



ORDERED in the Southern District of Florida on April 9, 2019.

Laurel M. Isicoff
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

IN RE:

MIAMI BEVERLY, LLC

CASE NO. 18-14506-BKC-LMI
Chapter 11 (Lead Case)

Jointly Administered

1336 NW 60, LLC
REVEREND, LLC
13300 ALEXANDRIA DR. HOLDINGS, LLC
THE HOLDINGS AT CITY, LLC

CASE NO. 18-14509-BKC-LMI
CASE NO. 18-14510-BKC-LMI
CASE NO. 18-14511-BKC-LMI
CASE NO. 18-14512-BKC-LMI

Debtors

**ORDER CONFIRMING CORRECTED SECOND AMENDED PLAN OF
REORGANIZATION OF JOINT DEBTORS AND SETTING POST-CONFIRMATION
STATUS CONFERENCE**

[Post-Confirmation Status Conference Scheduled for JULY 3, 2019 at 2:00 p.m.]

THIS MATTER came before the Court on April 5, 2019 at 9:30 a.m. (the "Hearing") upon confirmation of the *Corrected Second Amended Plan of Reorganization of Joint Debtors* proposed by jointly administered debtors, Miami Beverly, LLC, 1336 ("Beverly"), NW 60, LLC, Reverend LLC, 13300 Alexandria Dr. Holdings LLC, and The Holdings At City, LLC (collectively

the “Debtors” or “Proponents”) [ECF # 329] as modified by: *i)* the Redline Plan¹; *ii)* the settlement with creditor Miami Development & Holdings, LLC as set forth herein; *iii)* the settlement with creditors Gaynisha Williams, Nathanael Mars, Shannon Daniels, Lakeisha Chatfield, Lakeisha Chatfield on behalf of her minor daughter T.C., as set forth herein [ECF # 372]; and by the terms of this Confirmation Order (the “Plan”).

In connection with the confirmation of the Plan, the Court reviewed and considered the: (i) *Certificate of Proponent of Plan on Acceptance of Plan, Report on Amount to Be Deposited, Certificate of Amount Deposited and Payment of Fees* (the “Confirmation Certificate”) [ECF # 465]; (ii) *Confirmation Affidavits of Mrs. Denise Vaknin, Equity Owner of the Debtors, and Mr. Abraham Vaknin, officer of each of the Debtors* (the “Confirmation Affidavits”) [ECF ## 366 and 367]; (iii) *Notice of Filing Proposed Redline To Terms of Corrected Second Amended Plan of Reorganization of Joint Debtors to Be Incorporated Into Confirmation Order* (the “Redline Plan”) [ECF # 368]; (iv) *Beverly's Emergency Motion to Approve Compromise with Liberty Apartments, LLC, Freedom Apartments, LLC, Abraham Vaknin and Denise Vaknin, and Gaynisha Williams, Nathanael Mars, Shannon Daniels, Lakeisha Chatfield, Lakeisha Chatfield on behalf of her minor daughter T.C.* (the “Compromise Motion”) [ECF # 374] (which motion was granted immediately before the confirmation hearing); and (v) *Beverly's Emergency Motion for Entry of An Order Authorizing Use of Remaining Sums (As Defined In Plan) to Purchase Real Estate Properties* (the “Real Estate Purchase Motion”)[ECF # 369]. The Court has also reviewed and considered the entire record in this Chapter 11 Case, including the Proponents' *Corrected Second Amended Disclosure Statement* (the “Disclosure Statement”) [ECF # 330] as well as proffers made by the Debtors' counsel at the Hearing, including the representation of agreement by and between claimant, Miami Development & Holdings, LLC (“MDH”) concerning the

¹Redline Plan shall mean the redlined plan filed at ECF # 368. Unless otherwise indicated, all defined terms contained herein shall have the meaning set forth in the Plan.

allowance of a single claim in the amount of \$225,000.00 in full settlement of MDH's claims.²

