



ORDERED in the Southern District of Florida on December 27, 2012.

A handwritten signature in black ink that reads "Paul Hyman". The signature is written in a cursive style.

**Paul G. Hyman, Chief Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov**

In re:

**FORT LAUDERDALE BOATCLUB, LTD.,
Debtor.**

**Case No. 12-28776-BKC-RBR
Chapter 11**

**ORDER (I) APPROVING FIRST AMENDED DISCLOSURE STATEMENT FOR
DEBTOR'S PLAN OF REORGANIZATION AND (II) CONFIRMING DEBTOR'S
PLAN OF REORGANIZATION**

THIS MATTER came before the Court for hearing on **December 21, 2012** at 9:30 a.m. (the "Confirmation Hearing") pursuant to the (i) Order: (A) Conditionally Approving Disclosure Statement; (B) Authorizing Solicitation Of Votes On Plan Of Liquidation; (C) Approving Solicitation Procedures; And (D) Scheduling A Combined Hearing On Approval Of The Disclosure Statement And Hearing On Confirmation Of The Plan of Liquidation [D.E. 103] and (ii) Order (I) Rescheduling Confirmation Hearing (II) Rescheduling Hearings On Fee Applications And Related Matters And (III) Noticing Change Of Location Of Hearings [D.E. #111] (collectively, the "Orders"). During the Confirmation Hearing, the Court considered,

among other things, the Orders, First Amended Disclosure Statement For Debtor's Plan of Reorganization (the "Disclosure Statement") [D.E. #99] and confirmation of the Debtor's Plan Of Reorganization filed on November 15, 2012 (the "Plan") [D.E. #85] proposed by the Debtor-In-Possession, Fort Lauderdale BoatClub, Ltd. (the "Debtor").¹

In connection with the final approval of the Disclosure Statement and confirmation of the Plan, the Court has considered the Disclosure Statement and Plan, including all exhibits annexed thereto, and admitted into evidence without objection, the following: (a) Certificate of Plan Proponent on Acceptance of Plan, Report on Amount to Be Deposited, Certificate of Amount Deposited And Payment of Fees filed by the Debtor on December 18, 2012 (the "Ballot Certificate") [D.E. #122]; and (b) Affidavit of Edward J. Ruff in Support of the Debtor's Plan of Reorganization (the "Affidavit") [D.E. #121].

The Court also (i) reviewed and considered the entire record in this proceeding, including the Plan, together with all pending motions and fee applications noticed for consideration by the Court at the Confirmation Hearing, (ii) considered the proffer of evidence from Debtor's counsel, and (iii) heard argument of counsel for the Debtor and Secured Creditor, EverBank. No objections to confirmation of the Plan were filed with the Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the above and otherwise being fully advised in the premises, the Court hereby makes the following findings of fact and conclusions of law:

A. Adequate and sufficient notice of the Confirmation Hearing and the deadline to file objections to confirmation of the Plan was provided to all creditors, equity security holders and parties in interest in this case pursuant to and in accordance with the procedures approved by

¹ All capitalized terms not defined herein shall have the meanings as defined and ascribed to them in the Disclosure Statement and Plan.

the Court in its Order (A) Conditionally Approving Disclosure Statement; (B) Authorizing Solicitation of Votes on Plan of Liquidation; (C) Approving Solicitation Procedures; and (D) Scheduling a Combined Hearing on Approval of the Disclosure Statement and Hearing on Conformation of the Plan of Liquidation [D.E. #103];

B. The Plan has been duly and properly served upon all creditors, interested parties, equity security holders and entities subject to and sought to be bound by the releases and injunctions provided for under Article VII of the Plan and as set forth in paragraph (18) below of this Confirmation Order;

C. The Court has jurisdiction over this matter pursuant to 11 U.S.C. Sections 105, 1123, 1128, 1129; 28 U.S.C. Sections 157 (a), (b)(1) and (b)(2)(L), 1334(a) and (b), the United States District Court's general order of reference, and other various applicable provisions of the Bankruptcy Code and Bankruptcy Rules;

