



**ORDERED in the Southern District of Florida on December 8, 2015.**

  
Laurel M. Isicoff, Judge  
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)**

In re:

NNN DORAL COURT 3, LLC, et al

Debtors.

Case No. 15-24228-LMI  
Jointly Administered

Chapter 11

**ORDER CONFIRMING CHAPTER 11 TRUSTEE'S PLAN OF LIQUIDATION**

**THE CLERK OF THE COURT IS DIRECTED TO DOCKET THIS CONFIRMATION ORDER  
IN THE ABOVE CAPTIONED CASE, AS WELL AS IN ALL JOINTLY ADMINISTERED  
CASES LISTED IN FOOTNOTE 1.**<sup>1</sup>

<sup>1</sup> Additional Jointly Administered Chapter 11 Cases: (a) NNN Doral Court 4, LLC (Case No. 15-24233-LMI); (b) NNN Doral Court 5, LLC (Case No. 15-24236-LMI); (c) NNN Doral Court 6, LLC (Case No. 15-24237-LMI); (d) NNN Doral Court 7, LLC (Case No. 15-24238-LMI); (e) NNN Doral Court 8, LLC (Case No. 15-24239-LMI); (f) NNN Doral Court 9, LLC (Case No. 15-24241-LMI); (g) NNN Doral Court 10, LLC (Case No. 15-24242-LMI); (h) NNN Doral Court 11, LLC (Case No. 15-24243-LMI); (i) NNN Doral Court 13, LLC (Case No. 15-24245-LMI); (j) NNN Doral Court 14, LLC (Case No. 15-24246-LMI); (k) NNN Doral Court 15, LLC (Case No. 15-24247-LMI); (l) NNN Doral Court 16, LLC (Case No. 15-24248-LMI); (m) NNN Doral Court 18, LLC (Case No. 15-24249-LMI); (n) NNN Doral Court 20, LLC (Case No. 15-24250-LMI); (o) NNN Doral Court 24, LLC (Case No. 15-24252-LMI); (p) NNN Doral Court 26, LLC (Case No. 15-24253-LMI); (q) NNN Doral Court 30, LLC (Case No. 15-24254-LMI); (r) NNN Doral Court 31, LLC (Case No. 15-24256-LMI); (s) NNN Doral Court 32, LLC (Case No. 15-24258-LMI); (t) NNN Doral Court 34, LLC (Case No. 15-24259-LMI); (u) NNN Doral Court 36, LLC (Case No. 15-24261-LMI); (v) NNN Doral Court 37, LLC (Case No. 15-24262-LMI); (w)

On December 2, 2015 at 8:30 a.m., the Court conducted a hearing (“**Confirmation Hearing**”) to consider confirmation of the Plan of Liquidation filed by Chapter 11 Trustee, Barry E. Mukamal (“**Plan**”) [ECF No. 172], as well as the Supplement to Plan Exhibit filed by Barry E. Mukamal, Chapter 11 Trustee (“**Supplemental Plan Exhibit**”) [ECF No. 176], the Certificate of Proponent of Plan on Acceptance of Plan, Report on Amounts to be Deposited, Certificate of Amount Deposited and Payment of Fees (“**Plan Proponent Certificate**”) [ECF No.189] and other attestations, arguments and evidentiary proffers as announced on the record at the Confirmation Hearing and as set forth in this Confirmation Order.

Prior to the Confirmation Hearing, the Court entered an Order (I) Setting Evidentiary Hearings to Consider Plan Confirmation and Settlement Agreements with Bar Orders; (II) Setting Various Deadlines and (III) Describing Plan Proponent’s Obligations (“**Confirmation Procedures Order**”) [ECF No. 173] dated November 19, 2015, finding, among other things, that (a) the Plan contained adequate information concerning the history of these cases and the financial affairs of the Estates such that the Plan contained the disclosures required by 11 U.S.C. § 1125(a), and (b) that because no balloting was necessary to consider confirmation of the Plan, the solicitation requirements of 11 U.S.C. §§ 1125 and 1126, Rules 3017 and 3018, Federal Rules of Bankruptcy Procedure, and Local Rules 3017-1 and 3018-1 were waived.

At the Confirmation Hearing, the proponent of the Plan, Barry E. Mukamal, Chapter 11 Trustee (“**Chapter 11 Trustee or Proponent**”) offered into evidence, without objection, the

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NNN Doral Court 40, LLC (Case No. 15-24263-LMI); (x) NNN Doral Court 41, LLC (Case No. 15-24264-LMI); (y) NNN Doral Court 42, LLC (Case No. 15-24265-LMI); (z) NNN Doral Court 43, LLC (Case No. 15-24266-LMI); (aa) NNN Doral Court 44, LLC (Case No. 15-24268-LMI); and (bb) NNN Doral Court 45, LLC (Case No. 15-24269-LMI).