I. FINDINGS OF FACT/CONCLUSIONS OF LAW

Based upon the above and in consideration of the record in this case, the Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(a):³

A. The Disclosure Statement and Plan were properly served upon all creditors and parties in interest pursuant to the Bankruptcy Rules and the Court's *Order Granting Debtors' Expedited Motion for Entry of Order: (I) Conditionally Approving Disclosure Statement; (II) Setting Date for Consolidated Hearing On Final Approval of Disclosure Statement and Confirmation of Plan; (III) Establishing and Consolidating Deadlines to File Objections to Disclosure Statement and Confirmation; (IV) Setting Various Deadlines; and (V) Describing Plan Proponent's Obligations* (the "Disclosure Statement Order") [ECF #331]. Under the expedited circumstances, there was adequate and sufficient notice of the deadline to file and serve objections to the confirmation of the Plan, and the hearing date on the Confirmation of the Plan.

B. The Plan has been accepted, by law, by the creditors and equity security holders whose acceptance is required by law.

C. The Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 105, 1121 through 1129 and 1141; 28 U.S.C. §§ 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. §§ 1408 and 1409(a).

² Debtors shall file a corrected Confirmation Certificate to reflect MDH's allowed claim amount. Further, all pending objections to MDH's claims are deemed resolved by entry of this Order. MDH will be entitled to a single allowed claim in the Beverly case in the amount of \$225,000.00, in connection with Proof of Claim #2-2, and otherwise, all remaining claims filed in all related jointly administered cases are determined as disallowed and stricken, as provided in this Order. The MDH claim allowed in the Beverly case for \$225,000 is determined to be settled in full and the Plan shall be deemed amended to reflect the MDH allowed claim.

³ Where appropriate, findings of fact shall constitute conclusions of law and conclusions of law shall constitute findings of fact. See *In re American Family Enterprises*, 256 B.R. 377, 385 n.2 (Bankr. D. N.J. 2000); *In re Antar*, 122 B.R. 788, 789 (Bankr. S.D. Fla. 1990).

E. The provisions of Chapter 11 of the Code have been complied with and the Plan has been proposed in good faith and not by any means forbidden by law, and as more detailed below.

F. The Plan satisfies 11 U.S.C. § 1122(a) and adequately and properly classifies all claims and interests required to be classified, and accordingly, satisfies 11 U.S.C. § 1123(a)(1).

G. The Plan specifies any class of claims or interests that are impaired or unimpaired under the Plan, and accordingly, satisfies 11 U.S.C. §§ 1123(a)(2) and (3).

H. The Plan provides the same treatment for each claim or interest in each class and, accordingly, satisfies 11 U.S.C. § 1123(a)(4).

I. The Plan sets forth the means by which the Plan will be implemented, and accordingly, makes adequate means for its implementation and satisfies 11 U.S.C. § 1123(a)(5).

J. All holders of a claim or interest are unimpaired under the Plan, and therefore, are conclusively presumed to have accepted the Plan, and solicitation of acceptances with respect to such class from holders of claims or interest of such class was not required. Therefore, the Plan satisfies 11 U.S.C. § 1126(f) as well as 1129(a)(8)(B).

K. The Confirmation Certificate correctly sets forth that no vote tabulation was required by the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of the Bankruptcy Court for the Southern District of Florida.

L. The Plan complies with all applicable provisions of the Bankruptcy Code, including 11 U.S.C. § 1129(a) with respect to all Classes of Claims and Interests under the Plan, and, as required by Federal Rule of Bankruptcy Procedure 3016(a), the Plan is dated and identifies the Debtors as the Proponents.

M. The Proponents of the Plan has complied with all applicable provisions of the Bankruptcy Code, including 11 U.S.C. § 1129.

N. The Plan has been proposed and submitted to all Creditors and interest holders in good faith and not by any means forbidden by law and, therefore, the Plan satisfies 11 U.S.C. § 1129(a)(3).