D. Venue is proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409(a);

E. The Plan was transmitted to all creditors, equity security holders and parties in interest entitled thereto;

F. The Ballot Certificate reflects that Classes 1, 2 and 3 have either accepted the Plan or are unimpaired and, therefore, are deemed to have accepted the Plan. Further, the Ballot Certificate reflects that: (i) the creditors in Classes 1, 4 and 5 did not cast a ballot on the Plan, and (ii) Class 4 and 5 are deemed to have rejected the Plan;

G. The holders of Claims in Class 2 and 3 are impaired and have voted to accept the Plan;

H. The holders of Claims or Interests in Classes junior in priority to the holders of

Claims in Class 4 and 5 will not receive or retain any property under the Plan on account of such Claims and Interests;

I. The Plan complies with all applicable provisions of 11U.S.C. Sections 101 *et seq.*, including, without limitation, 11 U.S.C. Sections 1122, 1123, 1125 and 1129(a) and (b) with respect to all Classes of Claims and Interests under the Plan. Specifically, the Plan complies (i) with 11 U.S.C. Section 1129(b)(2)(A) with regard to Classes 2 and 3, and (ii) with 11 U.S.C. Section 1129(b)(2)(C) with regard to Class 8;

J. The Plan has been proposed and submitted to all creditors and equity security holders in good faith and not by any means forbidden by law;

K. With respect to each impaired Class of Claims or Interests, each holder of a Claim or Interest has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Estate liquidated under chapter 7 of the Bankruptcy Code on such date;

L. The Plan does not discriminate unfairly, is fair and equitable and otherwise complies with all of the provisions of Section 1129(b) of the Bankruptcy Code with respect to each Class of Claims or Interests that is impaired under the Plan that has not voted to accept the Plan, including without limitation, Classes 2, 3 and 8;

M. The Plan is feasible;

N. Pursuant to the projections attached as Exhibits “B” and “C” to the First Amended Disclosure Statement, there is a reasonable likelihood that the Reorganized Debtor will be able to make all payments required pursuant to the Plan. Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor. The Plan

satisfies the feasibility requirement of Section 1129(a)(11) of the Bankruptcy Code;

O. The Debtor has sufficient monies and assets available and existing on the Effective Date to pay in accordance with the Plan, or enable the Debtor to reserve in full for the payment of, all Allowed Administrative Claims, all Allowed Priority Tax Claims, all Allowed Priority Claims, all Allowed Secured Claims and all non-Professional Administrative Claims;

P. The Debtor has sufficient monies to confirm the Plan;

Q. The exculpation, injunction, Mutual General Releases, and other limitations of liability provisions contained in Article VII of the Plan (the “Exculpation Provisions”) is reasonable and appropriate under applicable law because it is part of the Plan that was proposed in good faith, is vital to the Plan formulation process, and is appropriately limited in scope. Furthermore, the Exculpation Provisions set forth in Article VII of the Plan are necessary to preserve and enforce the provisions of the Plan and is narrowly tailored to achieve that purpose. The Court thus finds that each of the exculpation and general injunction provisions set forth in Article VII of the Plan: (a) is within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b), and 1334(d); (b) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) is an integral element of the transactions incorporated into the Plan; (d) confers material benefits on, and is in the best interests of, the Debtors, their Estates and the Holders of Claims and Interests; (e) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in the Chapter 11 case with respect to the Debtor; and (f) is consistent with sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code. Accordingly, the record of the Confirmation Hearing and the Chapter 11 Case is sufficient to support the Exculpation Provisions contained in Article VII of the Plan;

- R. The record of the Confirmation Hearing is closed;
- S. The remaining provisions of 11 U.S.C. Section 1129 have been satisfied; and
- T. Confirmation of the Plan is in the best interest of the Debtor's Estate, all creditors, all holders of Interests and all other parties in interest.

THEREFORE, based upon the foregoing, it is, **ORDERED**, as follows:

1. The Disclosure Statement and Plan are hereby approved and the Plan is **CONFIRMED** in all respects pursuant to Section 1129 of the Bankruptcy Code.