Confirmation Affidavit of Chapter 11 Trustee, Barry E. Mukamal [ECF No. 192] (“**Chapter 11 Trustee Affidavit**”).

The Court notes that no party in interest objected to the Chapter 11 Trustee Affidavit or requested any cross-examination of Chapter 11 Trustee at the Confirmation Hearing. Accordingly, the Court accepts the evidence in support of the Plan as set forth in Chapter 11 Trustee Affidavit and as referenced on the record at the Confirmation Hearing.

Based upon the Plan, the Confirmation Procedures Order, Chapter 11 Trustee Affidavit, the Certificate, the arguments and representation of counsel at the Confirmation Hearing, the record of these Chapter 11 cases, of which the Court takes judicial notice, and the record of the Confirmation Hearing which is incorporated herein by reference as if fully stated in this Order (“**Confirmation Order**”), the Court determines that the Plan satisfies the applicable provisions of the Bankruptcy Code and should be confirmed. Based on the foregoing, the Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

This Confirmation Order constitutes the Court’s findings of fact and conclusions of law under Federal Rule of Civil Procedure 52, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). Any and all findings of fact shall constitute findings of fact even if stated as conclusions of law, and any and all conclusions of law shall constitute conclusions of law even if stated as findings of fact.

**A. Defined Terms:** Unless otherwise defined in this Confirmation Order, each capitalized term used in this Confirmation Order shall have the definition ascribed to such term in the Plan. If a capitalized term is not defined in either this Confirmation Order or the Plan, then it has the meaning prescribed in Title 11 of the U.S. Code (the “**Bankruptcy Code**”) or the

Bankruptcy Rules, whichever is applicable. If there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

**B. Jurisdiction and Venue; Qualification; Joint Administration.** The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). On August 6, 2015 (the “**Petition Date**”), the Debtors filed voluntary Chapter 11 petitions in this Court. On August 11, 2015, this Court entered an Order jointly administering the related bankruptcy cases, designating *In re NNN Doral Court 3, LLC*, Case No. 15-24228-LMI as the lead case pursuant to Local Rule 1015-1. [ECF No. 13]. The Debtors are and were qualified to be debtors under Section 109 of the Bankruptcy Code. The 29 jointly administered Debtors are tenants in common, who, along with 4 non-debtor tenants in common (collectively, the 33 entities are referred to as the “**TIC Owners**”), own as their primary asset a 209,000 sq. ft. commercial office building and approximately 9.4 acres of land located at 8600 N.W. 36<sup>th</sup> Street, Doral, Florida 33166 (“the “**Property**”). Accordingly, venue of these Chapter 11 cases in this Court was proper as of the Petition Date, pursuant to 28 U.S.C. § 1408, and continues to be proper. The Chapter 11 Trustee is the duly appointed, qualified and acting Chapter 11 Trustee of the Debtors’ Chapter 11 cases.

**C. Notice.** As evidenced by the Certificates of Service filed by the Chapter 11 Trustee [ECF Nos. 166, 167, 168, 174, 176 and 193], the Proponent has provided actual notice to known creditors, equity interest holders and/or parties in interest of the (i) Plan; (ii) the Settlement Agreements, Asset Purchase Agreement and Bid Procedures contemplated thereby; (iii) the Supplemental Plan Exhibit; (iv) the Confirmation Procedures Order, which includes the deadline to file and serve objections to confirmation of the Plan; and (v) the Trustee’s Certificate

of Plan Proponent and Affidavits in Support of Confirmation and Settlement Agreements. The Court finds that such notice is adequate, and no other and further notice is or shall be required under the Bankruptcy Rules, Bankruptcy Code, Local Rules of this Court, the Confirmation Procedures Order and other orders of this Court as to all parties to be affected by the Plan and the transactions contemplated thereby, and that such notice did apprise the parties receiving same of the Plan, as well as information and deadlines set forth in the Confirmation Procedures Order. Pro se applicant Joanna George filed a motion (ECF No. 187) for extension of time to object to the Trustee's Settlement Agreements (ECF Nos. 166 and 167) and the Plan or, in the alternative, to allow Ms. George to appear telephonically at the Confirmation Hearing. Mrs. George's motion addressed objections only to the Settlement Agreements, which were considered as part of the evidentiary settlement hearings and are being overruled by separate orders of this Court granting the Settlement Agreements.

**D. Modifications to Plan:** All modifications to the Plan, including but, not limited to the Supplemental Plan Exhibit, as well as any clarifications and/or modifications announced at the Confirmation Hearing and by this Confirmation Order, are either non-material or do not adversely change the treatment of the claim of any creditor or the holder of any interest, and the Plan is amended accordingly. Therefore no further notice or objection period in respect of the Plan is required pursuant to the provisions of 11 U.S.C. § 1127; and under Bankruptcy Rule 3019, the Plan is deemed accepted by all Classes of Claims and Interests.