O. All payments made or promised by the Debtors or by any other person for services or for costs and expenses in, or in connection with, the Plan and incident to this case, have been fully disclosed to the Court and are reasonable, or, if to be fixed after confirmation of the Plan, will be subject to approval of the Court, including applications for compensation and reimbursement of expenses⁴, and therefore, the Plan satisfies the requirements of 11 U.S.C. § 1129(a)(4).

P. All fees payable under 28 U.S.C. § 1930 have been paid or will be paid, and the Plan provides for the payment of all such fees.

Q. The Debtors are not providers of any retirement plan, and the Debtors therefore has no obligation to provide such benefits.

R. The Plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests, and otherwise complies with all the provisions of 11 U.S.C. § 1129(b) with respect to each class of claims or interests under the Plan.

S. The Plan and Disclosure Statement were accompanied by the Debtors' disclosure as to the amount of available Funds in support of the financial viability of the Reorganized Debtors and, therefore, the Plan and Disclosure Statement satisfy 11 U.S.C. § 1129(a)(11).

T. The modifications to the *Corrected Second Amended Plan of Reorganization of Joint Debtors* comply with 11 U.S.C. § 1127 of the Code.

The Debtors have acted in good faith in with respect to this chapter 11 plan, and in compliance with the applicable provisions of Chapter 11.

THEREFORE, BASED UPON THE FOREGOING FINDINGS, IT IS ORDERED AS

⁴ This includes payment to Mr. Peter Russin, as mediator. Debtors are authorized to disburse payment

FOLLOWS:

1. The Plan is **CONFIRMED** pursuant to 11 U.S.C. § 1129 and **APPROVED** in all respects.

2. 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 Fed. R. Bankr. P. 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.

3. The Disclosure Statement previously conditionally approved by the Court [ECF # 331] is finally approved pursuant to 11 U.S.C. § 1125.

a. To the extent any modification provided herein conflicts with the Plan, the terms of this Order shall govern. The Plan shall be deemed to include each and every term and condition of the Settlement Agreement attached as Exhibit "A" to docket entry ECF # 372, entered into between Beverly, Liberty Apartments, LCC, Freedom Apartments, LLC, Abraham And Denise Vaknin, And Claimants, Gaynisha Williams, Nathanael Mars, Shannon Daniels, Lakeisha Chatfield, And Lakeisha Chatfield On Behalf Of Her Minor Daughter T.C. (the "Tenant SA").

b. Miami Development & Holdings, LLC's claim (Proof of Claim #2-2 filed in the Miami Beverly, LLC bankruptcy case) shall have one allowed claim payable in the fixed amount of \$225,000.00 ("MDH Distribution Amount") in full satisfaction of MDH's claims against the Debtors and The Holdings at City II, LLC (as noted on the record). MDH's Distribution Amount shall be paid on or before the Effective Date of the Plan. All other claims filed by MDH in all jointly administered cases are determined as disallowed and stricken in full.

c. The Reserve amount, including the additional 10% cushion, provided in the Plan, shall be subject to adjustment based on the total amount of Class 3 claims that remains unpaid

at any given time. To extent a Class 3 Claim included in the Reserve is ultimately allowed after the Effective Date, and subject to other provisions included herein, then such claim shall be entitled to the *Till* rate of interest set at 5.75% per annum from the Petition Date through such date the claim is determined as allowed and is paid. Class 5 Fee Enhancement Reserve shall be entitled to Florida judgment rate of interest calculated from the Confirmation Date until such date as the claim is liquidated and determined as allowed, and is otherwise paid.

d. The Remaining Sum shall be available for purchase of any real properties as provided for under the Plan and as approved by this Court pursuant to a separate order granting the Real Estate Purchase Motion. To the extent any portion of the Remaining Sum is not utilized for purchase of real properties pursuant to the proposed 1031 Exchange, Debtors may distribute after the Effective Date said amounts to Class 4 Claims consisting of the Equity Holder.

e. Debtors shall pay \$1,982.50 to Peter Russin, who served as a Mediator in connection with a mediation that took place on March 7, 2019 by and between Debtors, Denise Vaknin, and MDH.

f. Debtors are authorized to pay prior to the Effective Date any professional fees and expenses approved by separate order of this Court.