2. All of the requirements of 11 U.S.C. Section 1129(a) are satisfied and, in the alternative, the Court finds that the Plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests which is impaired and the Debtor has met and satisfied all of the requirements of 11 U.S.C. Section 1129(b).

3. The Findings of Fact and Conclusions of Law set forth above shall constitute the findings of fact and conclusions of law of this Court pursuant to Bankruptcy Rule 7052. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

4. The Debtor as the Reorganized Debtor is hereby authorized and empowered to execute and deliver any and all documents and take any and all action necessary to consummate the Plan. On or before the Effective Date, the Reorganized Debtor shall execute and deliver the Restructured Loan Instruments to EverBank. To the extent that the Restructured Loan Instruments conflict with any provisions of the Plan, the Plan and Confirmation Order shall control. Further, pursuant to this Confirmation Order and 11 U.S.C. §1146(a) of the Bankruptcy Code, the Debtor or Reorganized Debtor, is exempt from any documentary stamp tax or other

transfer taxes associated with the Restructured Loan Instruments.

5. Upon entry of the Confirmation Order, but in no event later than the Effective Date of the Plan, all of the Reorganized Debtor Assets shall vest in, and be retained by, the Reorganized Debtor, free and clear of all liens, claims, encumbrances and interests of any kind except as provided under the Plan, including without limitation, any and all checking, savings other financial accounts, listed in the Debtor's Schedule B as of the Petition Date.

6. The Debtor and/or Reorganized Debtor are hereby authorized to and have otherwise specifically assumed in all respects the following leases under the Plan: (i) Submerged Lands Lease by and between the Debtor and Florida Department of Environmental Protection; (ii) Lease by and between the Debtor and G. Robert Toney & Associates, Inc. d/b/a National Liquidators; and (iii) Lease Agreement between the Debtor and CBS Outdoor for the Billboard located on the Marina Property (collectively, the "Leases").

7. Upon entry of the Confirmation Order, the Reorganized Debtor and BCA shall be charged, vested and empowered with complete and sole managerial responsibilities and all other rights, duties and obligations with respect to the continued daily maintenance, operations and management of the Marina Property, including without limitation, the right to payment and collection of any and all rents and other charges due under the Leases from each of the respective tenants (the "Rents"), along with the right, duties and obligations to enforce the Leases according to the terms thereof and as otherwise provided by Chapter 83, *Fla. Stat.* or other applicable law.

8. The Plan will be funded with the Available Cash, Rent Revenue Accounts and Rents collected by the Reorganized Debtor upon and following the Effective Date and such other assets as may be recovered by the Reorganized Debtor under the Plan. Upon entry of the Confirmation Order, any post-confirmation Rents with respect to the Leases and such other

profits, products and proceeds generated by the Marina Property, shall be paid to and collected by the Reorganized Debtor, which funds shall be deposited into the Reserve Accounts and vested with the Reorganized Debtor. The Reorganized Debtor shall continue to collect the Rents and manage, along with BCA, the operations of the Marina Property.

9. Further, upon entry of this Confirmation Order, Maggie Smith, as the Custodian appointed under 11 U.S.C. §543 and Receiver in the EverBank Foreclosure Lawsuit (the “Custodian”) shall be authorized and is directed to disburse and remit by wire transfer from the Rent Revenue Accounts any and all funds necessary to pay and satisfy Allowed Administrative Claims, including those administrative claims for Professionals as approved by the Bankruptcy Court consisting of (a) Genovese Joblove & Battista, P.A. (the “GJB Law Firm”)[D.E. #127]; and (b) Salazar Jackson, LLP [D.E. #126]; (ii) all Allowed Class 1 Priority Claims; and (iii) the corresponding fees of the Office of the United States Trustee incurred by the Debtor with respect to such disbursements as of the Effective Date (the “Administrative Claim Disbursements”). Any surplus funds remaining in the Rent Revenue Accounts, after payment of the Administrative Claim Disbursements, shall forthwith be disbursed to the Reorganized Debtor to be deposited into the Reserve Accounts to be utilized by the Reorganized Debtor under the Plan. On or before the Effective Date, the Custodian shall file a Final Receiver’s Status Report with the Court.

