

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE'S MOTION TO APPROVE
SETTLEMENT WITH BRUCE AND COLLEEN PREVOST**

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the bankruptcy estates of Palm Beach Finance Partners, L.P. and Palm Beach Finance Partners II, L.P. (collectively, the "*Debtors*"), by and through undersigned counsel, files this Motion to Approve Settlement with Bruce and Colleen Prevost ("*Motion*"). In support of this Motion, the Liquidating Trustee states the following:

I. Factual Background

A. *The Pre-Petition Activities of the Debtors*

1. The Debtors are two hedge funds. Together, David Harrold and Bruce Prevost managed the Debtors' fund raising and investment activities.
2. Pre-petition, Messrs. Harrold and Prevost invested nearly all of the Debtors' funds (approximately \$1 billion) in Thomas Petters's purchase order financing activities.
3. In September 2008, several federal law enforcement agencies, including the FBI, executed search warrants at Mr. Petters's offices. Shortly thereafter, it was revealed that Mr.

Petters's business activities were entirely fictitious; instead, Mr. Petters was operating a multi-billion dollar Ponzi scheme.

4. From 2002 through September 2008, Mr. Prevost and his wife Colleen ("*Prevosts*") received approximately \$25 million in transfers (prior to the payment of federal income taxes) from the Debtors and other affiliated entities.

5. Typically, the monies flowed from the Debtors to one of two management entities - Palm Beach Capital Management, LLC or Palm Beach Capital Management, LP (collectively, the "*Management Entities*") - and then to the Prevosts.

B. The Debtors' Bankruptcy Cases

6. On November 30, 2009, the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code. By subsequent Order of this Court, the cases are jointly administered.

7. On January 28, 2010, the Court entered the Agreed Order Directing Appointment of Chapter 11 Trustee and Denying United States Trustee's Motion to Convert Cases to Cases under Chapter 7 [ECF No. 100].

8. On January 29, 2010, the United States Trustee appointed the Liquidating Trustee as Chapter 11 Trustee in both of the Debtors' estates [ECF No. 107].

9. Following his appointment, the Liquidating Trustee and undersigned counsel reviewed the terms of a pre-petition settlement which had been reached between Messrs. Harold and Prevost and the Debtors through a pre-petition chief restructuring officer. The Liquidating Trustee determined in his business judgment not to seek its approval but rather to commence his own direct due diligence and negotiation with the Prevosts.

10. To that end, the Liquidating Trustee requested and received a host of financial data from the Prevosts including bank and stock account statements for several years and historical transfers for several years. The Liquidating Trustee also procured an independent appraisal of the Prevosts's personalty.

11. Additionally, in light of the millions of dollars utilized by the Prevosts to construct and renovate their residence, the Liquidating Trustee retained an appraiser (Callaway & Price) to value the property. The appraiser performed a physical inspection of the property (which includes a 9,000 sq/ft residence and a 2,000 sq/ft guest home) and reviewed the architectural plans of the construction. The results of the appraisal reflect that notwithstanding the significant sums of monies employed in the build-out, the market value of the property (\$1,250,000) is substantially below the replacement cost (\$2,372,500).¹ A material reason for the dramatic differential is the fact that the property is located in a neighborhood compromised of significantly more modest homes, both in terms of size and cost, as compared to the Prevosts' residence.

12. After analyzing the financial disclosures, the appraisal and other data, consulting with his accounting and legal professionals and the Liquidating Trust Monitor² and the Monitor's legal counsel, the Liquidating Trustee and undersigned counsel engaged in an in-depth negotiation with the Prevosts and their legal counsel. The negotiations took place over a period of months and culminated in the settlement described below ("**Settlement**"). The economic terms of the Settlement are substantially superior to the earlier pre-petition settlement.

II. Settlement Terms

¹ Including a first position mortgage in favor of ING, F.S.B., in the approximate amount of \$900,000, the Prevosts' equity in the residence is \$325,000.

² Geoffrey C. Varga.

13. The key aspects of the Settlement are the following:³

- a) **Cash consideration** - upon approval of the Settlement, the Prevosts will immediately pay \$605,000 to the Debtors. Additionally, the Prevosts will not contest a lawsuit to be filed against an affiliated charity currently holding just under \$400,000 which had previously been funded by the Prevosts. The lawsuit will seek the turnover of \$395,000 held by the charity. Thus, the estates will receive a total of \$1,000,000.
- b) **Mortgage on the Prevosts' personal residence** - upon approval of the Settlement, the Prevosts will agree to the recordation of a second mortgage on their homestead property in the amount of \$500,000 to secure a non recourse promissory note ("*Note*") in the same amount in favor of the Debtors. The initial term of the Note will be three years. During the initial term no interest shall accrue.

The Prevosts may elect to extend the Note for an additional four years starting at the expiration of the initial term. In such event, the property will be reappraised and the amount of the mortgage shall be reset to the greater of (i) \$500,000 or (ii) 75% of the net equity above the first mortgage in the re-appraised value of the property. Interest during this period shall begin to accrue annually at 100 basis points above the then existing Wall Street Journal Prime Rate. The Prevosts will also be required to make monthly payments of principal and interest based on a 15 year amortization period with a balloon payment being made at the expiration of the four year extension term.

With respect to costs associated with the initial recording of the mortgage, namely, the cost of any title policy or recording fees, or any costs associated with a re-recording of the mortgage during the extension term, the Debtors' shall be responsible for paying such items.

- c) **Entitlement to tax refund** - with respect to the Prevosts' 2009 tax return, the Debtors shall be entitled to receive 90% of any tax refund issued by the Internal Revenue Service.
- d) **Turnover of entities** - Mr. Prevost shall turn over his interest in various entities for the benefit of the Debtors (the Liquidating Trustee may decline to accept such interest).

³ A copy of the settlement agreement is attached as Exhibit 1. To the extent the terms of the agreement differ with the terms set forth in this Motion, the agreement shall control.

- e) **Cooperation and turnover of documents** - Mr. Prevost will meet with the Liquidating Trustee and his professionals at their offices on a regular basis without need for subpoena and additionally, will agree to cause the turnover of certain documents which may otherwise be subject to attorney-client privilege.
- f) **Consent to judgment** - with respect to the Debtors' management entities, Mr. Prevost shall cause such entities to consent to the entry of judgment against them in the amount of any transfers received. Additionally, Mr. Prevost will consent to a judgment against him personally in the amount of \$1,500,000. Execution on the personal judgment against Mr. Prevost shall be deferred until January 1, 2014.
- g) **Bar order and covenant not to sue** – as a pre-condition for providing the above consideration, the Liquidating Trustee will obtain a bar order in favor of the Prevosts and related family members which would bar any limited partners or creditors of the Debtors from suing the Prevosts; additionally, the Liquidating Trustee shall provide the Prevosts with a covenant not to sue. Moreover, the Liquidating Trustee will agree that in any execution proceeding against Mr. Prevost in connection with the \$1.5 million judgment, he will not seek to execute upon certain assets listed in the Prevosts' "Asset List" (attached to the Settlement).
- h) **Vessel** – the Liquidating Trustee will take possession of a 2006 Sea Ray with an estimated value of \$45,000 and auction the vessel with the net proceeds going to the Debtors' bankruptcy estates.

14. Pursuant to the Second Amended Joint Plan of Liquidation ("**Plan**"), approved by this Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received in conjunction with the Settlement will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. and 82% to Palm Beach Finance II, L.P. ("**Pro Rata Allocation Formula**").

15. It is important to note that with respect to some of the above consideration being provided by the Prevosts, it is not possible today to gauge their actual value, *e.g.*, the ultimate amount, if any, of the 2009 tax refund or the value of the entities to be turned over (to the extent

insolvent, the equity value may be nonexistent). However, the Liquidating Trustee believes it was appropriate to obtain the right to receive these assets.

16. Finally, in agreeing to the above terms, the Liquidating Trustee considered the availability of certain exemptions to the Prevosts (*e.g.*, Florida's homestead laws), titling of assets (*e.g.*, tenancy by the entireties) and the dramatic over-improvement performed to the Prevosts' personal residence.

III. Relief Requested

17. The Liquidating Trustee seeks an Order from this Court (a) approving the Settlement and entry of the bar order and (b) approving the Contingency Fee (as defined below).

18. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that [o]n motion...and after a hearing on notice to creditors; the debtor . . . and to such other entities as the Court may designate, the Court may approve a compromise or settlement."

19. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

20. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of

success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

A. *The Settlement Ought to be Approved*

21. Based upon the above legal principles, Liquidating Trustee asserts that the Settlement falls well above the lowest point of the range of reasonableness and thus, should be approved.

Probability of success in litigation

22. The Debtors could assert the following claims against the Prevosts:

- a) **Fraudulent transfer against the Prevosts pursuant to §§ 544 and 548:** The Debtors could assert claims against the Prevosts (as subsequent transferees) for transfers received by them from the Management Entities. As for Mrs. Prevost, the Debtors would assert claims against her as a subsequent transferee as to any transfer received by her from her husband.
- b) **Fraudulent transfer against the Prevosts pursuant to § 541 and Fla. Stat. 726 et seq.:** As direct state law creditors of the Management Entities, the Debtors could assert claims against the Prevosts (as initial transferees) for transfers received by them.
- c) **Fraudulent transfer against Colleen Prevost pursuant § 541 and Fla. Stat. 726 et seq.:** As direct state law creditors of Mr. Prevost, the Debtors could assert claims against Mrs. Prevost (as an initial transferee) for transfers received by her from her husband.
- d) **Other Theories:** The Debtors could assert claims against the Prevosts under various equitable theories, including unjust enrichment, equitable lien and constructive trust.

