12.4 and all other sections of the Plan or in the Confirmation Order, all Persons or Entities that have held, currently hold or may hold a Claim, Debt, Liability or Equity Interest that is discharged or terminated pursuant to the terms of the Plan are and shall be permanently enjoined and forever barred to the fullest extent permitted by law from taking any of the following actions on account of any such discharged or terminated Claims, Debts, Liabilities, or Equity Interests, other than actions brought to enforce any rights or obligations under the Plan or the Plan Documents: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Debtors, the Reorganized Debtor, the Estates, or any Guarantor, or any of their respective successors and assigns, or the assets or Property of any of them; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors, the Reorganized Debtor, the Estates, or any Guarantor, or any of their respective successors and assigns, or the assets or Property of any of them; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtors, the Reorganized Debtor, the Estates, or any Guarantor, or any of their respective successors and assigns, or the assets or Property of any of them; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors, the Reorganized Debtor, the Estates, or any Guarantor, or any of their respective successors and assigns, or the assets or Property of any of them; (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order; or (f) interfering with or in any manner whatsoever disturbing the rights and remedies of the Debtors, the Reorganized Debtor, the Estates, or any Guarantor, or any of their respective successors and assigns, or

the assets or Property of any of them, under the Plan and the Plan Documents and the other documents executed in connection therewith. The Debtors, the Reorganized Debtor and any Guarantor shall have the right to independently seek enforcement of this general injunction provision. This general injunction provision is an integral part of the Plan and is essential to its implementation.

12.4.3 Excluding the pending state court lawsuit by GACC against the Guarantors of the Class 2 Claim, all lawsuits pending in courts in any jurisdiction (other than the Bankruptcy Court) that seek to establish liability of the Debtors and/or one or more Guarantors on Prepetition Claims asserted therein shall be deemed dismissed without prejudice as of the Effective Date. The guaranties by the Guarantors of the obligations of Fairfax and Fairfax II under the BB&T \$3 Million Loan Documents, the BB&T \$7.6 Million Loan Documents, the Turf Notes and the Turf Guaranty Documents shall continue in full force and effect with respect to those obligations, as modified by the Plan, until they have been satisfied in full in accordance with the Plan. Any party benefitting from a guaranty of the BB&T Loans shall be stayed from instituting or continuing any collection activity at any time arising from or related to the default or defaults arising prior to the Confirmation Date. GACC may continue its pending state court litigation against the Guarantors. Neither this Section 12.4.3 nor Sections 12.1, 12.2, or 12.3 shall prejudice any collection activities arising from or related to the Guarantors' guaranty obligations to the Holders of Allowed Class 1 and Class 2 Claims for defaults arising after the Effective Date. Nothing in the Plan is intended to limit GACC's right to enforce its lien on the Turf Collateral in the event of a default of the Turf Note, and this provision controls over any contrary provision. Notwithstanding the preceding sentence, the Holder of the Class 2 Claim shall not exercise remedies against the Turf Collateral until it has first exhausted remedies against the Turf's assets.

F. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). The Plan's classification scheme is reasonable and proper. The Plan designates claims and interests into the following classes: Class 1 (Secured Claim of BB&T); Class 2 (Secured Turf Guaranty Claim); Class 3 (Secured Claim of Glendwell and JoAnn Lloyd); Class 4 (Unsecured Claim of Perry Engineering); Class 5 (Unsecured Claims of Unrelated Parties other than Perry Engineering); Class 6 (Unsecured Claims of Related parties); Class 7 (Equity Interests in the Debtors). Valid business, factual, and legal reasons exist for separately classifying the various classes of claims and interests created under the Plan, and such classes do not unfairly discriminate among holders of claims and interests. The number of classes reflects the diverse characteristics of the claims

and interests, and the legal rights under the Bankruptcy Code of each of the holders of claims or interests within a particular class are substantially similar to other holders of claims or interests within that class. Thus, the Plan satisfies §§ 1122 and 1123(a)(1) of the Bankruptcy Code.

G. Specify Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article 5 of the Plan specifies that Class 7 (Equity Interests in the Debtors) is unimpaired under the Plan. Thus, the requirements of § 1123(a)(2) of the Bankruptcy Code are satisfied.