10. Pursuant to Article VII of the Plan, and immediately following compliance with paragraph (9) of this Confirmation Order, but in no event later than the Effective Date, the Custodian shall forthwith be discharged and relieved of all further duties and responsibilities as Custodian in this Chapter 11 proceeding. The Custodian shall be also discharged and relieved of all co-managerial responsibilities and all other rights, duties and obligations under the Receivership Order in the EverBank Foreclosure Lawsuit, including without limitation, the right

to collect Rents from the Tenant, subject to reappointment as Receiver in accordance with the Plan as provided below.

11. From the Reserve Accounts the Reorganized Debtor and BCA shall expend those amounts necessary to satisfy the treatment of Allowed Class 2 and Class 3 claimants, including the daily operations, preservation and maintenance, including without limitation, the continuation and completion of all necessary repairs and/or inspections with respect to the Forty (40) Year inspection and permitting process, of the Marina in the ordinary course of business. Upon the entry of the Confirmation Order, and so long as the Reorganized Debtor complies with the terms and conditions of the Plan, there shall be no prohibitions and/or restrictions placed upon the Reorganized Debtor concerning the possession, custody, control of and use, maintenance and disbursements from the Reserve Accounts.

12. The Debtor shall retain all rights under 11 U.S.C. Section 502(d) of the Bankruptcy Code until the Plan is confirmed. Upon confirmation of the Plan, all such rights and interests with respect to Objections to Claims under 11 U.S.C. Section 502(d) of the Bankruptcy Code and Litigation Claims shall vest in the Reorganized Debtor for all purposes. Furthermore, nothing herein shall adversely effect, divest, nor be deemed a waiver of any right, claim or interest of the Debtor and/or Reorganized Debtor to file and prosecute any objection to claims and/or to seek the disallowance of any claim filed by any creditor against the Debtor or Debtor's estate, under 11 U.S.C. Section 502(d) of the Bankruptcy Code prior to the Confirmation Hearing and following the Effective Date of the Plan. The Reorganized Debtor shall be responsible for payment of professional fees and costs associated with prosecuting the Objections to Claims following the Effective Date.

13. Upon entry of this Order, the Custodian shall be authorized to pay from the Rent

Revenue Accounts any and all funds necessary to satisfy Allowed Administrative Claims, including those administrative claims for Professionals as approved by the Bankruptcy Court; (ii) all Allowed Class 1 Priority Claims; and (iii) the corresponding fees of the Office of the United States Trustee incurred by the Debtor with respect to such disbursements as of the Effective Date (the “Administrative Claim Disbursements”). The surplus funds remaining in the Rent Revenue Accounts, after payment of the Administrative Claim Disbursements (the “Account Surplus”) shall forthwith be disbursed to the Reorganized Debtor to be deposited into the Reserve Accounts to be utilized by the Reorganized Debtor pursuant to the Plan and as otherwise deemed in the sole discretion of the Reorganized Debtor.

14. The Reorganized Debtor shall pay the U.S. Trustee from the Reserve Accounts, the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) incurred by the Debtor and/or Reorganized Debtor on or before the Effective Date. To date, the Debtor has paid all fees due and owing to the Office of the United States Trustee and anticipates paying all such fees through confirmation of the Plan as provided herein.

15. The Debtor shall pay the U.S. Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) on the Effective Date, and simultaneously provide to the U.S. Trustee with monthly operating reports indicating Cash disbursements for all relevant periods; notwithstanding anything contained in the Plan to the contrary, the Reorganized Debtor shall further pay the U.S. Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) for post-confirmation periods within the time periods set forth in 28 U.S.C. §1930(a)(6) until the earlier of the closing of this case by the issuance of a Final Decree by the Bankruptcy Court, or upon entry of an order of this Bankruptcy Court dismissing the case, or converting this case to another chapter under the United States Bankruptcy Code, and the Reorganized Debtor shall

provide to the U.S. Trustee, and concurrently file with the Court, upon the payment of each post-confirmation payment, quarterly post-confirmation reports indicating income and disbursements for the relevant periods.