23. Although the Liquidating Trustee believes he has strong claims as to all of these theories, the probability of success cannot be gauged with certainty at this stage. Moreover, as addressed below, any judgment(s) regardless of the legal theory would undoubtedly face

significant collectability issues. Therefore, the Liquidating Trustee asserts that this factor is not dispositive in determining whether the Settlement should be approved.

Collectability

24. The collectability of the Prevosts is a very significant and critical factor militating in favor of approval of the settlement.

25. First, it is assumed that Mr. Prevost's future earning capacity and job prospects have been markedly impaired given the Debtors' massive losses. As such, it is unlikely that the pool of assets held by the Prevosts (as reflected in the exhibits to the Settlement) will materially expand. If the above claims are litigated, along with separate lawsuits being filed by other parties, it is all but certain that the assets subject to execution will be significantly diminished through defense costs, and thus, limit the collectability of any judgment.

26. Second, the Prevosts hold a number of their assets in either both of their names or in Mrs. Prevost's name. Although there are a number of permutations as to the above legal theories, one possibility is the Court entering a judgment solely against Mr. Prevost. In that scenario, the Debtors would then be limited to only those assets held in his name. The extent of those assets is limited. Another permutation would be a judgment against both of the Prevosts. However, in that scenario, the Debtors would have to litigate whether certain assets are exempt from collection. Based on the disclosures provided by the Prevosts, a material portion of these assets include the Prevosts' personal residence and proceeds from refunds related to jointly filed tax returns. If the exemptions were to be recognized, the pool of collectible assets would be materially diminished.

27. Finally, if the Liquidating Trustee were to succeed in obtaining a judgment, the Prevosts may file individual bankruptcy petitions. In that case, any chapter 7 trustee would

likely incur significant administrative expenses and it could take upwards of two years or longer to receive any distribution from the Prevosts' estate. In the event that a bankruptcy court were to recognize the Prevosts' asserted homestead exemption, then any recovery would be severely impaired.

28. The economic terms of the Settlement avoids these pitfalls. It provides for a turnover of significant monetary assets, including arguably exempt assets and jointly held assets. Ultimately, the Liquidating Trustee believes that the Settlement may well be superior to what could be obtained from executing on monetary judgments, particularly when factoring in professional expenses.

Complexity of litigation and attendant expense, inconvenience and delay

29. This is a significant consideration that militates in favor of approval of the Settlement.

30. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still will require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial attorney's fees on both sides which would diminish the net result of any recovery to creditors in the Debtors' cases.

31. Assuming the Liquidating Trustee was successful in obtaining a judgment against the Prevosts, he would then have to engage in collection efforts and litigate exemptions. The result would again be additional fees and delay.

32. Finally, if the Prevosts file for bankruptcy, the Debtors would only be entitled to a distribution in those cases once administrative expenses are paid and the case is closed a number of years later.

33. The Settlement addresses these concerns. The parties avoid litigating fact specific claims (including exemption issues such as homestead), with the attendant expense and delay of such litigation being nullified.

Paramount interest of creditors

34. Although a direct result of the Settlement is that creditors will be barred from asserting any claims against them, the settlement conversely provides significant cash consideration from the Prevosts' remaining assets (including assets which could likely be exempt), avoids the proverbial race to the courthouse and importantly, eliminates the expense, risk and delay associated with litigation.⁴ Moreover, the impact of such bar order appears negligible since (i) no limited partner or creditor of the Debtors has sued Mrs. Prevost or her children; (ii) Mr. Prevost will be left with few executable assets; and (iii) Mr. Prevost's future earning capacity is significantly impaired. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. The Contingency Fee Ought to be Approved

35. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No., 223], Meland Russin & Budwick, P.A. ("**MRB**") is entitled to a fee of 10% for any affirmative recovery received by the Debtors' estates and allocated to the Debtors from a litigation matter pursued by the firm without further order of the Court ("**Contingency Fee**").

⁴ Considering the commonality of the claims which could be asserted by Debtors or any limited partner of the Debtors against Messrs. Harrold or Prevost, the Liquidating Trustee believes that the bar order being sought in this case to be enforceable. *See Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454 55 (11th Cir. 1996).

36. In light of the staggered payment that will result in connection with the Settlement, and subject to the Pro Rata Allocation Formula, MRB respectfully requests that the Contingency Fee be paid as follows:

- a) Upon approval of the Settlement and receipt of the \$1,000,000 aggregate cash consideration, 10% of the amount received by each of the Debtors;
- b) Upon the Debtors' receipt of any Prevost tax refund for 2009, 10% of the amount received by each of the Debtors;
- c) Upon the Debtors' receipt of any funds from the sale of the vessel, 10% of the net amount received by each of the Debtors;
- d) Upon the Prevosts paying the Note securing the mortgage on their personal residence, 10% of the amount received by each of the Debtors; and
- e) In the event Liquidating Trustee elects to take possession, for the benefit of the Debtors, any entity then held by the Prevosts and later sells such entity, 10% of any gross sales price received by each of the Debtors.

WHEREFORE, Liquidating Trustee respectfully requests that this Court enter an Order (similar in form to the order attached as Exhibit 2) (1) approving the Settlement; (2) entering the Bar Order; (3) approving payment of the Contingency Fee and (4) granting such other relief this Court deems just and proper.

s/ Jonathan S. Feldman
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Attorneys for the Liquidating Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 3 on March 10, 2011.

s/ Jonathan S. Feldman

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("***Stipulation***") is entered into on this 2nd day of March 2011 by and among (a) Barry E. Mukamal, as Liquidating Trustee ("***Trustee***") for Palm Beach Finance Partners, L.P. ("***Palm Beach I***") and Palm Beach Finance II, L.P. ("***Palm Beach II***"; and together with Palm Beach I, the "***Debtors***"; and (b) Bruce and Colleen Prevost ("***Prevosts***").¹ The terms of this Stipulation are as follows:

RECITALS

A. On November 30, 2009 ("***Petition Date***"), the Debtors commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("***Bankruptcy Court***"), Case Nos. 09-36379-PGH and 09-36396-PGH respectively ("***Bankruptcy Cases***");

B. On January 29, 2010, the Trustee was appointed Chapter 11 trustee for each of the Debtors;

C. On October 21, 2010, the Trustee, pursuant to a confirmed joint plan of liquidation, was appointed Liquidating Trustee for each of the Debtors;

D. The Trustee, on behalf of the Debtors, may assert litigation claims against the Prevost's which could exceed their financial wherewithal ("***Potential Litigation***");

E. The Prevosts dispute the Trustee's assertions and assert that a substantial portion of their personal assets are exempt under applicable Florida law.

¹ The Trustee and the Prevosts together are the "***Parties***."
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F. To avoid the risk and expense of the Potential Litigation, among other reasons, the Prevosts and the Trustee have agreed to resolve the Potential Litigation subject to the terms and conditions of this Stipulation and Bankruptcy Court approval.

G. The Parties acknowledge that this Stipulation is a compromise and settlement of a controversy. No party admits, and each expressly denies, any liability on its part.

H. The Parties agree and stipulate that nothing contained in this Stipulation shall be construed as an admission. Nothing herein shall limit the ability of Bruce Prevost to invoke his rights under the Constitution of the United States of America or the State of Florida.

NOW, WHEREFORE, it is stipulated, consented to and agreed, by and among the Trustee, the Debtors and the Prevosts (each a "*Party*"; and collectively, the "*Parties*"), as follows:

1. REPRESENTATIONS AND WARRANTIES

A. Representations as to Assets. The Prevosts warrant and represent (and shall execute an affidavit under oath under penalty of perjury) that (a) the assets set forth in attached Exhibit A (the "*Assets List*") are all of the assets with a value equal to or in excess of \$10,000 in which the Prevosts or their minor children have any legal or beneficial interest whatsoever, directly or indirectly, either individually or jointly (including any assets held by any third party for their benefit) as of the date of this Stipulation; (b) valid title to the assets set forth in the Assets List is held as represented and (c) no asset with a value in excess of \$10,000 is held for their benefit or their minor children's benefit, except for those assets specifically listed on the Assets List. To the extent that information has been intentionally omitted from the Assets List pursuant to (a), (b) or (c) above and/or misrepresentations have been made by the Prevosts

concerning (a), (b) or (c) above, the Prevosts acknowledge and agree that the Trustee shall be entitled to the remedies set forth in Section 3 of this Stipulation. Any omission shall be presumed to be intentional unless established otherwise by the Prevosts by the preponderance of the evidence. The Prevosts acknowledge that the Trustee is relying on the accuracy of these representations and warranties, and that they are material to this Stipulation in that the Trustee would not enter into this Stipulation in the absence of these representations.

B. Representations as to Prior Transfers. The Prevosts warrant and represent (and shall execute an affidavit under oath under penalty of perjury) that from January 1, 2006 through the date of the execution of this Stipulation (the “*Transfer Period*”), neither they nor their minor children made any Transfer (as defined below) of personal assets, or of an interest in personal assets, other than those specific transfers disclosed on Exhibit B (the “*Transfers List*”) and which do not exceed \$50,000 in value in the aggregate per Recipient (as defined below). To the extent that any Transfers were made during the Transfer Period and are intentionally omitted from the Transfers List, the Prevosts acknowledge and agree that the Trustee shall be entitled to the remedies set forth in Section 3 of this Stipulation. Any omission shall be presumed to be intentional unless established otherwise by the Prevosts by the preponderance of the evidence. The Prevosts acknowledge that the Trustee is relying on the accuracy of these representations and warranties, and that they are material to this Stipulation in that the Trustee would not enter into this Stipulation in the absence of these representations.