4. The provisions of the Plan and this Confirmation Order are binding on the Debtors, each creditor, and every other interested party.

5. All creditors are also enjoined from commencing, continuing, or employing any action, process, or act to collect, recover, or offset any debts, or enforce any liens against the Debtors on account of any debt that existed as of the Petition Date, other than specifically set forth in the Plan or authorized by the Bankruptcy Court.

6. As of the Effective Date, all property of the estate shall re-vest in the Reorganized Debtors.

7. The Reorganized Debtors shall continue to manage and operate their business in the ordinary course.

8. The Reorganized Debtors shall be entitled to retain and compensate professionals to assist them in carrying out their respective obligations as Reorganized Debtors without necessity of further approval of this Court. Liberty 1031 together with LSAS, as defined in the Plan, are named as Disbursing Agents, in the manner provided for under the Plan, and shall make all payments to creditors as required by the Plan.

9. All creditors whose debts are ultimately discharged and all creditors whose judgments are declared null and void (if any) are enjoined from commencing, continuing, or employing any action, process, or act to collect, recover, or offset any such debts as personal liability of the Debtors, or from property of the Debtors, whether or not the discharge of the Debtors is waived. All creditors are also enjoined from commencing, continuing, or employing any action, process, or act to collect, recover, or offset any debts, or enforce any liens against the Debtors on account of any debt that existed as of the Petition Date, other than specifically set forth in the Plan or authorized by the Bankruptcy Court.

10. The Debtors shall each pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), through Confirmation, within fourteen (14) business days of entry of this Confirmation Order. The Reorganized Debtors shall file with the Court post-confirmation Quarterly Operating Reports and pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements, until the closing of this case by the issuance of a Final Decree by the Bankruptcy Court, or upon the entry of an Order by the Bankruptcy Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code.

11. The Reorganized Debtors shall pay all allowed claims at such time and in such amounts as provided for in the Plan including the Tenant SA.

12. The failure to reference or address all or part of any particular provision of the Plan herein 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. To the extent that any inconsistencies exist between the terms of the Plan and this Confirmation Order, the terms of this Confirmation Order shall control, except as otherwise provided herein.

13. If any provision of this Confirmation Order is hereafter modified, vacated, or reversed by subsequent order of this Court, or any court, such reversal, modification, or vacation shall not affect the validity of the obligations incurred or undertaken under or in connection with the Plan, nor shall such reversal, modification, or vacation of this Confirmation Order affect the validity or enforceability of such obligations. Notwithstanding any reversal, modification, or vacation of this Confirmation Order, any such obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification, or vacation, 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.

14. Pursuant to 11 U.S.C. § 1127(e), upon the request of the Debtors, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the final distribution under the Plan, to alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan. The rights of the above-referenced parties to seek a modification of the Plan post-confirmation are expressly reserved.

15. The Debtors have complied with all of the provisions of the U.S. Bankruptcy Code and the Federal Bankruptcy Rules concerning notice, disclosure, and solicitation in connection with the Plan, and the Disclosure Statement, and all other matters considered by this Court in

connection with this Chapter 11 case. The Debtors properly served the Disclosure Statement Order⁵ and gave proper notice of the Confirmation Hearing in accordance with Fed. R. Bankr. P. 2002, 3017(d), and 3020(b)(2). The notice and the opportunity given for a hearing before the Court on the approval of the Disclosure Statement and the confirmation of the Plan were adequate and satisfactory under the circumstances of this case.