16. All executory contracts and unexpired leases not previously assumed or rejected by the Debtor under the Plan, the Confirmation Order and/or in accordance with 11 U.S.C. Section 365 with approval of the Bankruptcy Court, with the exception of the Leases, are hereby rejected by the Debtor. **THE OTHER PARTY TO EACH SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE REJECTED HEREUNDER SHALL HAVE THIRTY (30) DAYS AFTER THE DATE HEREOF TO FILE ANY REJECTION CLAIM IN CONNECTION THEREWITH; PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT EXTEND THE BAR DATE FOR FILING CLAIM FOR ANY PARTY IN INTEREST, INCLUDING EXECUTORY CONTRACTS AND UNEXPIRED LEASES REJECTED PRIOR TO THE DATE HEREOF. THE FAILURE TO FILE SUCH REJECTION CLAIMS SHALL FOREVER BAR SUCH CLAIMS AND THE HOLDERS THEREOF SHALL NOT BE ENTITLED TO ANY DISTRIBUTION UNDER THIS PLAN.**

17. In accordance with the Real Estate Tax Escrow, any balance remaining in the Real Estate Tax Escrow after payment of that portion due by the Debtor with respect to the Property Tax Claim shall be held and applied by the Lender towards payment of the 2013 taxes due on the Marina Property.

18. Notwithstanding any other provisions of the Plan, the following terms and conditions for the final resolution of the EverBank Foreclosure Lawsuit, including without limitation, the EverBank Litigation, and any other claims, causes of action and/or disputes as

between the Debtor, Reorganized Debtor, EverBank and Non-Debtor Entities (BCA and Ruff) (collectively, the “Settling Parties”) as defined in Article VII (2) of the Plan, shall apply and be in full force and effect upon entry of this Confirmation Order:

(a) **Forbearance Period.** Subject to compliance by the Reorganized Debtor with the treatment of EverBank’s Secured Claim and Deficiency Claim and compliance with all other Plan terms as to EverBank, upon the entry of the Confirmation Order and at all times during the Discount Payoff Period, up through and including satisfaction by the Reorganized Debtor of the Discounted Payoff Amount, EverBank agrees to and shall stay and/or abate the EverBank Foreclosure Lawsuit and Receivership Order (the “Forbearance Period”), as provided under the Plan. During the Forbearance Period, the Lender shall forbear from pursuing, maintaining and/or exercising foreclosure, enforcement and collection rights and remedies against the Debtor, Reorganized Debtor and Non-Debtor Entities in the EverBank Foreclosure Lawsuit and/or such other action that may be instituted arising under the EverBank Loan Documents and/or Restructured Loan Instruments. Further, upon entry of the Confirmation Order, all Rents derived from the Marina Property shall be paid to and collected by the Reorganized Debtor and/or BCA pursuant to the Plan for deposit into the Reserve Accounts.

(b) **Good Faith By Settling Parties.** During the Forbearance Period, the Settling Parties acknowledge that the agreement by EverBank to forbear, abate and abstain from, and the Debtor’s waiver of defenses, but not claims, in connection with, the EverBank Foreclosure Lawsuit are expressly conditioned upon the Settling Parties utilizing their best efforts to facilitate and in no way impeding or frustrating (i) Everbank’s efforts to obtain a Certificate of Title as soon as practicable upon default under (a) the Plan, (b) Treatment of the EverBank Secured Claim and General Unsecured Claim, or (c) Final Balloon Payment; (ii) the ability of the Reorganized Debtor to make the Secured Plan Payments, Deficiency Claim and Final Balloon Payment, including the redemption of the Property; (iii) the rights, duties and obligations of the Reorganized Debtor and National Liquidators under the Lease; (iv) the continued maintenance and operations of the Marina, Billboard and/or EverBank Collateral by the Reorganized Debtor; (v) the ability of the Reorganized Debtor to continue with and complete the Forty (40) Year inspection/permitting work with respect to the Marina and EverBank Collateral; and (vi) the possession, custody, control of and use, maintenance and disbursements from the Reserve Accounts by the Reorganized Debtor.