**E. Assumption and Rejection:** As clarified by this sub-paragraph of the Confirmation Order, the provisions of the Plan in Article 5 governing the assumption and rejection of Executory Contracts and unexpired leases satisfy the requirements of Section 365 of the Bankruptcy Code. Entry of this Confirmation Order shall constitute approval of such

assumption or rejection pursuant to Sections 365(a) and 1123 of the Bankruptcy Code. The Confirmation Order shall act as an Order approving the Trustee's business judgment as to the forthcoming assumption and assignment at Closing on the sale of the Property of all Executory Contracts listed in the Supplemental Plan Exhibit, which is an attachment to the Stalking Horse Asset Purchase Agreement. **PRIOR TO THE POST-CLOSING EFFECTIVE DATE, THE TRUSTEE SHALL FILE A NOTICE OF REJECTION OF ANY EXECUTORY CONTRACT CURRENTLY LISTED ON THE PROSPECTIVE LIST OF EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED THAT ARE BEING REJECTED AT THE DETERMINATION OF THE ULTIMATE PURCHASER OF THE PROPERTY, AND SUCH CLAIMANT, OR ANY OTHER HOLDER OF AN ASSERTED EXECUTORY CONTRACT NOT OTHERWISE INCLUDED ON THE SUPPLEMENTAL PLAN EXHIBIT, SHALL HAVE 30 DAYS AFTER THE EFFECTIVE DATE OF THE PLAN TO FILE A REJECTION DAMAGE PROOF OF CLAIM WITH THE BANKRUPTCY COURT.**

**F. Unclaimed and Undeliverable Distributions:** As clarified by this sub-paragraph of the Confirmation Order, the provisions of the Plan in Article 7.7 governing the treatment of Unclaimed and Undeliverable Distributions are appropriate. Specifically, the treatment of Unclaimed Property with respect to Equity Interest Holders is carved out of the provisions of Article 7.7. Any Unclaimed Property with respect to an Equity Interest Holder shall be deposited with the Clerk of the Bankruptcy Court of the Southern District of Florida.

**G. Satisfaction of Confirmation Requirements:** Bankruptcy Code § 1129(a)(1) is satisfied, as no objections to the Plan were timely filed or raised at the Confirmation Hearing,

and because the Plan complies with all applicable provisions of the Bankruptcy Code, including, without limitation, the provisions of §§ 1122 and 1123, as follows:

(1) Proper Classification of Claims and Interests. Bankruptcy Code §1122(a) and §1123(a)(1) are satisfied because the Plan properly designates separate Classes of Claims and Interests, each of which contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class.

(2) Specification of Unimpaired and Impaired Classes. Bankruptcy Code §1123(a)(2) is satisfied because the Plan properly specifies Classes of Claims and Interests that are not impaired under the Plan. No Classes of Claims or Interests are impaired within the meaning of Bankruptcy Code §1123(a)(3).

(3) Equal Treatment Within Classes. Bankruptcy Code § 1123(a)(4) is satisfied because the Plan provides the same treatment for each Claim or Interests within a particular Class.

(4) Implementation of Plan. Bankruptcy Code §1123(a)(5) is satisfied because the Plan provides adequate means for its implementation, including without limitation, the payment in full of All Allowed Administrative Claims and Allowed General Unsecured Claims (and this Confirmation Order clarifies that the holders of Allowed General Unsecured Claims shall receive distributions on their claims that include postpetition interest at the federal judgment rate), in cash on the later of (a) the Effective Date, or (b) the Allowance Date, as applicable.

(5) Charter Provisions. Bankruptcy Code §1123(a)(6) of the Bankruptcy Code is not applicable because the Debtors are limited liability companies and not a corporation.

(6) Selection of Officers and Directors. Bankruptcy Code §1123(a)(7) is satisfied because the Plan contains only provisions that are consistent with the interests of Creditors and Equity Interest Holders and with public policy with respect to the manner of selection of the persons in control of the post-confirmation Debtors, including, but not limited to, the Chapter 11 Trustee's continued administration of the Debtors and their assets and claims as Plan Administrator.

(7) Bankruptcy Rule 3016(a). Bankruptcy Rule 3016(a) is satisfied because the Plan is dated and identifies the Proponent.

(8) Specific Identification of Injunction Entities. Other than conduct automatically enjoined by the Bankruptcy Code, the Plan describes in specific, bold and conspicuous language all acts to be enjoined and identified the entities that would be subject to any injunction thereby satisfying Rule 3016(c) of the Bankruptcy Rules.

**H. Proponent's Compliance with All Applicable Provisions of the Bankruptcy Code:** The Proponent complied with all applicable provisions of the Bankruptcy Code as required by Section 1129(a)(2) of the Bankruptcy Code in proposing the Plan.

**I. Plan Proposed in Good Faith:** The Proponent proposed the Plan in good faith and not by any means forbidden by law. In determining that the Plan has been proposed in good faith as required by Bankruptcy Code §1129(a)(3), the Court has examined the totality of circumstances surrounding the filing of the Chapter 11 cases and the formulation of the Plan.

