

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

IN RE:

BALLANTRAE, LLC,

CASE NO. 17-13427

CHAPTER 11

Debtor.

FIRST AMENDED PLAN OF REORGANIZATION

ARTICLE I

SUMMARY

This Plan of Reorganization (the “Plan”) under chapter 11 of the Bankruptcy Code (the “Code”) proposes to pay creditors of BALLANTRAE, LLC (the “Debtor”) from future income.

This Plan provides for one class of secured claims and one class of unsecured claims. This Plan also provides for the payment of administrative claims.

All creditors should refer to Articles III through VI of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 Class 1. The allowed secured claim of Gulf Coast Bank and Trust Company assignee of American Business Lending, Inc. to the extent allowed as a secured claim under § 506 of the Code.

2.2 Class 2. The interests of the Debtor in the property of the estate.

ARTICLE III

TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS

3.1 Unclassified Claims. Under § 1123(a)(1), administrative expense claims, and priority tax claims are not in classes.

3.2 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code will be paid in full on the effective date of this Plan (as defined in Article VII), in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.3 Internal Revenue Service. The Internal Revenue Service has filed a priority claim in the amount of \$421.28. The Debtor will pay \$421.28 within 30 days of the effective date.

3.4 United States Trustee Fees. All fees required to be paid by 28 U.S.C. § 1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date.

ARTICLE IV

TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

The Plan shall provide for the payment of all expenses of this proceeding, including fees due the Office of the U.S. Trustee. The accompanying Plan of Reorganization divides creditors into the following classes:

Class 1 – The allowed secured claim of Gulf Coast Bank and Trust Company (“GCB”), successor to American Business Lending in the amount of \$3,417,808.64. GCB holds a mortgage securing its claim on property located at: 5937 Roebuck Road, Jupiter, FL 33458, which has the

legal description reflected on its Mortgage dated January 5, 2015 and recorded in the official public records of Palm Beach County, Florida at Book 27297, Page 1606.

GCB's claim arises from certain loan documents between the Debtor and American Business Lending, Inc., including a US SBA Authorization and Loan Agreement, US SBA Promissory Note in the original amount of \$3,500,000.00, a blanket Security Agreement in Borrower's assets, a Mortgage described above, an Assignment of Leases and Rents recorded at Book 27297, Page 1625, and the Personal Guaranty of Chorine Gates (Collectively "Loan Documents"). The Debtor hereby affirms the Loan Documents which remain in force and effect except as modified expressly as to those financial terms set out below, and to clarify that Debtor is required to maintain windstorm insurance for the duration of the term. GCB's pre-petition lien rights are unaffected by this filing, but to the extent it may be deemed necessary, Debtor hereby grants GCB, post-petition liens of the same scope and collateral as was granted in the Loan Documents. Debtor acknowledges that the GCB and its predecessor did not default under the Loan Documents, and waives any defenses or claims arising from the Loan Documents and underlying transaction that it held on the Petition Date. Should this case be converted or if the Debtor should file a subsequent bankruptcy, ABL shall be entitled to immediate relief from the stay. This class is impaired.

Modified Financial Terms:

Balances: as of January 1, 2018 (before the January payment)

Principal Balance was \$3,300,830.07

Interest Rate: the rate is fixed at 6% through December 31, 2018, but returns to floating per the Note (WSJ Prime plus 2.25 for the January 10, 2019 payment) from January 1, 2019 forward.

Payments shall be:

Debtor shall pay \$16,933.48 per month January and February 2018, then \$22,547.13 per month beginning March 2018 through and including December 2018. Beginning January 1, 2019 the rate changes from fixed to floating (see above). The outstanding principal will be reamortized at that time and at other times should the rate change, retaining the same maturity as provided in the Loan Documents, and the payment may change accordingly.

In addition to the above monthly payments, Debtor will make the following Additional Payments:

Debtor will defer payment of GCB's legal expenses of \$46,450.56 without interest over 18 months as follows - September 2018 to February 2019 (6 payments) of \$1,452.87, and March 2019 to February 2020 (12 payments) of \$3,244.45. These expense payments shall be by separate check. The next 36 months (beginning March 2020) Debtor shall pay an additional \$3,400.00 per month.

All payments and Additional Payments shall be applied as provided in the Note, except that the expense payments shall be applied to GCB's attorney's fees and expenses in that amount. Additional Payments are treated the same as regular payments under the Loan Documents, including but limited to as to their due dates, and consequences of non-payment. Payments are due on the 1st of each month but will be considered late if not received by the 10th of the month. ABL will retain its mortgage on the property but the note will be modified as to the financial terms as set forth above. Payments are due on the 1st of each month but will be considered late if not received by the 10th of the month. All other terms of the original loan documents will remain in full force and effect. ABL is not in default under the terms of the original loan documents. The Debtor waives any defenses that existed at the time of the filing of the case. Should this case be converted of if the Debtor should file a subsequent bankruptcy, ABL shall be entitled to immediate

relief from the stay. This class is impaired.

Class 2 – The members of the Debtor shall retain all property of the estate.

ARTICLE V

ALLOWANCE AND DISALLOWANCE OF CLAIMS

- 5.1 **Disputed Claim.** A disputed claim is a claim that has not been allowed or disallowed by a final non-appealable order, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.
- 5.2 **Delay of Distribution on a Disputed Claim.** No distribution will be made on account of a disputed claim unless such claim is allowed by a final non-appealable order.
- 5.3 **Settlement of Disputed Claims.** The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

ARTICLE VI

PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Assumed Executory Contracts and Unexpired Leases.

The Debtor has a copier lease with Marlin which is assumed.

ARTICLE VII

GENERAL PROVISIONS

- 7.1 **Definitions and Rules of Construction.** The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used

in this Plan and they are supplemented by the following definitions:

7.2 Effective Date of Plan. The effective date of this Plan shall be the first business day following fourteen (14) days after entry of the order of confirmation. However, if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

7.3 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

7.4 Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

7.5 Controlling Effect. Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of Florida govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.

7.6 Binding Effect of the Plan. The provisions of this Plan shall be binding upon the Debtor and all Creditors receiving treatment under the Plan and shall inure to the benefit of the Reorganized Debtor, their predecessors, successors, assigns, agents, officers and partners.

7.7 The Debtors may settle, enforce, or adjust any claim or interest which belonged to the Debtor or to the estate prior to confirmation.

ARTICLE VIII

DISCHARGE

Subject to the Debtor's duties under this Plan, in accordance with 11 U.S.C. §

1141(d)(1), the confirmation of the Plan discharges the Debtor from any debt that arose before the date of such confirmation.

The discharge will be fully effective against all creditors regardless of whether they have voted to accept or reject the Plan and regardless of whether the Plan is confirmed by consent or by resort to the provisions of § 1129(b) of the Bankruptcy Code. Except as otherwise provided in the Plan, the confirmation of the Plan vests all of the property of the estate in the Debtor free of liens.

Respectfully submitted

s/ Corinne Gates

Ballantrae, LLC
By Corinne Gates, its Managing Member

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