H. Specify Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article 5 of the Plan designates Class 1 (Secured Claim of BB&T); Class 2 (Secured Turf Guaranty Claim); Class 3 (Secured Claim of Glendwell and JoAnn Lloyd); Class 4 (Unsecured Claim of Perry Engineering); Class 5 (Unsecured Claims of Unrelated Parties other than Perry Engineering); Class 6 (Unsecured Claims of Related parties) as impaired and specifies the treatment of claims and interests in those classes. Thus, the requirements of § 1123(a)(3) of the Bankruptcy Code are satisfied.

I. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each claim or interest 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. Claims and interests are separately classified due to the distinctive basis for each such claim or interest. Thus, the requirements of § 1123(a)(4) of the Bankruptcy Code are satisfied.

J. Implementation of the Plan (11 U.S.C. § 1123(a)(5)). Article 11 of the Plan provides for substantive consolidation of the Debtors upon the Effective Date. Article 6 of the Plan provides adequate and proper means for the Plan's implementation the continued development and sale of the Real Property by and through the Reorganized Debtor.

K. Non-Voting Securities (11 U.S.C. § 1123(a)(6)). The provisions of § 1123(a)(6) of the Bankruptcy Code are not applicable to the Plan.

L. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Article 6 of the Plan properly and adequately discloses that the Debtors' current members and managers shall

continue to manage the Reorganized Debtor's affairs. Thus, the requirements of § 1123(a)(7) of the Bankruptcy Code are satisfied.

M. Additional Plan Provisions (11 U.S.C. § 1123(b)). As permitted by § 1123(b)(1) of the Bankruptcy Code, Article 5 of the Plan provides for the impairment of certain classes of claims and interests, while leaving other classes unimpaired. The Plan thus modifies the rights of the holders of certain claims and interests and leaves the rights of others unaffected.

N. Settlement, Releases, Injunctions and Exculpations. Pursuant to § 1123(b)(3) of the Bankruptcy Code, the releases, discharges, exculpations and injunctions set forth in the Plan shall be, and hereby are, approved as fair, equitable, reasonable and in the best interests of the Debtor, the Estate, the creditors, and holders of interests.

O. Compliance with Bankruptcy Rule 3016. The Plan is dated and identifies the Debtor entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b).

P. Compliance with Bankruptcy Rule 3017. The Debtors have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d).

Q. Compliance with Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. The Plan was transmitted to all creditors entitled to vote on the Plan, sufficient time was prescribed for such creditors to accept or reject the Plan, and the solicitation and voting procedures comply with § 1126 of the Bankruptcy Code, thereby satisfying the requirements of Bankruptcy Rule 3018.

R. Impaired Classes That Have Voted to Accept the Plan. As set forth in the Plan, holders of claims in Class 1 (Secured Claim of BB&T); Class 2 (Secured Turf Guaranty Claim); Class 3 (Secured Claim of Glendwell and JoAnn Lloyd); Class 4 (Unsecured Claim of Perry Engineering); Class 5 (Unsecured Claims of Unrelated Parties other than Perry Engineering); Class 6 (Unsecured Claims of Related parties) are impaired and constitute all of the impaired classes. As set forth in the Voting Declaration, the holders of claims in each class

that voted did so in excess of the statutory thresholds in § 1126(c) of the Bankruptcy Code, to accept the Plan. Thus, at least one impaired class of claims has voted to accept the Plan, determined without including any acceptance of the Plan by any insider, as required by §1129(a)(10).

S. Classes Conclusively Presumed to Have Accepted the Plan. The holders of Administrative Claims and Priority Claims are unimpaired under the Plan, and, pursuant to § 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted the Plan.

T. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code including §§ 1122 and 1123, and, as required by Bankruptcy Rule 3016, the Plan is dated and identifies the Debtors as proponents of the Plan, thereby satisfying § 1129(a)(1) of the Bankruptcy Code.

U. Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with all applicable provisions of the Bankruptcy Code, as required by § 1129(a)(2) of the Bankruptcy Code, including § 1125 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018. The Disclosure Statement and the procedures by which the ballots for acceptance or rejection of the Plan were solicited and tabulated were fair, properly conducted and in accordance with §§ 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018 and the DS Approval Order. Votes with respect to the Plan were solicited in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order. The Debtors, their members and their respective managers, officers, employees, agents, members and professionals, acting in such capacity, have acted in “good faith,” within the meaning of § 1125(e) of the Bankruptcy Code.

V. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying § 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has been adequately advised and has considered the totality of the circumstances surrounding the negotiation and formulation of the Plan. The Debtors filed their Chapter 11

Case and proposed the Plan with legitimate and honest purposes including, among other things, the maximization of value to all creditors.

W. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).

All payments made or to be made by the Debtors for services or for costs and expenses in or in connection with the Plan and incident to the Chapter 11 Case, have been approved by, or are subject to the approval of, the Court as reasonable, thereby satisfying § 1129(a)(4) of the Bankruptcy Code.

X. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtor has

complied with § 1129(a)(5) of the Bankruptcy Code. The Plan has disclosed that the Debtors' current members and managers will continue to manage the Reorganized Debtor's affairs. The continuation of the management by Debtor's member and its managers is consistent with the interests of holders of claims against and interests in the Debtor and with public policy.

Y. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for

any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

Z. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies

§ 1129(a)(7) of the Bankruptcy Code. The evidence proffered or adduced at the Confirmation Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that holders of claims in impaired classes have accepted the Plan or will receive or retain under the Plan, on account of such claim, property of a value, as of the date of entry of this Confirmation Order (the "Effective Date"), that is not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date.

AA. Rejection by Certain Classes (11 U.S.C. § 1129(a)(8)). No Class of

Claims has voted to reject the Plan. While the Holder of the Class 2 Claim cast no ballot, at the Confirmation Hearing, its counsel indicated that the Holder favored confirmation and did not wish to be an impediment to confirmation. If and to the extent the Holder's failure to cast a

ballot invoked the cram down provisions of 1129(b), the Court finds, based on the testimony presented at the Confirmation hearing and in the record of these bankruptcy cases, that the Debtor has established that with respect to the Holder of the Class 2 Claim, it will receive the indubitable equivalent of its claim in accordance with § 1129(b)(2)(iii) of the Bankruptcy Code, and therefore, that the Debtor has established that the Plan may be confirmed even under the cram down provisions of the Bankruptcy Code.

BB. Treatment of Administrative, Priority and Tax Claims (11 U.S.C. § 1129(a)(9)). The Plan's treatment of administrative claims and priority creditors pursuant to Article 3 of the Plan satisfies the requirements of §§ 1129(a)(9)(A), (B) and (C) of the Bankruptcy Code.

CC. Impaired Classes (11 U.S.C. § 1129(a)(10)). The Plan satisfies the elements of § 1129(a)(10) because all impaired Classes that voted on the Plan have voted to accept the Plan.

DD. Feasibility (11 U.S.C. § 1129(a)(11)). The Debtor has established with credible evidence that the Plan is feasible and thus satisfies the requirements of § 1129(a)(11) of the Bankruptcy Code.

EE. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under § 1930 of Title 28, United States Code, as determined by the Court, have been paid or will be paid on the Effective Date, thus satisfying the requirements of § 1129(a)(12) of the Bankruptcy Code.

FF. Non Applicability of 11 U.S.C. § 1129(a)(13),(14),(15) and (16). Based upon the proffers of the Debtor at the Confirmation Hearing, 11 U.S.C. § 1129(a)(13)-(16) are not applicable to the Plan.

GG. Principal Purpose (11 U.S.C. § 1129(d)). Based upon the evidence presented by the Debtors at the Confirmation Hearing, the principal purpose of the Plan is not (i) the avoidance of taxes or (ii) the avoidance of § 5 of the Securities Act. No governmental unit

has objected to the confirmation of the Plan on any such grounds. The Plan therefore satisfies the requirements of § 1129(d) of the Bankruptcy Code.

HH. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Court in this Chapter 11 Case, the Debtors, their agents, managers, professionals, advisors, and other representatives have acted in good faith within the meaning of § 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in § 1125 of the Bankruptcy Code, and are entitled to the protections afforded by § 1125(e) of the Bankruptcy Code and the injunction and exculpation provisions set forth in the Plan. The solicitation of acceptances on the Plan complied with the solicitation procedures in the Disclosure Statement Order.

II. Substantive Consolidation. No party in interest has objected to substantive consolidation and the Debtors have established that substantive consolidation is appropriate under the circumstances and is in the Debtors' and their creditors' best interest.