**J. Payment for Services and Expenses:** The Plan complies with Section 1129(a)(4) of the Bankruptcy Code because any payment made or to be made by the Chapter 11 Trustee or Plan Administrator for services or for costs and expenses in, or in connection with,



these cases, or in connection with the Plan and incident to these Chapter 11 cases, has been approved by, or remains subject to the approval of, the Court as reasonable.

**K. Directors, Officers and Insiders:** The Proponent has satisfied Section 1129(a)(5) of the Bankruptcy Code because the Chapter 11 Trustee adequately discloses in the Plan the identity and affiliation of the individual proposed to serve in control of the post-confirmation Debtors after the post-confirmation Effective Date of the Plan, as Plan Administrator: Barry E. Mukamal. The appointment of the Plan Administrator is consistent with the interests of creditors and equity interest holders, and with public policy.

**L. Governmental Regulatory Control Over Rate Changes:** Section 1129(a)(6) of the Bankruptcy Code is satisfied because the Plan does not provide for any change in rates over which a governmental regulatory commission has jurisdiction.

**M. Best Interest of Creditors Test:** Section 1129(a)(7) of the Bankruptcy Code is satisfied because each holder of a Claim or Interest identified in the Plan will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive if the Debtors were liquidated under Chapter 7.

**N. Plan Acceptance by Classes:** Bankruptcy Code § 1129(a)(8) is satisfied because all Classes of Claims, as modified herein, and Interests are not impaired and are deemed to have accepted the Plan pursuant to Bankruptcy Code §§ 1124 and 1126(f).

**O. Treatment of Priority Claims Pursuant to Section 507(a) of the Bankruptcy Code:** The Plan complies with Section 1129(a)(9) of the Bankruptcy Code because it provides for treatment of Administrative Claims, Priority Tax Claims, and any Claims entitled to priority

pursuant to Sections 507(a)(3) - (7) and 507(a)(9) of the Bankruptcy Code in the manner required by Section 1129(a)(9) of the Bankruptcy Code.

**P. Acceptance of at Least One Impaired Class:** Bankruptcy Code § 1129(a)(10) is inapplicable because all Classes are deemed to have accepted the Plan as described above.

**Q. Feasibility of the Plan:** The Plan is feasible. The Plan is premised upon the consummation of the transactions contemplated by the Plan, the Bid Procedures, Settlement Agreements & the Asset Purchase Agreement. Further, the Chapter 11 Trustee has sufficient Cash to make the payments on the Effective Date contemplated by the Plan, and therefore, confirmation of the Plan is not likely to be followed by the liquidation, other than as proposed by the Plan, or the need for further financial reorganization of the Debtors or any successors under the Plan. The Plan, therefore, complies with Section 1129(a)(11) of the Bankruptcy Code.

**R. Payment of Bankruptcy Fees:** In accordance with Section 1129(a)(12) of the Bankruptcy Code, the Chapter 11 Trustee on behalf of the Debtors has paid, or will pay on the Effective Date, all fees payable under 28 U.S.C. § 1930. For fees that arise after the Effective Date, the Plan Administrator shall continue to file quarterly reports and pay all fees due and payable under 28 U.S.C. § 1930 until the closing of the Chapter 11 cases. This Confirmation Order clarifies that all such reports and fees in this subparagraph are due for each Debtor until the close of these cases.

**S. Continuation of Retirement Benefits:** Bankruptcy Code § 1129(a)(13) is inapplicable because the Debtors have no retirees who are entitled to retirement benefits by contract or by statute, and payment of retirement benefits has not been established or required in these cases pursuant to Bankruptcy Code § 1114.

**T. Other Bankruptcy Code §1129 Requirements:** Sections 1129(a)(14) and (15) of the Bankruptcy Code apply only to individuals, so they are not applicable to, nor implicated by, the Plan. Similarly, Section 1129(a)(16) of the Bankruptcy Code only applies to nonprofit organizations; thus, this Section is not applicable to the Plan. Accordingly, Sections 1129(a)(14)-(16) of the Bankruptcy Code are not implicated by the Plan.

**U. Only One Plan:** The Plan is the only Chapter 11 plan relating to the Debtors pending before the Court or any other court, and this satisfies Section 1129(c) of the Bankruptcy Code.

**V. Principal Purpose of the Plan:** 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, as amended (the “**Securities Act**”), and no governmental entity has filed any objection asserting that such avoidance is the principal purpose of the Plan.

**W. Retention of Jurisdiction:** The Court may properly retain jurisdiction over the matters set forth in Article 11 of the Plan.