For purposes of this Stipulation, the term “*Transfer*” shall have the same meaning set forth in 11 U.S.C. § 101(54) and Florida Statute § 726.102(12); provided that the Parties agree that the term Transfer shall not include any individual payments under \$5,000 to pay for groceries, utilities, real estate taxes, ordinary and customary car payments, ordinary and customary

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mortgage payments, ordinary and customary living expenses, gasoline or clothing even if the sum of such payments exceeds \$50,000. The Prevosts warrant and represent that they have each reviewed these definitions with their own separate legal counsel and they each understand this term.

For purposes of this Stipulation, the term "*Recipient*" shall mean any transferee or an affiliate of such transferee regardless of whether such transferee or affiliate of such transferee is related to or at arms-length with the Prevosts or their minor children.

C. Time. The Assets List and Transfers List shall be provided within twenty (20) days from the date of execution of this Stipulation.

D. Termination Prior to Bankruptcy Court Approval. Prior to the entry of an Order from the Bankruptcy Court approving this Stipulation, in the event that the content of the final form of the Assets List or Transfers List deviates materially from those which have been disclosed as of the date of the execution of this Stipulation, the Trustee in his sole discretion may terminate this Stipulation and thereupon it shall be null and void in its entirety.

2. **CONSIDERATION.**

A. Cash Consideration. Within twenty (20) days of entry of an Order approving this Stipulation, the Prevosts shall turn over to the Trustee the assets identified on the Assets List, under the column titled "Trustee." The Prevosts shall retain all other assets not listed in such column. All consideration paid to the Trustee in conjunction with this settlement shall be deemed a return of profits.

B. Homestead. Immediately upon entry of an Order approving this Stipulation, the Prevosts agree to execute a promissory note in favor of the Trustee with the terms and

conditions set forth in Exhibit C ("*Note*"). The Note shall be secured by a second position mortgage on the Prevosts' residence located at 8292 Nashua Drive, Palm Beach Gardens, Florida per the terms and conditions set forth in Exhibit D ("*Mortgage*"). The Prevosts shall provide an ALTA lender's title insurance policy in favor of the Trustee in the face amount of the Note at the expense of the Debtors' estates.

C. Bruce Prevost Judgment. Notwithstanding Section 4 of this Stipulation, the Trustee shall commence an adversary proceeding solely against Bruce Prevost and Bruce Prevost shall consent to the entry of a judgment against him in the amount of \$1,500,000.00, with such judgment providing for post-judgment interest at five percent (5%) per annum ("*Prevost Judgment*"). The Trustee agrees that he, his assigns or successors in interest (i) shall not undertake any effort to collect on the Prevost Judgment until January 1, 2014 and (2) the assets identified on the Assets List which are not listed under the column titled "Trustee" and the assets identified in the the home asset appraisal dated July 9, 2010 performed by Moecker Auctions, Inc. shall be exempt from any execution proceeding. Subject to the terms of the covenant not to sue provided for under Section 4.A of this Stipulation, nothing shall prevent the Trustee from exercising any rights against third-parties, including but not limited to, any rights under *Fla. Stat.* Chapter 726.

D. Entitlement to Tax Refunds. The Prevosts shall immediately turn over to the Trustee, for the benefit of the Debtors (i) the first \$200,000 of any state or federal income tax refund which either is entitled to in connection with tax year 2009 and (ii) as to any remaining refund for tax year 2009, ninety-percent (90%) of such refund. The Prevosts further agree that no portion of any refund attributable to tax payments made in 2008 or earlier may be applied toward any 2009 tax obligation(s). The Prevosts shall expeditiously file their 2009 tax returns

and provide the Trustee with copies of any return and any amendments or other related documents. Subject to the Prevosts electing to either file jointly or separately, the 2009 tax returns shall seek the full benefit of any refund to the fullest extent permissible under applicable law. The Prevosts or their tax preparer shall consult with the Trustee or his professionals prior to finalizing of any returns and share any draft return. In the event that the Internal Revenue Service subsequently reduces the federal income tax refund after disbursement to the Trustee, that reduction shall be borne by the Prevosts and the Trustee according to their pro rata shares.

E. Charitable Foundation. Notwithstanding Section 4 of this Stipulation, the Trustee shall commence an adversary proceeding solely against The Father's Heart Family Foundation ("*Foundation*") and Bruce Prevost, on behalf of and as the representative of the Foundation, shall consent to the entry of a judgment against the Foundation in the amount of \$395,000 with such judgment providing for post-judgment interest at the then prevailing rate (the "*Foundation Judgment*"). Bruce Prevost, on behalf of and as the representative of the Foundation, shall not oppose the Trustee's efforts to collect on the Foundation Judgment.

F. Interests in Entities. Within twenty (20) days from the date of the entry of an Order approving this Stipulation and Bar Order, the Prevosts shall assign to the Trustee their interests in the closely held entities, business interests or hedge funds identified on the Assets List, under the column titled "Trustee" ("*Assigned Interests*"). The Assigned Interests shall not include Palm Beach Capital Management, LLC ("*PBCMLLC*") which is addressed separately in Section 2.G of this Stipulation. The Trustee at his election may decline in writing to accept any such assignment or abandon any Assigned Interest. The Prevosts shall retain all other interests not listed in the column titled "Trustee" ("*Retained Interests*"). Within twenty (20) days from

the date of the entry of an Order approving this Stipulation and Bar Order, the Prevosts shall (i) provide the Trustee with all books and records pertaining to the Assigned Interests to enable the Trustee to value the Assigned Interests and (ii) cooperate with the Trustee or his professionals to manage, liquidate or preserve the value of such interests. The Prevosts shall also provide the Trustee with copies of the books and records pertaining to the Retained Interests, including copies of any filed tax returns, within five (5) days from the date of execution of this Stipulation to enable the Trustee to confirm the representations made by the Prevosts regarding the Retained Interests. Nothing herein shall be construed as an assumption by the Trustee or the Debtors' estates of any of the debts or liabilities of any of the Management Entities, the Prevosts or the Prevosts' children. The Assigned Interests shall not include (i) Haggai I for which financial disclosure, as set forth in this paragraph, shall be made to the Trustee within twenty (20) days from the date the Parties execute this Stipulation or (ii) Jump for Joy, LLC and Jump for Joy Farm, LLC.

G. PBCMLLC. Within twenty (20) days from the date of the entry of an Order approving this Stipulation and Bar Order, Bruce Prevost, in his representative capacity for PBCMLLC, shall cause to be assigned to the Trustee all of PBCMLLC's assets ("*PBCMLLC Assets*"); provided that such assignment shall not be construed as waiver of any attorney client privilege or attorney work product that may exist with respect to PBCMLLC and Holland Knight LLP and Yoss, LLP ("*Attorney Materials*"); and further provided that PBCMLLC retains its right to invoke, maintain or waive such privilege and work product, and to retain attorneys (to be paid for by the Prevosts) as needed. Within twenty (20) days from the date of the entry of an Order approving this Stipulation and Bar Order, the Prevosts shall (i) provide the Trustee with all books and records pertaining to the PBCMLLC Assets (other than Attorney Materials) to enable

the Trustee to value them and (ii) cooperate with the Trustee or his professionals to manage, liquidate or preserve the value of such assets. The Trustee at his election may decline in writing to accept any of the PBCMLLC Assets. Nothing herein shall be construed as an assumption by the Trustee or the Debtors' estates of any of the debts or liabilities of PBCMLLC, the Prevosts or the Prevosts' children.

H. Management Entities. Bruce Prevost, in his representative capacity for Palm Beach Capital Management, L.P., Palm Beach Capital Corp. and PBCMLLC ("*Management Entities*"), shall cause:

- i. Within twenty (20) days from the date of the entry of an Order approving this Stipulation and Bar order, the turn over to the Trustee or his counsel of all electronic records of the Management Entities (other than Attorney Materials) for inspection and copying. To the extent any Attorney Materials are produced, such production shall be considered inadvertent and the Trustee or his professionals shall return such materials to the Management Entities. Such electronic records shall include both information pertaining to the Debtors, in addition to information pertaining to any other entities managed or controlled by the Management Entities. The Trustee acknowledges and agrees that it will not use such information for his personal benefit and will only use the information insofar as it relates to generating recoveries for the Debtors' estates. Such information shall not be disclosed to any third party (other than the Trustee's professionals or employees) absent Court order or the third party signing a confidentiality agreement in form reasonably acceptable to the Prevosts.

ii. Within thirty (30) days from the date of the entry of an Order approving this Stipulation and Bar Order, the turn over to the Trustee of all hard copy records of the Management Entities (other than H&K Materials) for inspection and copying. To the extent any H&K Materials are produced, such production shall be considered inadvertent and the Trustee or his professionals shall return such materials to the Management Entities. Such records shall include both information pertaining to the Debtors, in addition to information pertaining to any other entities managed or controlled by the Management Entities. The Trustee acknowledges and agrees that it will not use such information for his personal benefit and will only use the information insofar as it relates to generating recoveries for the Debtors' estates. Further, such information shall not be disclosed to any third party (other than the Trustee's professionals or employees) absent Court order or the third party signing a confidentiality agreement in form reasonably acceptable to the Prevosts.

I. Consent to Judgment on Behalf of Management Entities. In the event that the Trustee files a civil action against any of the Management Entities, Bruce Prevost, in his representative capacity for the Management Entities, consents to the entry of a monetary judgment in favor of each Debtor in the amount of all Transfers made by each Debtor to each of the Management Entities within the four (4) year period preceding the Debtors' Petition Date. The Trustee agrees that he shall not, on behalf of the Debtors, seek to impose any subsequent transferee liability or file and pursue any avoidance actions against Rappaport Osborne & Rappaport, P.L., Yoss, LLP, Holland & Knight, LLP or Shraiberg, Ferrara & Landau P.A. (or any attorney employed therein) for any fees they have been paid or costs reimbursed.