JJ. Implementation. All documents necessary to implement the Plan and all other relevant and necessary documents have been negotiated in good faith and at arm's-length and shall, upon execution, but subject to the occurrence of the Effective Date, be valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

KK. Assumption and Rejection of Executory Contracts and Leases (11 U.S.C. § 1123(b)(2)). Pursuant to Article 8 of the Plan, as of the Effective Date and pursuant to the Confirmation Order, the Reorganized Debtor shall and does hereby assume the Freeman Contract. On the Effective Date, all other executory contracts and unexpired leases between the Reorganized Debtor and any third party shall be deemed assumed.

LL. Satisfaction of Confirmation Requirements. The Plan satisfies the requirements for confirmation set forth in § 1129 of the Bankruptcy Code.

MM. Retention of Jurisdiction. The Court may properly retain jurisdiction over the matters set forth in Article 13 of the Plan and/or § 1142 of the Bankruptcy Code.

ORDER

IT IS HEREBY ORDERED THAT:

1. Findings of Fact and Conclusions of Law; Defined Terms. The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed thereto in the Plan.

2. Confirmation. Pursuant to § 1129 of the Bankruptcy Code, the Plan as modified hereby, and each of its provisions is hereby CONFIRMED. Pursuant to § 1142(b), the Reorganized Debtor is hereby authorized and directed to implement the Plan in accordance with the terms thereof, and to take any and all actions contemplated to be taken under the Plan, including to execute and deliver, and take such action as is necessary to effectuate the terms of, all contracts, instruments, releases, agreements, and documents contemplated by the Plan, and to effectuate the transfers of all property as provided in the Plan and to satisfy any lien as provided in the Plan, whether or not the same is specifically approved herein.

3. Substantive Consolidation. The Plan has served as, and will be deemed to be, a motion by the Debtors for the entry of an order approving the substantive consolidation (“Substantive Consolidation”) of the Debtors, subject to the occurrence of the Effective Date. This Confirmation Order shall constitute approval of the Substantive Consolidation request. As a result of the substantive consolidation of the Debtors, (a) the Bankruptcy Cases shall be consolidated into the Bankruptcy Case of Fairfax as a single consolidated case; (b) all Property of the Estate of each Debtor shall be deemed to be Property of the consolidated Estate; (c) all Claims against each Estate shall be deemed to be Claims against the consolidated Estate, any Proof of Claim filed against one or more of the Debtors or listed by either Debtor on its Schedules and not reflected as disputed, contingent, or unliquidated shall be deemed to be a single Claim filed against the consolidated Estate, all duplicate Proofs of Claim for the same

Claim filed against more than one of the Debtors shall be deemed expunged, and all duplicate Claims for the same Claim scheduled against more than one of the Debtors shall be deemed expunged; (d) all indebtedness between the Debtors shall be deemed cancelled, annulled and extinguished, and no distributions under the Plan shall be made on account of any such indebtedness; (e) except as provided in Section 12.4 of the Plan, all guarantees by one Debtor of the obligations of the other Debtor shall be deemed cancelled, annulled and extinguished (provided, however, that the liens granted by Fairfax II under the BB&T \$7.6 Million Loan Documents, the Turf Notes and the Turf Guaranty Documents shall continue in full force and effect), and, except as expressly provided otherwise in the Plan, no distributions under the Plan shall be made on account of Claims based upon such guarantees; and (f) for purposes of determining the availability of the right of setoff under § 553 of the Bankruptcy Code, each of the Debtors shall be treated as one consolidated entity so that, subject to the other provisions of § 553 of the Bankruptcy Code, debts due to one of the Debtors may be set off against the debts of the other Debtor. Pursuant to WV Local Rule 1015-1(b), the Debtors shall file a mailing matrix for the combined cases within fourteen (14) days from the date of this Confirmation Order.

4. Assumed Contracts; Adequate Assurance. The Debtors are hereby authorized and empowered to assume the Freeman Contract. The assumption of the Freeman Contract pursuant to the terms of the Plan is in the best interests of the Debtors and their Estates, creditors and all other parties-in-interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors. Except as otherwise provided in the Plan or in this Confirmation Order, the assumption and assignment shall be free and clear of all liens, claims, interests, encumbrances and other charges that any other party to the Assumed Contract shall have (collectively, the “Charges”), pursuant to § 363(b) and (f) and 365(a), (b) and (f) of the Bankruptcy Code. The Debtors have provided adequate assurance of the Reorganized Debtor’s future performance under the Freeman Contract within the meaning of §§ 365(b)(1)(c) and (f)(2)(B) of the Bankruptcy Code.