**FINDING THAT THE PLAN IS CONFIRMABLE BASED UPON, AMONG OTHER THINGS, ALL OF THE ABOVE-STATED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND GOOD CAUSE APPEARING THEREFORE, IT IS –**

**ORDERED** as follows:

1. **Plan.** The Plan, with its modifications supplements, amendments, revisions and clarifications (a) pursuant to the Supplemental Plan Exhibit [ECF No. 176], (b) pursuant to the Court’s Confirmation Procedures Order [ECF. No. 173], (c) as announced on the record at the Confirmation Hearing, and (d) as set forth in this Confirmation Order is APPROVED, and all of

the foregoing are hereby re-defined as the Plan. The terms and conditions contained in the Plan and the documents contemplated thereby are APPROVED.

2. **Confirmation.** The Plan in its entirety is CONFIRMED pursuant to Bankruptcy Code § 1129. All objections and responses to, and statements and comments regarding, the Plan, to the extent they have not been withdrawn prior to entry of this Confirmation Order or are not cured by the relief granted herein, are hereby expressly overruled.

3. **Severability.** The provisions of this Confirmation Order are fully independent and severable, such that in the event that a court of competent jurisdiction, applicable law, or agreement of parties-in-interest makes any single provision null and void or without effect, the remaining provisions of this Confirmation Order shall continue in full force and effect.

4. **References to Plan Provisions.** 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.

5. **Binding Effect.** Subject to the “Controlling Provisions” clause of this Confirmation Order, the provisions of the Plan and this Confirmation Order shall be and are binding on, and enforceable by and against, the Debtors, post-confirmation Debtors, the Proponent, Plan Administrator, and all Creditors and holders of Claims and Equity Interests, including their successors and assigns, whether or not they voted to accept the Plan.

6. **General Authorizations.** The Proponent and Plan Administrator, their respective agents and attorneys are authorized, empowered and directed, subject to the right to modify the Plan in accordance with Article 12.5 of the Plan, to carry out the provisions of the Plan, and to enter into, execute, deliver, consummate, file and/or perform the terms of the Plan

and any other agreements, instruments and documents related thereto, and any amendments, supplements or modifications to such documents as may be necessary or appropriate, and to take such other steps and perform such other acts as may be necessary or appropriate to implement and effectuate the Plan and this Confirmation Order, and to satisfy any and all conditions precedent to the implementation and effectiveness of the Plan and to consummate the Plan. Each such document or instrument entered into by the Proponent or Plan Administrator shall constitute legal, valid, binding and authorized obligations of such Proponent or Plan Administrator, enforceable in accordance with its terms. Pursuant to Bankruptcy Code § 1123(a) and § 1142(a), the provisions of the Plan and this Confirmation Order shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

7. **Plan Implementation.** All actions contemplated by the Plan, the Asset Purchase Agreement, the Bid Procedures, and the Settlement Agreements, as well as the releases, injunctions and bar orders provided therein (collectively, the “**Plan Documents**”) are authorized and approved in all respects, including without limitation, all actions contemplated by Articles 5, 6, 7 and 8 of the Plan and this Confirmation Order. All such actions, and any other actions described in the Plan or this Confirmation Order that would otherwise require the consent or approval of the equity interest holders shall be deemed to have been consented to or approved and shall be effective under applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of prior or further action by the equity interest holders. The Proponent and/or Plan Administrator are authorized and directed to execute and deliver and to perform the terms of the documents contemplated by the Plan in the name of and on behalf of the Debtors or Chapter 11 Trustee.

8. **Authorizations Under Applicable Non-Bankruptcy Law.** The Debtors will continue to exist as separate legal entities, and the Chapter 11 Trustee will continue to serve as Chapter 11 Trustee of the Debtors' Estates until the Effective Date, in accordance with the laws of the State of Florida and pursuant to their limited liability company agreements, as applicable, in effect prior to the Effective Date, except to the extent amended or subsequent to the Effective Date, having all of the powers of a limited liability company under applicable non-bankruptcy law and their limited liability company agreements in effect prior to the Petition Date, or as amended on or after the Petition Date.

9. **Discharge of Chapter 11 Trustee; Plan Administrator.** Upon the Effective Date, the Chapter 11 Trustee shall be discharged in connection with his duties as Chapter 11 Trustee of these Chapter 11 cases. On or after the Effective Date, Barry E. Mukamal shall serve as Plan Administrator, and the all assets and cash in the Chapter 11 Trustee's possession shall vest with the Plan Administrator for distribution to Creditors and Equity Interest Holders pursuant to the Plan. The Plan Administrator shall be required to post a bond or surety or other security in favor of the estates equal to 100% of the Cash on hand as of the post-closing Effective Date for the performance of his duties as set forth in the Plan. The Chapter 11 Trustee or Plan Administrator, as applicable, is authorized to pay for this bond premium from property of the bankruptcy estates without further Court order. All references in the Plan and the Plan Documents to Disbursing Agent shall be deemed amended to refer to the Plan Administrator.