(c) **Stay of EverBank Foreclosure Lawsuit.** Upon the entry of the Confirmation Order, but in no event later than the Effective Date, EverBank shall file a motion in the EverBank Foreclosure Lawsuit seeking an order from the state court having jurisdiction over the foreclosure of the Marina Property staying and abating the EverBank Foreclosure Lawsuit and Receivership Order (including without limitation the cessation of sequestration of Rents) against the Reorganized Debtor and guarantee claims against the Guarantors (the “Stay Motion”). The Stay Motion and accompanying order (the “Stay Order”) shall further provide for the (i) forbearance by Lender from pursuing, maintaining and/or exercising foreclosure, enforcement and collection rights and/or remedies against the Reorganized Debtor and Non-Debtor Entities (Guarantors) in the EverBank Foreclosure Lawsuit, including under the Restructured Loan

Instruments; and (ii) dismissal with prejudice of the EverBank Foreclosure Lawsuit, which shall include without limitation, the Guarantee and any other claims against BCA and Ruff, following payment of the Discounted Payoff Amount or, alternatively, issuance of a Certificate of Title transferring title of the Property to EverBank and/or its assigns as provided herein. EverBank further agrees and shall forbear, abate and abstain from initiating any other action and/or pursuing any post-judgment collection proceedings, including without limitation, execution, levy, garnishment, attachment, proceedings supplementary and/or otherwise seek collection upon the Consent Judgment and/or Restructured Loan Instruments against the Debtor, Reorganized Debtor and Non-Debtor Entities, so long as the Secured Plan Payments are made by the Reorganized Debtor in accordance with the Plan, along with all other obligations due Lender under the Plan and Restructured Loan Documents. In the event that the Reorganized Debtor defaults with respect to the treatment of the EverBank Secured Claim and Final Balloon Payment as provided in Article IV(2) above and/or as otherwise provided in the Confirmation Order, the Lender shall be entitled to reinstate the EverBank Foreclosure Lawsuit and Receivership Order, including the reappointment of the Receiver or such other receiver as may be appointed by the state court in the EverBank Foreclosure Lawsuit.

(d) Consent Final Judgment of Foreclosure. The Restructured Loan Documents shall consist of the EverBank Loan Documents, as modified and approved by the Settling Parties and in accordance with the Confirmation Order, together with the Mutual General Release as provided in sub-section (g) below (the “Mutual General Release”) and the delivery of a Consent Final Judgment of Foreclosure by the Reorganized Debtor, which consent judgment shall limited to and not exceed the sum of \$10,500,000.00, less credit for all Secured Plan Payments made as set forth in the Amortization Schedule and fifty (50%) percent of all Distributions made to EverBank under Class 3 for the Deficiency Claim as provided under Article III of the Plan, in the form substantially agreed to and approved by the Lender, Debtor and/or Reorganized Debtor on or before the Effective Date (the “Consent Judgment”). Further, the Consent Judgment shall be held in escrow by the Lender and released upon notice to the Reorganized Debtor for entry in the EverBank Foreclosure Lawsuit only in the event that the Reorganized Debtor defaults with respect to the treatment of the EverBank Secured Claim as provided in Article IV(2) above; provided however, that entry of the Consent Judgment shall be for the sole and limited purpose of allowing and authorizing EverBank to foreclose upon the Marina Property and proceed with a foreclosure sale in order to liquidate the Property in full and final satisfaction of the EverBank Secured Claim, and any other obligations due EverBank under the Plan or in the EverBank Foreclosure Lawsuit.

(e) Waiver of Defenses and Dismissal of EverBank Foreclosure Lawsuit. For purposes of this provision of the Plan, and provided that the Reorganized Debtor has defaulted under the Plan, but only with respect to the EverBank Secured Claim, ~~General Unsecured Claim~~ and/or Final Balloon Payment, the Reorganized Debtor shall (i) waive any and all defenses to the entry of the Consent Judgment; (ii) not interfere, delay or otherwise hinder the foreclosure process through sale of the Property; and (iii) further consent to the entry of the Consent Judgment as provided herein (“Stipulated Foreclosure”). Notwithstanding the waiver of defenses only by the Reorganized Debtor as provided in sub-section (d)(i) above, in the event of a dispute arising out of any obligation due by the Reorganized Debtor under the Plan with respect to payment of the Secured Plan Payments, Deficiency Claim, Final Balloon Payment and/or the