J. Consent to Judgment on Behalf of Affiliated Entities. In the event that the Trustee files a civil action to avoid or recover transfers to or for the benefit of Palm Beach Diversified, Inc., Palm Beach Multi-Strategy Fund LP, Palm Beach Multi-Strategy LP, or any other hedge fund, business entity or investment vehicle affiliated with either of the Prevosts, the Prevosts agree not to take any action to oppose the relief sought by the Trustee.

K. PBFP Holdings, LLC. At the sole election of the Trustee, the Prevosts agree to either (a) turn over any interest they hold in PBFP Holdings, LLC ("*Holdings*") to the Trustee for the benefit of the Debtors or (ii) if the Trustee seeks to substantively consolidate Holdings with the Debtors, not to contest such consolidation.

L. Bar Order. As a condition for the Prevosts in entering into this Stipulation, the Trustee, with the cooperation of the Prevosts, shall obtain the entry of an order ("*Bar Order*") by the Bankruptcy Court in the form of Exhibit E which bars and permanently enjoins the prosecution of any and all direct, indirect or derivative claims against the Prevosts or their children whether known or unknown, by any and all of the following entities: (1) any creditors of either of the Debtors (including but not limited to Palm Beach Offshore Ltd. and Palm Beach Offshore II, Ltd.); (2) any limited partners of either of the Debtors or (3) any persons listed on Exhibit F.

3. **REMEDIES.**

A. Omission from or Misrepresentations Regarding the Assets List or Transfers List. Prior to the Trustee's closing of the Bankruptcy Cases, in the event the Trustee discovers (i) any undisclosed asset with a value equal to or in excess of \$10,000 in which the Prevosts or their minor children hold a legal or beneficial interest as of the date of the execution of this Stipulation

that is not specifically identified on the Assets List, or (ii) that the Prevosts or their minor children have transferred any assets to a Recipient with an aggregate value in excess of \$50,000 within the Transfer Period that is not specifically disclosed on the Transfers List, then the Trustee (or any interested party only as to (ii) below), in addition to electing any other remedies and rights available under this Stipulation, at law or in equity, shall be entitled to the following remedies:

- i. To retain the consideration provided for in Section 2 of this Stipulation;
- ii. Vacatur of the Bar Order; and
- iii. To file an adversary complaint in the Bankruptcy Court seeking a judicial determination that the Prevosts intentionally failed to disclose such asset(s) or transfer(s) and upon a judicial determination in his favor, be entitled to the entry of a judgment by the Bankruptcy Court in favor of the Trustee and against the Prevosts, jointly and severally, in the amount of \$2,500,000.00 (the “*Judgment*”). Any omission shall be presumed to be intentional unless established otherwise by the Prevosts by a preponderance of the evidence. The Judgment shall provide for post-judgment interest at the then prevailing rate. The amount of the Judgment as stated herein has been determined by the Parties to be an appropriate measure of liquidated damages, is not a penalty and the Parties acknowledge the difficulty in ascertaining and quantifying all such damages that would flow from such a breach by the Prevosts, including but not limited to the costs of identifying the omitted asset or transfer, the costs of seeking to collect the Judgment and the costs of making an appropriate supplemental disbursement(s) to the entire creditor and/or interest holder bodies of the Debtors from the proceeds of the liquidated omitted

asset(s) or transfer(s). Upon entry of the Judgment, the Trustee shall have the right to record the Judgment in any jurisdiction located either within or without the United States of America and shall also shall have the right to levy or execute upon any asset owned by the Prevosts.

4. COVENANT NOT TO SUE AND RELEASES.

A. Covenant Not to Sue. Upon approval of this Stipulation by final order of the Bankruptcy Court in the Bankruptcy Cases, the Trustee, on behalf of the Debtors, shall provide to the Prevosts, their children, spouses of their children and parents (in the event the transfers to the parents from the Prevosts do not exceed \$170,000 from January 1, 2006 until the Petition Date) a covenant not to sue in a form reasonably and mutually acceptable to the Parties; provided that neither the Trustee nor the Debtors shall be required to release, nor shall any aspect of this Stipulation or covenant not to sue be deemed or interpreted as a covenant not to sue or a release of any Claims of any type against any persons or entities including any initial or subsequent transferees of the Prevosts, or any joint, consecutive or concurrent tortfeasors (except Rappaport Osborne & Rappaport, P.L., Yoss, LLP, Holland & Knight, LLP or Shraiberg, Ferrara & Landau P.A. or any attorney employed therein as set forth in Paragraph 2.I, which attorneys shall be released for any fees they have been paid or costs reimbursed) and further provided that in the event that Trustee elects to take ownership of Bruce Prevost's interest in the Management Entities, such covenant not to sue shall also then include and be binding upon the Management Entities. Notwithstanding anything else contained within this Stipulation, the covenant not to sue shall be null and void in its entirety in the event that the Prevosts fail to comply with their obligations as set forth in this Stipulation.

B. Release by the Prevosts. Upon approval of this Stipulation by final order of the Bankruptcy Court in the Bankruptcy Cases, the Prevosts and their children waive, release and hold harmless, now and forever, the Trustee, his counsel and the Debtors from any and all Claims (as defined below) that the Prevosts or their children may have against the Trustee, his counsel or the Debtors including the extinguishment of any equity interest they may have individually or through any corporate entities, directly or indirectly, in either of the Debtors; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation.

For purposes of this Stipulation, the term “*Claims*” shall have the meaning set forth in 11 U.S.C. § 101(5).

5. COOPERATION.

Upon the execution of this Stipulation, Bruce Prevost agrees to and shall make himself available for interviews at mutually agreeable times at the Trustee’s counsel’s Miami office for at least twenty (20) hours per month through February 28, 2011 and for at least ten (10) hours per month thereafter until the Bankruptcy Cases are closed. The Trustee and his professionals will make reasonable efforts to conduct such interviews telephonically. Bruce Prevost shall not be entitled to any compensation or reimbursement of expenses for attendance at such meetings, other than parking expense. This provision is not intended to be a waiver of any applicable privileges inuring to the benefit of the Prevosts, either individually or jointly. If Bruce Prevost cannot be available in person for reasons reasonably beyond his control (supported by a sworn affidavit if requested by the Trustee), the Parties agree that this will not be deemed a material breach and that he will make up any missed time as soon as he becomes available.

6. MISCELLANEOUS PROVISIONS.

A. Review. Each of the Parties acknowledges that he, she or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his, her or its own choosing or voluntarily waived such right and enters into those terms voluntarily and without duress.

B. Approval. The Trustee shall file and serve the necessary motion(s) in the Bankruptcy Cases seeking the entry of the Bar Order and an order approving this Stipulation pursuant to *Fed. R. Bankr. P.* 9019. Each Party shall bear its own attorneys' fees and costs in connection with the Potential Litigation, the negotiation and drafting of this Stipulation and the submission of such Stipulation and any motions, orders and hearings as may be necessary to obtain the approval of the Bankruptcy Court; provided that in the event of any litigation between the Parties in connection with this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

C. Modification. This Stipulation and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified except by an instrument in writing signed by all the Parties against whom enforcement of such change is sought.

D. Effective Date. This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final orders of the Bankruptcy Court.

E. No Approval. If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their best efforts to seek reconsideration of any order denying approval of the Stipulation, or file an amended motion to approve the Stipulation.

F. Controlling Law. This Stipulation shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida and by federal law to the extent the same has preempted the laws of the State of Florida.

G. Counterparts. This Stipulation may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

H. Construction. This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Stipulation as a whole is purportedly prepared or requested by such Party.

I. Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation.

J. Authority to Bind. The individuals signing below represent and warrant that they have the authority to execute this Stipulation.