10. **Automatic Stay/Injunction Remains in Effect Until the Effective Date.** Subject to the injunctions and bar order provided in this Confirmation Order, in the Plan and/or in the Bankruptcy Code, all injunctions and stays in effect on the Confirmation Date pursuant to Sections 105 and 362 of the Bankruptcy Code or otherwise shall remain in full force and effect

through and including the Effective Date of the Plan, except that nothing herein shall bar the taking of such other actions as are necessary to effectuate the transactions contemplated by the Plan or this Confirmation Order.

11. **Plan Injunction Enjoining Enforcement of Pre-Confirmation Debt.**

a. Except as provided in the Plan or this Confirmation Order, as of the Effective Date, all Persons that have held, currently hold, may hold, or allege that they hold a Claim or other debt or liability or an Equity Interest, are permanently enjoined from taking any of the following actions against the Property, its Proceeds or other property of the Estates: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors; or (v) commencing or continuing any action, in each such case in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan.

b. As of the Effective Date, all Persons that have held, currently hold, or may hold, a Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, or liability that is fully paid pursuant to the Plan are permanently enjoined from taking any of the following actions on account of such released Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities or Equity Interests or rights: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff

against any debt, liability, or obligation due to any released Person; or (v) commencing or continuing any action, in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan.

c. Without limiting the effect of the foregoing and provisions of Article 9.1 of the Plan, upon any Person, by accepting distributions pursuant to the Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in Article 9.1 of the Plan and this Confirmation Order.

d. Without limiting the generality of the foregoing provisions, if any Person has held, currently holds, may hold, or alleges that she/he/it holds a Claim, and such Person either did not timely file a Proof of Claim with respect to such Claim or filed a Proof of Claim that is or was disallowed by order of this Court, then such Person is permanently enjoined from taking any of the following actions on account of such Claim or on account of any acts, omissions, transactions, occurrences, or other activities upon which such Claim is or may be based: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors, their Estates or the post-confirmation Debtors; or (v) commencing or continuing any action, in each such case in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Amended Plan.

12. **Banyan and Lender Injunction/Bar Orders.**

a. The release, exculpation, injunction and bar order provided in Article 8.2 of the Plan to (a) Banyan Street Capital, LLC and any of its affiliates or assigns (“**Banyan**”), and



(b) Doral Court Debt Holdings, LLC and all of its parents, subsidiaries, affiliates, assigns and predecessors with respect to the Property, its mortgagee rights and obligations (the “**Lender**”), in the Plan and the Plan Documents are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and its Estates, and such provisions shall be effective and binding upon all persons and entities.

**b. THE OCCURRENCE OF THE EFFECTIVE DATE, THE CONFIRMATION ORDER AND 9019 ORDERS APPROVING THE ESTATES’ SETTLEMENT AGREEMENTS WITH BANYAN AND THE LENDER SHALL PERMANENTLY BAR, PROHIBIT, RESTRAIN AND ENJOIN THE FOLLOWING: (I) THE FILING, COMMENCING, CONDUCTING, INSTITUTING, PROSECUTING, LITIGATING OR CONTINUING IN ANY MANNER, DIRECTLY, INDIRECTLY, OR DERIVATIVELY, ANY SUIT, ACTION, OR OTHER PROCEEDING (INCLUDING, WITHOUT LIMITATION, ANY PROCEEDING IN ANY JUDICIAL, ARBITRAL, ADMINISTRATIVE, OR OTHER FORUM) BY ANY PERSON (AS DEFINED IN THE BANKRUPTCY CODE) AGAINST OR AFFECTING BANYAN AND/OR THE LENDER ARISING OUT OF, RELATING TO, OR WITH RESPECT TO ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, OBLIGATIONS, EXPENSES, RIGHT TO ATTORNEYS’ FEES, CONTRACTS, WARRANTIES, UNDERTAKINGS, REMEDIES, ACTIONS OR CAUSES OF ACTION OF ANY KIND, WHETHER ABSOLUTE OR CONTINGENT, DUE OR TO BECOME DUE, DISPUTED OR UNDISPUTED, LIQUIDATED OR UNLIQUIDATED, AT LAW OR IN EQUITY, BOTH KNOWN OR UNKNOWN, WHICH WERE OR COULD HAVE BEEN OR COULD BE ALLEGED IN THE BANKRUPTCY CASE, THE SPECIFIC PERFORMANCE ACTION, THE FORECLOSURE CASE AND APPEALS, OR IN ANY LAWSUIT BY, AGAINST, OR IMPLICATING BANYAN OR THE LENDER THAT COULD HAVE BEEN RELATED IN ANY WAY TO THE DEBTORS, THE BANKRUPTCY CASE, THE PROPERTY, THE SPECIFIC PERFORMANCE ACTION, THE FORECLOSURE CASE AND APPEALS, OR THE BANYAN PSA, OR ANY FACTS OR CIRCUMSTANCES OR COURSE OF CONDUCT IN CONNECTION WITH ANY OF THE FOREGOING (ALL OF THE FOREGOING COLLECTIVELY, THE “BARRED CLAIMS”); (II) ENFORCING, LEVYING, EMPLOYING LEGAL PROCESS, ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PREJUDGMENT ATTACHMENT), GARNISHING, SEQUESTERING, BRINGING PROCEEDINGS SUPPLEMENTARY TO EXECUTION, COLLECTING, OR OTHERWISE RECOVERING BY ANY MEANS OR IN ANY MANNER, WHETHER DIRECTLY, INDIRECTLY, OR DERIVATIVELY, ANY JUDGMENT, AWARD, DECREE, OR OTHER ORDER AGAINST BANYAN AND/OR THE LENDER WITH RESPECT TO THE BARRED CLAIMS; AND (III) FILING, COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY, INDIRECTLY OR DERIVATIVELY, ANY ACTIONS SEEKING CONTRIBUTION, SUBROGATION OR INDEMNIFICATION FROM OR**