16. All executory contracts and unexpired leases not otherwise assumed are deemed rejected as of the date of the Confirmation Hearing, and the Reorganized Debtors are authorized to enter into such contracts as he deems appropriate in the exercise of his business judgment without the need for a motion and hearing in this Court. **Any claims arising from the rejection of an unexpired lease or executory contract shall be filed within thirty (30) days from the date of this Order or be forever barred.** The Debtors are directed to serve a copy of this order on all parties and file a certificate of service within 3 days of the entry of the order.

17. The Debtors are authorized to execute any and all documents reasonably required to effectuate the provisions of the Plan or prior Orders of this Court.

18. The Debtors shall each be discharged from all pre-Confirmation debts except as is provided in the Plan, subject to the occurrence of the Effective Date, to the extent specified in 11 U.S.C. § 1141(d)(1)(A), except that the Debtors will not be discharged of any debt: (i) detailed in the Plan; (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or (iii) of a kind specified in § 1141(d)(6)(B).

19. The Bankruptcy Court shall retain jurisdiction:

a. To enable the Debtors to consummate the Plan and any amended or modified Plan and to resolve any disputes arising with respect thereto;

⁵ *Order Granting Debtors' Expedited Motion for Entry of Order: (I) Conditionally Approving Disclosure Statement; (II) Setting Date for Consolidated Hearing On Final Approval of Disclosure Statement and Confirmation of Plan; (III) Establishing and Consolidating Deadlines to File Objections to Disclosure Statement and Confirmation; (IV) Setting Various Deadlines; and (V) Describing Plan Proponent's Obligations* (the "Disclosure Statement Order") [ECF #331].

b. To enable the Debtors to consummate any and all proceedings that he may bring prior to the entry of the Confirmation Order;

c. To determine all controversies relating to or concerning the classification, subordination, allowance, valuation, modification, or satisfaction of Claims in this case, as permitted by law;

d. To liquidate or estimate for purposes of allowance all contested, contingent or unliquidated Claims as permitted by law;

e. To determine the validity, extent and priority of all liens, if any, against property of the estate;

f. To determine all assertions or an ownership interest in, the value of, or title to, any property of the estate;

g. To determine all objections to Administrative Claims;

h. To determine all (1) adversary proceedings, contested or litigation matters brought before the Bankruptcy Court as permitted by law; and, (2) any and all claims or Causes of Action asserted by the Debtors, either by and through the Debtors or Reorganized Debtors as permitted by law;

i. Without limiting the generality of the preceding paragraph, to determine any Avoidance Action brought by the Debtors;

j. To determine all controversies arising out of any purchase, sale, modification, or contract made or undertaken by the Debtors prior to the Confirmation Date;

k. To enforce all agreements assumed, if any, and to recover all property of the estate, wherever located;

l. To determine any tax liability of the estate in connection with the Plan, actions taken, distributions or transfers made thereunder;

m. To enforce any and all injunctions created pursuant to the terms of the Plan;

n. To modify the Plan or to remedy any defect or omission or reconcile any inconsistencies in the Plan either before or after the entry of the Confirmation Order;

o. To hear and determine all controversies, suits, and disputes that may arise in connection with the interpretation or enforcement of the Plan;

p. To enter a Final Decree; and

q. To make such orders as are necessary or appropriate to carry out the provisions of the Plan.

20. The Court will conduct a post-confirmation Status Conference on **July 3, 2019** **at 2 p.m.**, at the United States Bankruptcy Court, C. Clyde Atkins United States Courthouse, 301 North Miami Avenue, 8th Floor, Miami, FL 33128.

###

Submitted by:

Ido J. Alexander, Esq.
Leiderman Shelomith Alexander +
Somodevilla, PLLC
2699 Stirling Rd # C401
Ft. Lauderdale, FL 33312
Telephone (954) 920-5355
Facsimile (954) 920-5371
ija@lsaslaw.com

Copies furnished to:

Ido J. Alexander, Esq.

[Attorney Alexander is directed to serve copies of this order on all creditors and interested parties and to file a certificate of service.]