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SIGNATURE PAGE OF BRUCE AND COLLEEN PREVOST

Dated: 3-2, 2011



BRUCE PREVOST

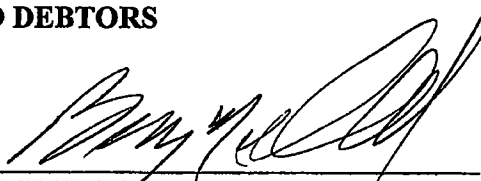
Dated: 3-2, 2011



COLLEEN PREVOST

SIGNATURE PAGE OF THE TRUSTEE AND DEBTORS

Dated: 3-2-, 2011


**BARRY E. MUKAMAL, as Liquidating
Trustee for Palm Beach Finance Partners,
L.P. and Palm Beach Finance II, L.P.**

Palm Beach Finance Partners, LP, et al
Case No.: 09-36379-BKC-PGH

2011.03.01

Prevost Personal Financial Statement						
	Est Value	Child	Wife	GP	Trustee	
Hedge Funds:	Est Value (9/08)					
PB Diversified Income, LP	588,271	-	-	-	588,271	
Palm Beach Multi Strategy	120,048	-	-	-	120,048	
Palm Beach Finance Partners	Undetermined	-	-	-	Undetermined	
Palm Beach Finance II	Undetermined	-	-	-	Undetermined	
Palm Beach Strategic Income	85,714	-	-	-	85,714	
"Palm Beach" Entities						
PBCM, LP	Undetermined	-	-	-	Undetermined	
PBCM, LLC "Assets"	Undetermined	-	-	-	Undetermined	
PBDI GP, LLC	Undetermined	-	-	-	Undetermined	
Life Settlement, LLC	0	-	-	-	0	
Homestead (1)	TBE \$ 1,250,000	-	(1st & 2nd Mort)		2nd Mortgage	
			Homestead	-	-	
Bank and Securities						
Chase	TBE 14,300	-	-	-	14,300	
MF Global	TBE 6,097	-	-	-	6,097	
Bof A (Home refy)	TBE 4,136	-	-	-	4,136	
ADM (Home refy)	TBE 66,800	-	-	-	66,800	
Fidelity (Home refy)	TBE 374,172	-	-	-	374,172	
RBC Wife 2008 tax refund MM	Wife 368,000	-	230,901	-	137,099	
RBC Wife 2008 tax refund Chk	Wife 2,396		-		2,396	
Misc						
IRA - Etrade	BP 43,869	-	-	43,869	-	
IRA - Etrade	Wife 39,700		39,700			
Annuity	15,000	-	-	15,000	-	
Insurance, Life	BP 47,000	-	-	47,000	-	
Insurance, Life	Wife 12,000		12,000			
Household items	50,000	-	50,000	-	-	
2009 Tax Refund (Estimated)	Est Undetermined	-	10% Undetermin	-	90% Undetermined	
Jewelry (Estimated)	25,000		25,000			
2nd Mortgage to Trustee (5)	(500,000)		-	(500,000)	500,000	
Note to Trustee by GP	BP (1,500,000)	-	-	(1,500,000)	1,500,000	
2008 Tax Refund withheld	200,000		-		200,000	
Youngstown Holdings, LLC	Undetermined				Undetermined	
Trailer	TBE 1,000		1,000			
Vehicles & Watercraft						
05 Navigator	15,000	-	15,000	-	-	
08 Expedition	Wife 30,000	-	30,000	-	-	
07 Escape	Child 12,000	12,000	-	-	-	
06 Searay	BP 45,000	-	-	-	45,000	
Business Interests						
Haggai I	TBE 22,000	-	22,000	-	-	
Crossroad Finance	45,000	-	45,000	-	-	
Chameleon	-	-	-	-	-	
Joule I	?	-	?	-	-	
Loyalty Stream	?	-	?	-	-	
Ready Credit	?	-	?	-	-	
Jump for Joy Farm, LLC (4)	Wife 17,700	-	17,700	-	-	
Jump for Joy, LLC (3)	Wife 4,200	-	4,200	-	-	

Palm Beach Finance Partners, LP, et al
Case No.: 09-36379-BKC-PGH

2011.03.01

Prevost Personal Financial Statement

Notes

1. Net Home value is estimated at zero based on appraisal of \$1,250,000 minus the approximate \$900,000 first mortgage minus 2nd mortgage to Trustee. Home to be transferred to Wife.
2. Hedge fund values are based on 9/08 estimated NAV.
3. There is \$4,200 of cash. There are \$20,000 of loans owed by Jump for Joy, LLC to other third parties. Held by Entity Holdings, LLC.
4. \$18,000 is the cash, plus one horse and tack.
5. Subject to a \$500,000 note.
- * All remaining assets to be owned by wife.

Other

<u>Foundation</u>		<u>Foundation</u>	<u>Trustee</u>
	\$398,000	3,000	395,000

TO BE FILED SEPARATELY

THIS IS A BALLOON NOTE AND THE FINAL PRINCIPAL PAYMENT OR THE FINAL PRINCIPAL BALANCE DUE UPON MATURITY SHALL BE \$500,000.00 OR, IN THE EVENT MAKER EXERCISES THE EXTENSION OPTION, THE RESTATED PRINCIPAL BALANCE, TOGETHER WITH ANY ACCRUED INTEREST AND ALL ADVANCEMENTS MADE BY THE PAYEE UNDER THE TERMS OF THIS NOTE.

PROMISSORY NOTE

\$500,000.00

Palm Beach Gardens, Florida
_____, 2011

FOR VALUE RECEIVED, Bruce and Colleen Prevost, husband and wife, (collectively the "**Maker**"), with an address of 8292 Nashua Drive, Palm Beach Gardens, Florida 33418 ("**Property**"), hereby agree to pay to the order of Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P., with an address c/o Meland Russin & Budwick, PA, 200 South Biscayne Boulevard, Suite 3000, Miami, Florida 33131 (the "**Payee**") the principal sum of FIVE HUNDRED THOUSAND AND 00/100 (\$500,000.00) DOLLARS ("**Original Principal Balance**"), which principal balance may be restated on the terms set forth below, together with interest, at the rate and on the terms set forth below, as follows:

1. Subject to the Maker's exercising the Extension Option (hereinafter defined), the Original Principal Balance and any unpaid costs shall be due and payable on March 31, 2014 (the "**Initial Maturity Date**"), unless sooner accelerated pursuant to the terms hereof. During this term, and absent any event of default by Maker, the Note shall be interest free.

2. Maker shall have the right, which may be exercised only by written notice given to Payee no sooner than 150 days and no less than 90 days prior to the Initial Maturity Date, to extend the amounts owing under this Note ("**Extension Option**") for an additional forty-eight (48) month term (the "**Extension Term**") provided that: (i) there is no default and no event has occurred that could become a default under the terms of this Note, or any of the Loan Documents (hereinafter defined) at the time of such notice and on the date of extension and (ii) Maker shall execute an estoppel statement confirming no offsets, defenses or counterclaims exist to any of the Obligations (hereinafter defined) hereunder, and all other documents reasonably required by Maker to evidence the extension and to confirm Maker's continuing Obligations (hereinafter defined). If such Extension Option is duly exercised, then during the Extension Term all terms and conditions set forth in this Note and all of the Loan Documents shall remain in full force and effect except there shall be no further right to extend the maturity date of this Note beyond March 31, 2018 ("**Subsequent Maturity Date**").

3. In the event Maker exercises the Extension Option, the principal balance of this Note shall be reset to the greater of: (i) the Original Principal Balance or (ii) 70% of the net

{Firm Clients/4189/4189-1/00851875.RTF.}

equity of the Property ("**Restated Principal Balance**"). For purposes hereof, the net equity of the Property shall mean and be calculated in the following manner: the appraised value of the Property (with such appraisal being conducted (i) by an appraiser mutually agreed upon by Maker and Payee and (ii) no sooner than 150 days and no less than 90 days prior to the Initial Maturity Date) minus the amount then outstanding on the indebtedness evidenced by that certain mortgage dated June 18, 2009 by Maker in favor of ING Bank, FSB ("**First Mortgage**"). Maker agrees to execute any all documents necessary to evidence the Restated Principal Balance, including any amended or restated promissory note or modification to any mortgage. Maker further agrees that they shall not take any further advances under any indebtedness related to the First Mortgage and will execute any documents necessary to evidence such limitation.

4. In the event Maker exercises the Extension Option, during the Extension Term, interest shall accrue at a fixed rate, which rate shall be equal to 100 basis points above the Wall Street Journal Prime Rate (hereinafter defined) then existing on February 3, 2014 ("**Applicable Interest Rate**"). For purposes hereof, the Wall Street Journal Prime Rate ("**Index**") shall be defined as the rate of interest announced publicly by the Wall Street Journal. If said Index is no longer available, Payee will choose a new Index that is based upon comparable information and will give the Maker notice of this choice. Interest shall be calculated on a three hundred sixty (360) day year for the actual number of days the debt is outstanding in each calendar year, by multiplying the actual number of days the debt is outstanding in each calendar year by the rate of interest computed as provided in this Note, and dividing the product thereof by three hundred sixty (360).

5. In the event Maker exercises the Extension Option, Maker shall make forty-seven (47) consecutive monthly payments of interest and principal, commencing on April 31, 2014 and continuing without demand on the 31st day of each subsequent month until the Subsequent Maturity Date. The amount of such payments shall be determined by amortizing the full Restated Principal Balance together with accrued interest thereon at the Applicable Interest Rate over a fifteen (15) year period. On the Subsequent Maturity Date, Maker shall make a payment of any accrued interest and a final balloon payment of the remaining Restated Principal Balance.

6. In the event the unpaid principal balance of the indebtedness is not paid on the Initial Maturity Date, or in the event Maker exercises the Extension Option, the Subsequent Maturity Date, Maker will pay interest at the Default Rate (hereinafter defined). All payments shall be applied first to accrued interest and then to principal. If any installment of interest or principal and interest or any other payment is not paid within five (5) days of the date when due under the terms of this Note, or of the Second Mortgage (hereinafter defined), then there shall also be immediately due and payable a late payment charge of a sum equal to five (5%) percent of the amount of such late payment for each month of delinquency. Any late payment fee that will be charged shall be calculated on the total monthly payment which includes principal, interest and escrows.

7. Maker shall have the right to prepay this Note, in whole or in part, at any time without penalty, provided that any partial prepayment shall be applied first to any accrued

interest and then to principal. The principal and interest shall be payable at the office of Payee set forth in the heading hereof, or at such other place as Payee, from time to time, may designate in writing.

8. Payment of this Note is secured by a second mortgage ("**Second Mortgage**") of even date herewith, intended to be recorded forthwith, from Maker to Payee and secured by the Property. The Second Mortgage, together with all the other documents executed by Maker relating to this transaction are referred to as the "**Loan Documents**". As used in this instrument, the term "**Obligations**" shall refer to the indebtedness represented by this note and all modifications, renewals and substitutions hereof, all obligations of the Maker under Loan Documents which evidence and secure the obligations of the loan evidenced by this note (the "**Loan**"), and all other claims of every nature and description of the Payee against the Maker whether present or future, contracted with or acquired by the Payee, and whether joint, several, absolute, contingent, matured, unmatured, liquidated, unliquidated, or direct or indirect.

9. All of the agreements, conditions, covenants, provisions and stipulations contained in the Mortgage and the other Loan Documents which are to be kept and performed by Maker are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein, and Maker covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms. Any default by Maker under any of the Loan Documents which remains uncured upon the expiration of any applicable grace and/or curative period provided for therein, may, at Payee's option, be treated as an event of default hereunder.