**REGARDING BANYAN AND/OR THE LENDER REGARDING THE BARRED CLAIMS. IN AGREEING TO THE REQUIREMENT OF THIS BAR ORDER, THE CHAPTER 11 TRUSTEE HAS RELIED UPON HIS INVESTIGATION OF THE SPECIFIC PERFORMANCE ACTION, FORECLOSURE CASE AND APPEALS, AND THE BANKRUPTCY CASE, AND HIS CONCLUSION THAT THERE ARE NO MATERIAL CLAIMS OR CAUSES OF ACTION THAT EXIST WITH RESPECT TO BANYAN OR THE LENDER OTHER THAN THOSE ALREADY FRAMED BY OR RAISED IN THE SPECIFIC PERFORMANCE ACTION, FORECLOSURE ACTION OR OTHER PLEADINGS FILED IN THE BANKRUPTCY CASE.**

**THIS INJUNCTION AND BAR ORDER SHALL NOT ENJOIN OR BAR: (I) ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL GOVERNMENTAL AUTHORITY WHATSOEVER AGAINST BANYAN OR THE LENDER; AND (II) THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL GOVERNMENTAL AUTHORITY WHATSOEVER FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS AGAINST BANYAN OR THE LENDER ASSERTING ANY OTHER LIABILITY, INCLUDING WITHOUT LIMITATION ANY CLAIM, SUIT OR ACTION ARISING UNDER THE INTERNAL REVENUE CODE, SECURITIES LAWS, ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE OR LOCAL JURISDICTION.**

13. **Professional Fee Claims.** Counsel for the Chapter 11 Trustee, David A. Samole and the law offices of Kozyak Tropin & Throckmorton, LLP (collectively, “**Trustee’s Counsel**”) are authorized to continue as counsel to the Chapter 11 Trustee, in his capacity as Chapter 11 Trustee or Plan Administrator, as the case may be, in order to perform any and all post-confirmation services (“**Post-Confirmation Services**”). All final requests for payment of Professional Fee Claims for services rendered and costs incurred after the Confirmation Hearing through the Effective Date by Trustee’s Counsel or other Professionals in these Chapter 11 cases pursuant to Sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code and Claims under Section 503(b)(3), (4), or (5) of the Bankruptcy Code must be filed and served on the Equity Interest Holders, their counsel, and other necessary parties-in-interest no later than thirty (30) days after the Effective Date, unless otherwise ordered by this Court. The Trustee, his counsel and his accounting firm also may seek any pre-confirmation fees and costs not

previously sought prior to Plan Confirmation, by way of a supplemental fee application or other application. Objections to all requests for payment in this paragraph must be filed and served on the Chapter 11 Trustee, his counsel, and the requesting Professional or other entity no later than twenty (20) days (or such longer period as may be allowed by order of the Court) after the date on which the applicable request for payment was served.

14. **Post Confirmation Professionals of the Estate.** As set forth in Article 12.10 of the Plan, all Professionals retained by the Chapter 11 Trustee prior to confirmation to perform services on behalf of the Chapter 11 Trustee or the Debtors' Estate shall be authorized to continue such employment subsequent to confirmation of the Plan up to and including the Effective Date, as which time the continued employments of such professionals is within the sole discretion of the Plan Administrator. To the extent necessary, the Chapter 11 Trustee shall seek the Court's approval to retain the services of professionals subsequent to confirmation of the Plan, but prior to the Effective Date, as provided for in Sections 327 and 328 of the Bankruptcy Code. Any duly authorized Professional that performs services on behalf of the Chapter 11 Trustee or the Debtors' Estates subsequent to confirmation of the Plan but prior to the Effective Date shall be entitled to seek compensation from the Plan Administrator, who or which will handle same consistent with the terms of this Plan and this Confirmation Order.