5. Further Assurances. Upon confirmation hereof, the Debtors and the Reorganized Debtor are hereby ordered pursuant to § 1142(b) to execute or deliver any instrument required to effect a transfer of any property dealt with in the Plan and to perform any act that is necessary for the consummation of the Plan.

6. Employment of Professionals. The Debtors and the Reorganized Debtor are hereby permitted to employ such professionals as it deems necessary and beneficial, including real estate brokers and appraisers, former or present counsel, and financial advisors who shall be compensated at their customary professional rates and reimbursed for reasonable expenses from or by non-Debtor parties.

7. Closing of the Chapter 11 Case. When all disputed claims filed against the Debtor have become allowed claims or have been disallowed by final order, or at such earlier time as the Reorganized Debtor deems appropriate, the Reorganized Debtor will seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

8. Jurisdiction of Bankruptcy Court. Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of the Debtor and the Estate. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matters set forth in Article 13 of the Plan.

9. Binding Effect. Except as otherwise provided in § 1141 of the Bankruptcy Code, on and after the Effective Date, the provisions of the Plan hereby binds any holder of a claim against, or interests in, the Debtor and their respective successors and assigns, whether or not the holder of the claim has timely filed a proof of it claim, the claim or interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan. Further, this Confirmation Order is binding on (x) the trustee in the event of (a) conversion of any of the Debtor's Chapter 11 Cases to Chapter 7 or (b) appointment of a Chapter 11 trustee, and (y) any United States bankruptcy court in the event the venue of this Chapter 11 Case is transferred to a bankruptcy court other than the Bankruptcy Court.

10. Interference with Plan. All holders of a debt, claim or interest, along with their respective assignees, employees, agents, officers, directors or principals, be, and the same hereby are, hereby enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

11. Modification of Plan. After the entry of this Confirmation Order, the Debtors or the Reorganized Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with § 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A holder of an allowed claim or interest that is deemed to have accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the claim or interest of such holder.

12. Authorization of Managers. All actions contemplated by the Plan shall be deemed authorized and approved in all respects by this Confirmation Order and the Managers of the Debtors and the Reorganized Debtor shall be authorized and directed, in the name of and on behalf of the Debtors and Reorganized Debtor, to execute, deliver, file, certify, attest to or record any contracts, deeds, instruments, releases, indentures and other agreements or documents, and take such actions, as may be necessary or appropriate to effectuate and evidence the terms and conditions of the Plan. The Managers shall not be required to execute any other or further documents to authorize any of the transactions provided for by the Plan, but may do so, at their option.

13. Satisfaction, Discharge, etc. of Debts, Claims, etc. Except to the extent provided otherwise in the Plan or in this Confirmation Order, all debts of and claims against the Debtors, including, but not limited to, demands and liabilities that arose before the entry of this Confirmation Order, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code, shall be, and they hereby are, ordered to be deemed fully satisfied, discharged, waived and released in exchange for the treatment of such claims under the Plan to the fullest

extent provided under § 1141 of the Bankruptcy Code. The foregoing shall be effective as to debts, claims, demands, and liabilities or interest against or of the Debtor regardless of whether a proof of claim or interest therefore was filed, whether or not it is a secured claim or a priority claim, whether it is an Allowed Claim or Interest, or whether the holder thereof votes to accept or reject the Plan.

14. Third Party Execution, etc., of Documents and Actions. All Persons that are dealt with under the Plan are hereby directed to execute, deliver, file and record any document, and take any action necessary or appropriate to implement, consummate and otherwise effect the Plan in accordance with its terms in all material respects, and all such Persons shall be bound by the terms and provisions of all documents executed and delivered by them in connection with the Plan.

15. Notice of Entry of Confirmation Order. Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c), notice of the entry of the Confirmation Order shall be mailed to all Persons on the Service List attached to this Order which Service List includes the creditors, equity security interest holders, other parties in interest, parties to assumed leases and other contracts, and any identified entity subject to an injunction. The Debtors shall complete such service within five (5) Business Days of the date that the Confirmation Order is entered by the Court. From and after the date the Confirmation Order is entered by the Court, notices of appearances and demands for service filed with the Bankruptcy Court after such date shall not be effective. No further notices shall be required to be sent to any entities or persons.

16. Confirmation Order Controls. To the extent there are inconsistencies between the language of the Plan and this Confirmation Order, the language of this Confirmation Order shall control.

THIS ORDER PREPARED BY:

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