10. Subject to paragraph 12 below, it is further understood, however, that should any default be made in the payment of any installment of principal or interest on the date on which it shall fall due, or in the performance of any of the agreements, conditions, covenants, provisions or stipulations contained in this Note, the Mortgage or any of the other Loan Documents, then Payee, at its option and without notice to Maker unless expressly required elsewhere herein, may declare immediately due and payable the entire unpaid balance of principal with interest accrued thereon at the then otherwise applicable rate specified herein above to the date of default and thereafter at a rate equal to twelve (12%) percent (which rate is hereinafter referred to as the "**Default Rate**") and all other sums due by Maker hereunder or under the Loan Documents, anything herein or in the Loan Documents to the contrary notwithstanding; and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided to Payee in this Note or the Loan Documents. In such case, Payee may also recover all costs of suit and other expenses in connection therewith, together with a reasonable attorneys' fee for collection, together with interest on any judgment obtained by Payee at a rate which shall be equal to the Default Rate, including interest at that rate from and after the date of any execution, judicial or foreclosure sale until actual payment is made to Payee of the full amount due Payee. Additionally, from and after maturity of this Note (whether upon the Initial Maturity Date, Subsequent Maturity Date, acceleration or otherwise), all sums then due and payable under this Note, including all unpaid principal, accrued interest and any other sums outstanding hereunder, shall bear interest until paid in full at the Default Rate.

11. The failure of the Payee to exercise such option to accelerate the indebtedness evidenced hereby shall not constitute a waiver of the right to exercise such option at any other time so long as such event of default remains outstanding and uncured.

12. Payee shall not exercise any right or remedy provided for herein (other than Payee's right to be paid a late charge, as described above), unless Payee in its sole discretion, deems itself insecure, or (the following sometimes referred to as "*Events of Default*"): (i) Maker fails to make any payment of principal or interest within five (5) days from when due pursuant to the Note; or (ii) in the event of any other monetary default, Maker shall have failed, within a period of ten (10) days after such default, to pay the amounts then due; or (iii) Maker fails to pay any outstanding tax obligation owing on the Property; (iv) any default, including the filing of any foreclosure action, with respect to the First Mortgage; or (v) in the event of a non-monetary default, Maker shall have failed, within a period of thirty (30) days after receipt by Maker of written notice of such default, to correct the non-monetary default or, if such non-monetary default is of a type which cannot be cured within thirty (30) days, Maker shall have begun to correct such default and thereafter Maker proceeds diligently to correct such default; provided, however, that Payee shall not be required to allow any part of the grace period if Maker shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of Maker's assets, or if Maker shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Maker and such appointment and such receivership is not terminated within sixty (60) days. Notwithstanding anything contained herein to the contrary: (a) Payee shall not be required to allow any grace period or give notice of any default as aforesaid more than two (2) times in any twelve (12) month period with respect to substantially similar events of default; and (b) Payee shall be permitted to cure any default by Maker without allowing any part of the grace period if Payee determines, in its reasonable judgment, that its security may be threatened or impaired by reason of such default. In the event that any of the Loan Documents contains a grace period, such grace period shall run concurrently with the grace period granted herein and, if the grace period granted in such other document is shorter than that set forth herein, the grace period set forth herein shall control.

13. The remedies of Payee as provided herein and the warranties contained herein or attached hereto, shall be cumulative and concurrent, and may be pursued singly, successively or together at the sole discretion of Payee, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

14. Maker hereby waives and releases all benefits that might accrue to Maker by virtue of any laws exempting any property, real or personal, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale under execution, or providing for any stay of execution to be issued on any judgment recovered on this Note, exemption from civil process, or extension of time for payment. Maker and all endorsers, sureties and guarantors hereby jointly and severally waive presentment for payment, demand, notice of demand, notice

of nonpayment or dishonor, protest and notice of protest of this Note, and, except as expressly required by the terms and provisions of the Note and other Loan Documents, all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, and they agree that the liability of each of them shall be unconditional, joint and several, without regard to the liability of any other party, and shall not be affected in any manner by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Payee. Maker and all endorsers, sureties and guarantors consent to any and all extensions of time, renewals, waivers or modifications that may be granted by Payee with respect to the payment or other provisions of this Note, and to the release of the collateral or any part thereof, with or without substitution, and agree that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to them or affecting their liability hereunder.

15. If any provision of this Note is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Note shall remain in full force and effect. In no event shall the rate of interest payable hereunder exceed the maximum rate of interest permitted to be charged by applicable law (including the choice of law rules) (hereinafter the "**Maximum Legal Rate**") and any interest paid in excess of the permitted rate shall be refunded to Maker or at the option of Maker used to reduce the principal of the outstanding indebtedness. Such refund shall be made by application of the excessive amount of interest paid against any sums outstanding and shall be applied in such order as Payee may determine. If the excessive amount of interest paid exceeds the sums outstanding, the portion exceeding the said sums outstanding shall be refunded in cash by Payee. Any such crediting or refund shall not cure or waive any default by Maker hereunder. Maker agrees, however, that in determining whether or not any interest payable under this Note exceeds the highest rate permitted by law, any nonprincipal payment, including, without limitation, prepayment fees and late charges, shall be deemed to the extent permitted by law, to be an expense, fee, premium or penalty rather than as interest.

16. In determining whether or not the interest paid or payable under any specific contingency exceeds the Maximum Legal Rate, Payee shall, to the maximum extent permitted under applicable law: (a) exclude voluntary prepayments and the effects thereof; and (b) amortize, prorate, allocate and spread, in equal parts, the total amount of interest throughout the entire contemplated term of this Note so that the interest rate is uniform throughout the entire term of this Note; provided, that if this Note is paid and performed in full prior to the end of the full contemplated term hereof, and if the interest received for the actual period of existence thereof exceeds the Maximum Legal Rate, Payee shall refund to Maker the amount of such excess, and in such event, no holder shall be subject to any penalties provided by any laws for contracting for, charging or receiving interest in excess of the Maximum Legal Rate.

17. Payee shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Payee, and then only to the extent specifically set forth in the writing. A waiver on one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

18. This is a non recourse Note. Maker shall not be liable on any possible deficiency if the value of the Property is less than the amount due under the Note provided that any other obligation owed by Bruce Prevost to Payee, including any judgment in favor of Payee or Palm Beach Finance Partners, L.P. or Palm Beach Finance II, L.P., shall not be impacted by the non-recourse nature of this Note.

19. This Note is governed by the laws of the State of Florida, without regard to the choice of law rules of that State. Maker consents to the non-exclusive jurisdiction and venue of the United States Bankruptcy Court for the Southern District of Florida over any action or proceeding arising out of or relating to this Note, the Mortgage, Loan Documents, and all claims in respect thereto, including any action to interpret and enforce the rights and obligations of the parties hereto.

20. Whenever used, the singular number shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders, and the words "**Payee**" and "**Maker**" shall be deemed to include the respective heirs, personal representatives, successors and assigns of Payee and Maker.

21. Time is of the essence in the performance of all obligations of the Maker under this Note.

22. This Note may not be amended or modified, nor shall any waiver of any provision hereof be effective, except by an instrument in writing executed by Maker and Payee.

23. This Note inures to and binds the heirs, legal representatives, successors and assigns of Maker and Payee; provided, however, that Maker may not assign this Note, or assign or delegate any of its rights or obligations, without the prior written consent of Payee in each instance. Payee in its sole and absolute discretion may, at any time, sell, transfer, or assign this Note.

MAKER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION PROCEEDINGS OR COUNTERCLAIMS ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS. FURTHER, MAKER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE PAYEE NOR THE MAKER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE PAYEE WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. THE MAKER ACKNOWLEDGES THAT THE PAYEE HAS BEEN INDUCED TO ENTER INTO THIS TRANSACTION BY, INTER ALIA, THE PROVISIONS OF THIS SECTION. MAKER AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE WAIVED.

Maker, intending to be legally bound hereby, has caused this Note to be executed as of the day and year first above written. This Note consists of seven (7) pages excluding any signature pages.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Maker has executed this Promissory Note as of the day and year first above written.

Bruce Prevost

Colleen Prevost

This instrument prepared by or under
the supervision of, and after recording, return to:

Sandra M. Ferrera, Esq.
Meland Russin & Budwick, P.A.
3000 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131

(Reserved for Clerk of Court)

MORTGAGE

THIS MORTGAGE, executed the ____ day of _____, 2011, by Bruce and Colleen Prevost, husband and wife, whose mailing address is 8292 Nashua Drive, Palm Beach Gardens, Florida ("**Mortgagor**"), to Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P., whose mailing address is c/o Michael S. Budwick, Esq., Meland Russin & Budwick, P.A. 200 S. Biscayne Boulevard, Suite 3000, Miami, Florida 33131 ("**Mortgagee**").

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Mortgagee, having executed and delivered to Mortgagee that certain Promissory Note (the "**Note**") of even date herewith, wherein Mortgagor promises to pay to Mortgagee the principal sum of FIVE HUNDRED THOUSAND AND 00/100 (\$500,000.00) DOLLARS, or so much thereof as shall have been advanced and remain outstanding (the "**Loan**"), in lawful money of the United States of America, with interest thereon at the rates and times and in the manner and according to the terms and conditions specified in the Note, as may thereafter have been amended.