Consent Judgment or other obligations due EverBank under the Plan, the Reorganized Debtor shall escrow the undisputed amount of any such payment pending a judicial determination in the Bankruptcy Court or EverBank Foreclosure Lawsuit of the sum(s) then due and owing in accordance with the Plan. Upon full compliance by the Reorganized Debtor and Non-Debtor Entities with respect to the obligations due EverBank under the Plan, EverBank shall forthwith file a Voluntary Notice of Dismissal With Prejudice (the “Dismissal”) of the EverBank Foreclosure Lawsuit, thereby dismissing with prejudice all claims, including without limitation, any guarantee, deficiency and other claims filed or that could have been filed against the Debtor and/or Reorganized Debtor, BCA and Ruff in the EverBank Foreclosure Lawsuit. Furthermore, the Settling Parties shall each release all claims against the other Settling Party as set forth in the Mutual General Release in section (h) below.

(f) **Discharge of Custodian And Receiver.** Upon the entry of the Confirmation Order, but in no event later than the Effective Date or commencement of the Discounted Payoff Period, whichever is earlier, the Custodian and/or Receiver, Maggie Smith, shall be discharged as the Custodian in this Chapter 11 case and Receiver in the EverBank Foreclosure Lawsuit. For purposes of this provision of the Plan, and provided that the Reorganized Debtor has not defaulted under the Plan with respect to the EverBank Secured Claim and Final Balloon Payment, the Custodian shall be further discharged and relieved of all co-managerial responsibilities and all other rights, duties and obligations under the Receivership Order, including without limitation, the right to collect Rents from the Tenant. In the event that EverBank is entitled to reinstate the EverBank Foreclosure Lawsuit due to a default by the Reorganized Debtor under the Plan with respect to the treatment of the EverBank Secured Claim and Final Balloon Payment, then Maggie Smith is subject to reappointment as Receiver pursuant to the Receivership Order.

(g) **Reservation of Redemption Rights.** In conjunction with the Plan, and as otherwise provided under Section 45.0315, Florida Statutes, including other applicable state law, the Reorganized Debtor reserves the right and shall be entitled to redemption of the Marina Property and EverBank Collateral at any time before the later of the filing of a Certificate of Sale by the Clerk of the Court, upon agreement of the Settling Parties, or such other time as may be specified in a judgment, order, or decree entered in the EverBank Foreclosure Lawsuit.

(h) **Mutual General Releases.** Except as to all obligations due by the Settling Parties under the Plan and upon the entry of this Confirmation Order approving the Plan by the Bankruptcy Court, the following Mutual General Releases as between each of the Settling Parties shall apply upon full compliance with the terms of this Plan, including payment in full of the Discounted Payoff Amount or issuance of a Certificate of Title to EverBank or its assignees as to the EverBank Collateral and Marina Property (the “Releases”):

The Settling Parties, including without limitation, each of their respective heirs, successors, assigns, representatives, officers, directors, shareholders, employees, professionals, principals, personal representatives, attorneys, successors, affiliates, subsidiaries, partners, heirs, beneficiaries, assigns and/or privies (also referred to collectively herein as “Releasers”) do hereby fully and finally remise, covenant not to sue, compromise and settle with, release, acquit, satisfy, hold harmless, and forever discharge each of the other