15. **Exemption From Certain Taxes.** Notwithstanding anything in the Plan to the contrary, pursuant to Section 1146(a) of the Bankruptcy Code: (a) the issuance, transfer, or exchange of notes or equity securities under the Plan; (b) the creation of any mortgage, deed of trust, lien, pledge, or other security interests; and (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation the sale by the Chapter 11 Trustee or the Plan Administrator of the Property pursuant

to the Plan Documents of consolidation, restructuring, disposition, liquidation, or dissolution, deeds, bills of sale, and transfers of tangible property, will not be subject to any law imposing a stamp or similar tax, including but not limited to any recording fee, intangible taxes or documentary stamp taxes, whether on any deed, leasehold, assignment, promissory note, security agreement or mortgage. All recording and filing officers and clerks wherever located are hereby directed to accept for filing or recording, and to file or record immediately upon presentation thereof, any mortgage, deed of trust or other instrument of transfer described in (a), (b) or (c) above without payment of any stamp tax or similar tax. The Chapter 11 Trustee and Plan Administrator are hereby authorized to deliver a notice or short form of this Confirmation Order to any state recording officer to the effect that such officer must accept for filing such security interests without charging any stamp tax or other similar tax within the scope of Section 1146(a).

16. **Section 1145 Exemption.** Confirmation of the Plan shall constitute a determination, in accordance with Section 1145 of the Bankruptcy Code, that except with respect to an entity that is an underwriter as defined in Section 1145(b) of the Bankruptcy Code, the Securities Act, as amended, and any state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, broker or dealer in, a security does not apply to the offer or sale under the Plan of the Property or as to any of the other Estates assets and claims, or as to the exchange of Claims against the Debtors for Claims against the proceeds from the sale of the Property of the administration of other assets and claims of the Estates.

17. **No Waiver.** Neither the entry of this Confirmation Order, the execution of any of the documents required or contemplated hereunder or by the Plan, nor any other action or inaction by the Debtors, the Chapter 11 Trustee, any Creditor, Holder of any Interest or any other

party in interest in this case shall constitute a waiver, estoppel, res judicata, release, relinquishment, abandonment or any other abrogation by the Debtors, post-confirmation Debtors, the Chapter 11 Trustee, or Plan Administrator of any objection, defense, offset or counterclaim.

18. **Reversal.** If any or all of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by subsequent order of the Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Chapter 11 Trustee's receipt of written notice of any such order. No such reversal, modification or vacatur of this Confirmation Order shall affect, prejudice or impair the validity or enforceability of such act or obligation. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan and all documents, instruments and agreements related thereto or any amendments or modifications thereto.

19. **Substantial Consummation.** The Plan shall be deemed substantially consummated immediately on the completion of all material actions required to be undertaken at the Effective Date, including, but not limited to, a Closing of the sale of the Property contemplated by the Plan and Asset Purchase Agreement, and otherwise in accordance with Article 13.1 of the Plan and Bankruptcy Code § 1101(2).

20. **Notice of Entry of Confirmation Order.** Pursuant to Bankruptcy Rules 2002(f), 3017(f) and 3020(c), and Local Rules 2002-1(C)(11), 3020-1(D), the Chapter 11 Trustee shall promptly serve, by first-class mail, postage prepaid, a copy of this Confirmation Order on all Creditors, Interest holders and other parties-in-interest that are not registered to receive notices

generated electronically through CM/ECF. Pursuant to Local Rule 9076-1(A), all parties registered to receive notice electronically will receive notice of the Confirmation Order only by the Court's Notice of Electronic Filing generated by CM/ECF and not by mail. The foregoing notice shall constitute due and adequate notice of this Confirmation Order within the meaning of the Bankruptcy Rules and Local Rules of this Court.

21. **Final Decree.** After substantial consummation as defined under Bankruptcy Code § 1101(2), the Chapter 11 Trustee or Plan Administrator may file the Local Form "Final Report and Motion for Entry of Final Decree" and as otherwise set forth in Article 13.3 of the Plan.

22. **Controlling Provisions.** In the event and to the extent that any provision of this Confirmation Order is determined to be inconsistent with any provision of the Plan, such provision of this Confirmation Order shall control and take precedence.

23. **Retention of Jurisdiction.** Notwithstanding Confirmation of the Plan, the Court retains exclusive jurisdiction, to the maximum extent permitted by the Bankruptcy Code and other applicable law, over these Chapter 11 Cases pursuant to and for the purposes set forth in (a) Bankruptcy Code § 105(a) and § 1127, (b) Article 11 of the Plan and (c) for such other purposes as may be necessary or useful to aid in the confirmation and consummation of the Amended Plan and its implementation.

24. **Immediate Effectiveness of the Confirmation Order.** This Confirmation Order shall be effective immediately upon entry and any stay of the effectiveness provided for by the Bankruptcy Code or the Bankruptcy Rules is hereby abrogated.

# # #

Submitted by and Copy furnished to:  
DAVID A. SAMOLE, ESQ.  
KOZYAK TROPIN & THROCKMORTON, LLP

Counsel for Chapter 11 Trustee  
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Miami, Florida 33134  
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(Attorney Samole is directed to serve a conformed copy of this Order upon all interested parties and to file a Certificate of Service with the Court.)