NOW, THEREFORE, that Mortgagor, in consideration of the indebtedness and to secure the guaranty of payment to Mortgagee of the principal with interest, and all other sums provided for in the Note and in this Mortgage (which above-mentioned documents and all such other agreements and instruments evidencing and securing the Loan, being hereinafter collectively referred to herein as the "**Loan Documents**"), have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto Mortgagee that certain tract or parcel of land lying and being in the County of PALM BEACH and State of Florida, more particularly described as follows (hereinafter the "**Property**"):

**Lot 39, according to the unrecorded plat of HORSESHOE ACRES,
Palm Beach County, Florida, being more particularly described as
follows:**

**Commencing at the Southeast corner of Section 23, Township 42
South, Range 42 East, Palm Beach County, Florida; thence run North**

00 09' 46" East, along the East line of said Section 23, also being the Easterly right-of-way of Canal No. 3, a distance of 1426.58 feet; thence run due West, a distance of 100.00 feet to an intersection with the Westerly right-of-way line of Canal No. 3 and the Point of Beginning of the herein described parcel of land; thence continue due West, a distance of 462.46 feet to the intersection with the East right-of-way line of Nashua Drive; thence run due North along said East right-of-way line, a distance of 241.83 feet; thence run due East, a distance of 463.15 feet to the intersection with the Westerly right-of-way line of said Canal No. 3; thence run South 00 09' 46" West, along said Westerly right-of-way line, a distance of 241.83 feet to the POINT OF BEGINNING.

To have and hold the same together with the tenements, hereditaments, and appurtenances, unto the Mortgagee and their heirs and assigns, fee simple.

This is a SECOND MORTGAGE.

AND the Mortgagor, for themselves, their heirs, legal representatives, successors or assigns, do covenant with the Mortgagee, their heirs, legal representatives, successors or assigns that the Mortgagors have full power and lawful right to convey the Property in fee simple as aforesaid; that it shall be lawful of the Mortgagee, their heirs, legal representatives, successors or assigns, at all time peaceably and quietly to enter upon the Property; that the Property is free from all encumbrances and that the Mortgagor, their heirs, legal representatives, successors or assigns will make such further assurances to perfect the fee simple to the Property in the Mortgagee, their heirs, legal representatives, successors or assigns as may reasonably be required, and that the Mortgagor hereby fully warrants the title to the Property and will defend the Property against the lawful claims of all persons whomsoever.

And the Mortgagor, for themselves and their heirs, legal representatives and assigns, hereby covenant and agree:

1. To pay all and singular the principal and interest and other sums of money payable by virtue of the Note and this Mortgage, or either, promptly on the days respectively the same severally become due.
2. To pay all real estate taxes and assessments and charges of every kind upon the Property before the same become delinquent.
3. To pay all and singular the costs, charges and expenses, including lawyer's fees, reasonably incurred or paid at any time by said Mortgagee, their heirs, legal representatives or assigns, because of the failure on the part of the said Mortgagor, their heirs, legal representatives or assigns to perform, comply with and abide by each and every of the stipulations, agreements, conditions and covenants of the Note and this

Mortgage, or either, and such payment shall bear interest from date at the maximum rate of interest set forth in the Note.

4. To keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including windstorms, floods or flooding, for which Mortgagee requires insurance. Additionally, Mortgagor shall keep and maintain contents and liability insurance for casualty or damage occurring within the Property in an amount not less than the full insurable value of the improvements, in a company or companies to be reasonably approved by said Mortgagee, and the policy or policies held by and payable to said Mortgagee, their heirs, legal representatives or assigns. In the event any sum of money becomes payable under such policy or policies, the Mortgagee, their heirs, legal representatives or assigns and the Mortgagor agree (1) to receive and use the policy proceeds to repair any and damages to the property provided that mortgagee, in the event he believes that he is not adequately protected with respect to the Property, may seek an order from the Bankruptcy Court for the Southern District of Florida ordering that such policy proceeds be applied to the indebtedness and provided further that the use of such policy proceeds does not constitute a waiver or impairment of any equity, lien or right under or by virtue of this Mortgage and (2) that Mortgagee may place and pay for such insurance or any part thereof without waiving or affecting the option to foreclose or any right hereunder, and each and every such payment shall bear interest from date at the maximum rate of interest set forth in the Note. If Mortgagor fails to maintain coverages described above, Mortgagee may, at Mortgagee's option, obtain coverage to protect Mortgagee's rights in the Property and any amounts disbursed by Mortgagee as a result of same shall become additional debt of Mortgagor secured by this Mortgage and shall bear interest from the date of disbursement at the maximum rate of interest set forth in the Note.

5. Other than common ordinary wear and tear, to permit, commit or suffer no waste, impairment or deterioration of the Property, or any part thereof, and to keep the same and improvements thereon in good condition and repair. To make no additions, alterations or improvements except by a licensed contractor pursuant to all required building permits issued by the appropriate governmental authorities. If this Mortgage is on a unit in a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

6. To perform, comply with, and abide by each and every of the stipulations, agreements, conditions and covenants in the Note, and in this Mortgage set forth.

7. It is understood and agreed by Mortgagor that as part of the inducement to Mortgagee to make the loan evidenced by the Note, Mortgagee has considered and relied on the reliability of Mortgagor. Mortgagor covenants and agrees not to sell, convey, transfer or encumber (including but not limited to, wraparound Mortgages) any interest in or any part of the real property described herein without the prior written consent of the

Mortgagee, and any such sale, conveyance, transfer or encumbrance made without the prior written consent of the Mortgagee shall result in the automatic acceleration of all indebtedness due and owing under the Note, and same shall be then deemed immediately due and payable together with any prepayment penalty. If any person shall obtain an interest in all or any part of the Property described herein pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event (absent the express approval of Mortgagee) shall be deemed to be a transfer by Mortgagor and shall result in the automatic acceleration of all indebtedness due and owing under the Note, and same shall be then deemed immediately due and payable. Nothing in this paragraph shall be interpreted to prohibit Mortgagor and/or Bruce Prevost from selling, conveying or transferring any interest in any part of the real property to Colleen Prevost.

8. Mortgagee may make or cause to be made reasonable entries upon and inspections of the Property, provided that Mortgagee shall give Mortgagor notice prior to any such inspection specifying reasonable cause therefor related to Mortgagee's interest in the Property.

9. If any of said sums of money herein referred to be not promptly and fully paid when due and payable, or if each and every of the stipulations, agreements, conditions and covenants of the Note and this Mortgage, or either, are not fully performed, complied with and abided by, then all obligations under the Note and under this Mortgage, including, but not limited to sums advanced by the Mortgagee to protect their security or lien position on the Property or any of their rights under this Mortgage, shall immediately and without further notice to Mortgagor become due and payable and bear interest at the maximum rate of interest set forth in the Note.

10. Mortgagor agrees that it shall not make any major changes to the Property until this Mortgage is satisfied.

11. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Mortgagee's rights in the Property (such as a proceeding in bankruptcy, probate, or condemnation or forfeiture or to enforce laws or regulations), then Mortgagee may do and pay for whatever is necessary for to protect the value of the Property. Mortgagee's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys fees and entering on the Property to make repairs. Although Mortgagee may take action under this Paragraph, Mortgagee does not have to do so. Any amounts disbursed by Mortgagee under this Paragraph shall become additional debt of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the maximum rate of interest set forth in the Note and shall be payable, with interest, upon notice from Mortgagee to Mortgagor requesting payment.

12. [INTENTIONALLY OMITTED].

13. Mortgagee can only look to the real property for payment of the sums due under the Promissory Note and Mortgage.

14. Anything herein to the contrary notwithstanding, the Mortgagor and the Mortgagee agree that the Mortgagee does not at any time intend to charge nor does the Mortgagor have any obligation to pay interest at a rate which shall exceed the limits specified under the laws under the State of Florida applicable to this Mortgage and Note evidencing the indebtedness. If any interpretation of the provisions of this Mortgage would require the Mortgagor to pay interest or other fees or sums which have paid in the opinion of the Mortgagee or their counsel, would constitute a violation of the above mentioned intention of the parties, then that Mortgagee shall advise the Mortgagor in writing as to what reduced amount of interest or other charges or fees shall be paid and thereupon this Mortgage shall be deemed to be interpreted and intended to read as set forth in said writing as a true intention of the parties. Any interest previously paid which would be construed under Florida law as usurious interest shall be deemed to have been a payment against principal as of the time of payment.

15. That no waiver of any agreement, covenant, condition, representation, or warranty under this Mortgage or the Note shall at any time hereafter be held to be a waiver of any of the other terms thereof or a continuing waiver thereof. Time is of the essence under all terms and conditions of the Mortgage and Note.

16. Each provision of this Mortgage is intended to be severable and the invalidity or illegality of any portion of this Mortgage shall not affect the validity or legality of the remainder thereof. Any ambiguities contained in this Mortgage shall not be construed against the preparers of this document.