Releasors and/or Settling Parties, individually, and/or in their corporate capacities, including each of their respective heirs, assigns, representatives, professionals, attorneys, successors, affiliates and/or direct and indirect subsidiaries, of and from all, and all manner of action and actions, cause and causes of action, any and all claims, counterclaims, demands, debts, damages, loss of profits, costs, contract damages, tort claims or choses of action, damages, loss of income, damages to reputation, bad faith damages, exemplary damages, punitive damages, attorneys' fees, costs, interest, suits, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, extents, executions, sums of money, actions, rights, obligations, liabilities, derivative shareholder suits or actions, fraudulent transfer and/or avoidance claims, verdicts, judgments, taxable costs, proofs of claim, claims, causes of action or suits in law, admiralty, contract or equity, and demands whatsoever, known or unknown, in law or in equity, arising from and/or under any state or federal statute, common and administrative law or otherwise, of whatever kind or nature, known, unknown or unforeseeable ("Claims"), which any of the Settling Parties and/or Releasors ever had, now has or have, or hereafter can, or which any the Releasors shall or may have against any Settling Parties, directly or indirectly, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of these Releases including, without limitation, relating to the EverBank Loan Documents, Restructured Loan Instruments and the transactions contemplated thereby, any claims, defenses, Chapter 5 avoidance actions under Title 11 of the United States Code, and/or counterclaims that could have been asserted whatsoever, arising out of or related in any way to the EverBank Foreclosure Lawsuit and/or Restructured Loan Instruments and any and all claims arising from or related to the EverBank Litigation, together with such claims that the Settling Parties raised or could have raised in this Chapter 11 proceeding and Litigation Claims (hereinafter, the EverBank Litigation, EverBank Foreclosure Lawsuit and Litigation Claims shall be collectively referred to as the "Released Claims"), except for those claims which may arise from any breach of the terms, covenants, or warranties and other obligations due by each of the Settling Parties under this Plan. The Releases and Released Claims as provided herein shall also be made a part of and incorporated by reference in the Restructured Loan Instruments.

3. Exculpation and Injunction.

(a) **Exculpation:** The Debtor and the Reorganized Debtor shall have no liability whatsoever to any holder or purported holder of an Administrative Claim, Claim, or Equity Interest for any act or omission in connection with, or arising out of, the Plan, the Disclosure Statement, the negotiation of the Plan, the pursuit of approval of the Disclosure Statement or the solicitation of votes for confirmation of the Plan, the Chapter 11 Case, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, or any transaction contemplated by the Plan or Disclosure Statement or in furtherance thereof except for any act or omission that constitutes willful misconduct or gross negligence as determined by a Final Order, and (ii) in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting the Debtor, the

Reorganized Debtor, and the Non-Debtor Released Party from liability.

(b) Injunction: Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim or Equity Interest shall be permitted to commence or continue any action, employment of process, or any act to collect, offset, or recover any Claim against the Debtor, the Reorganized Debtor and Non-Debtor Entities that accrued on or prior to the Effective Date and that has been released or waived pursuant to the Plan.

19. All of the provisions of the Plan, to the extent they are not incorporated above, are valid and in full force and effect upon the entry of this Order.

20. Any allowed unsecured creditor claims not filed and deemed allowed as of the Effective Date shall not share in any prior distributions of other allowed Class 3 unsecured creditor claims under the Plan.

21. The Reorganized Debtor is hereby designated as disbursing agent. The disbursing agent is directed to make all distributions in accordance with the Plan. Subject to further order of the Court upon motion and a hearing, the Reorganized Debtor shall, not later than one (1) year after this Order becomes final, file a Final Report of Estate and Motion for Final Decree Closing Case on the Court approved local form.

22. The Court will conduct a post-confirmation Status Conference on **February 27, 2013, at 9:30 a.m. before the Honorable Raymond B. Ray at United States Bankruptcy Court, 299 E. Broward Blvd, Room 308, Fort Lauderdale, Florida 33301**, to determine whether the Reorganized Debtor has complied with the provisions of this Order. At the Status Conference, the Court will also consider the propriety of closing this Chapter 11 case upon the filing of a Final Report of Estate and Motion For Final Decree Closing Case.

23. Until such time as Final Decree entered closing this Chapter 11 case, the Court shall retain jurisdiction as set forth in 28 U.S.C. Section 1334, including for the purposes set forth in the Plan, to enter such further relief as necessary and proper to enforce the terms and

conditions of this Confirmation Order.

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Submitted by:

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Copies to: Barry P. Gruher, Esq.

(Mr. Gruher is directed to serve a conformed copy of this Confirmation Order upon all creditors and parties in interest entitled to receive electronic notice.)