17. This Mortgage secures such future or additional advances (in addition to the principal amount of the Note) as may be made by Mortgagee or the holder hereof at its exclusive option, to Mortgagor or their successors or assigns in title, for any purpose, provided that all such advances are made within 15 years from the date of this Mortgage or within such lesser period of time as may be provided by law as a prerequisite for the sufficiency of actual notice or record notice of such optional, future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration to the same extent as if such future or additional advances are made on the date of the execution of this Mortgage. The total amount of indebtedness secured by this Mortgage may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed an amount equal to two (2) times the original principal sum of the Note secured hereby, plus interest thereon and any disbursements made under this Mortgage for the payment of taxes, insurance or otherwise, with interest on such disbursements. It is agreed that any additional sum or sums advanced by Mortgagee shall be equally secured with, and have the same priority as, the original principal indebtedness payable under the Note and shall be subject to all of the terms, provisions, and conditions of this Mortgage, whether or not such additional loans or advances are evidenced by other promissory Note of Mortgagor and whether or not identified by a recital that it or they are secured by this Mortgage and provided further

that it is understood and agreed that this future advance provision shall not be construed to obligate the Mortgagee to make any such additional loans or advances. This Mortgage cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

18. This Mortgage constitutes a Security Agreement as that term is used in the Uniform Commercial Code. Mortgagor, as debtor, hereby grants to Mortgagee, as secured party, a security interest in, and lien on, the following property (collectively, the "Secured Property"): (a) All insurance policies required to be maintained by Mortgagor hereunder, together with all general intangibles, contract rights and accounts arising therefrom; (b) All leases and rents and all proceeds of any judgment, award or settlement in any condemnation or eminent domain proceeding, together with all general intangibles, contract rights and accounts arising therefrom; (c) All of the Equipment which constitutes personal property and all other personal property described in the granting clauses hereof; and (d) All of Mortgagor's right, title and interest in and to all licenses, permits, certificates, and authorizations, currently in effect with respect to the Property; (e) Any and all renewals or replacements of or additions and substitutions to any of the above-mentioned items; and (f) All proceeds of the above-mentioned items.

19. The Mortgagor's failure to pay any property taxes or future taxes that may accrue with respect to the Property prior to the maturity of the Note shall constitute an event of default. If Mortgagor fails to pay such tax, assessment or charge when due, prior to a tax certificate being issued against the Property, Mortgagee may (but shall not be required to), at its election pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by Mortgagee shall be deemed to constitute disbursements of the Loan proceeds hereunder (even if the total amount of disbursements would exceed the face amount of the Note). Mortgagor shall, unless Mortgagee has paid such taxes directly on Mortgagor's behalf, furnish to Mortgagee evidence that taxes are paid within five calendar days of making payment of such taxes.

20. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, OR THE NOTE OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE ACCEPTING THIS MORTGAGE.

[Signatures Continued on Next Page]

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$500,000.00, OR, IN THE EVENT MORTGAGOR EXERCISES THE EXTENSION OPTION (AS DEFINED IN THE NOTE), THE RESTATED PRINCIPAL BALANCE (AS DEFINED IN THE NOTE), TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

IN WITNESS WHEREOF, the Mortgagor has hereunto set their hand and seal the day and year first above written.

Signed, sealed, read and
delivered in the presence of:

Print Witness Name: _____

Bruce Prevost

Print Witness Name: _____

Colleen Prevost

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH)

The foregoing instrument was sworn to, subscribed and acknowledged before me this _____ day of _____, 2011, by Bruce Prevost and Colleen Prevost, husband and wife, who are personally known to me and did (did not) take an oath.

Print Name:
Notary Public, State of Florida at Large
My commission expires:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

PALM BEACH FINANCE PARTNERS,
L.P., a Delaware limited partnership, et al.,

Chapter 11

Debtors,

CASE NO. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER GRANTING MOTION FOR ENTRY OF
BAR ORDER IN FAVOR OF THE PREVOST PARTIES**

THIS MATTER came before the Court on [DATE] at [TIME], upon the *Liquidating Trustee's Motion to Approve Settlement with Bruce and Colleen Prevost* (the "**Motion**") [D.E. ____].¹ The Court reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises. Accordingly, the Court finds as follows:

In its Motion, the Liquidating Trustee, on behalf of the Debtors, seeks entry of an order barring certain claims against the Prevost Parties as described in detail below (the "**Bar Order**").

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

The Court has noted that notice of the Motion and the request for a Bar Order was given to those potentially interested parties identified on the service list referenced in D.E. _____. The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).
3. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.
4. The Court has been apprised of the negotiations that preceded the Agreement and finds that the Motion and request for Bar Order is a result of arms'-length bargaining among the parties. There is no evidence that the settlement reached by the Trustee with the Prevosts is the result of collusion among the parties or that there has been any intent to prejudice the persons or entities that will be subject to the Settlement Order.
5. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the Proposed Settlement and that good cause therefore exists for the entry of this Order, and is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 7 below:

"Releasors" shall mean (1) any creditors of either of the Debtors; (2) any limited partners of either of the Debtors and (3) any parties identified on Exhibit F attached to the Stipulation.

"Prevost Parties" shall mean Bruce and Colleen Prevost and their children;

"Barred Claims" shall mean any and all direct, indirect and/or derivative Claims, whether known or unknown, by any and all Releasors against the Prevost Parties that relate in any manner whatsoever to the Debtors.

6. Except as expressly provided below, Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against the Prevost Parties, any and all liabilities, judgments, rights, claims, cross-claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that any Releasor now has, ever had or may claim to have in the future that is a Barred Claim; provided that nothing in this Order shall (i) enjoin, impair or delay the Securities and Exchange Commission ("**SEC**") from commencing or continuing any claims, causes of action, proceedings or investigations against any person or entity, including the Prevost Parties, or (ii) release or discharge any person or entity, including the Prevost Parties, from any claims, rights, powers or interests held or assertable by the SEC.

7. The Court retains jurisdiction to enforce or interpret this Order.

###

Submitted By:

MICHAEL S. BUDWICK
Fla. Bar No. 938777
mbudwick@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3000 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363

{Firm Clients/4189/4189-9L/00838448.DOC.}

Telecopy: (305) 358-1221
Attorneys for the Committee

Copies to:

Michael S. Budwick, Esq.

(Attorney Budwick is directed to mail a conformed copy of this Order upon all interested parties and to file a certificate of service.)

Christopher J Topolewski,
West Capital Management
c/o Simon B. Paris
1 Liberty Pl 52 FL – 1650 Market St
Philadelphia, PA 19103

West Capital Management
1818 Market St, #3323
Philadelphia, PA 19103

Albert Liguori
16590 Crownsbury Way, #201
Ft. Myers, FL 33908

Alice Pugliese
2741 Village Blvd, #403
West Palm Beach, FL 33409

Alton Opitz
2647 Sailors Way
Naples, FL 34109

Amy Davenport
PO Box 3511
Midland, TX 79702

Robert Davenport
3 Greenwich Dr
Midland, TX 79705

Robert Davenport, Jr.
104 S. Pecos Street
Midland, TX 79701

ARIS Capital Management
152 W 57 St, 19th Fl
New York, NY 10019

ARIS Multi-Strategy Fund, LP
Aris Capital Management
152 W 57 St 19 Fl
New York, NY 10019

Armadillo Fund
40 Random Farms Cir
Chappaqua, NY 10514

Barbara Bluhm
189 E Lake Shore Dr
Chicago, IL 60611

BTA Oil Producers
104 S Pecos St
Midland, TX 79701

Lynda Beal
104 S Pecos St
Midland, TX 79701

Nancy Beal
104 S Pecos St
Midland, TX 79701

Spencer Beal
104 S Pecos St
Midland, TX 79701

Barry Beal
104 S Pecos St
Midland, TX 79701

Keleen Beal
104 S Pecos St
Midland, TX 79701

Kelly Beal
104 S Pecos St
Midland, TX 79701

BayRoc Associates
c/o JamiScott
15 W 53rd St. #24-B
New York, NY 10019

JamiScott LLC
15 W 53rd St #24-B
New York, NY 10019

Leslie Schneider
c/o JamiScott
15 W 53rd St., #24-B
New York, NY 10019

Scott Schneider
c/o JamiScott
15 W 53rd St, #24-B
New York, NY 10019

Claridge Associates, LLC
c/o JamiScott, LLC
15 W 53rd St, #24
New York, NY 10019

Leonard & Lillian Schneider
c/o JamiScott LLC
15 West 53rd St #24-B
New York NY 10019

Beacon Partners, Ltd
3030 McKinney Ave, #305
Dallas, TX 75204

Blackpool Partners, LP
701 Harger Rd, #190
Oak Brook, IL 60523

Blackpool Absolute Return Fund, LLC
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

Calhoun Asset Management, LLC
8770 W Bryn Mawr Ave, #1300
Chicago, IL 60631

Centermark Asset Management
21320 Baltic Dr
Cornelius, NC 28031

Claude Lestage
4893 N Kay
Palm Beach Gardens, FL 33418

Attn: Andrew N. Friedman, Esq.
Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005

MIO Partners Inc.
55 E 52 St, 29th Fl
New York, NY 10055

MIO Partners Inc
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

McKinsey Master Retirement Trust
c/o Robin Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Special Situations Investment Fund, L.P. c/o
Robin Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Deer Island, LP
4 Nason Hill Lane
Sherborn, MA 01770

Dennis Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410

Douglas A. Kelley, Chapter 11 Trustee
Attn: James A. Rubenstein, Esq.
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Douglas A. Kelley, Chapter 11 Trustee
Attn: Terrence J. Fleming, Esq.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Father's Heart Family Foundation Inc.
8292 Nashua Dr
Palm Beach Garden, FL 33418

Frank Carruth
5407 S Flagler Dr
West Palm Beach, FL 33405

Freestone Entities
c/o Mr. Justin Young
1918 Eighth Avenue, Suite 3400
Seattle, WA 98101

Fulbright & Jaworski
2100 IDS Center
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

PALM BEACH FINANCE PARTNERS,
L.P., a Delaware limited partnership, et al.,

Chapter 11

Debtors,

CASE NO. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER GRANTING THE LIQUIDATING TRUSTEE'S MOTION TO APPROVE
SETTLEMENT WITH BRUCE AND COLLEEN PREVOST**

THIS MATTER came before the Court on _____, upon the *Liquidating Trustee's Motion to Approve Settlement with Bruce and Colleen Prevost* (the "**Motion**") [D.E. ____].¹ The Court reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises. Accordingly, the Court finds as follows:

In its Motion, the Liquidating Trustee, on behalf of the Debtors, seeks entry of an order barring certain claims against the Prevosts as described in detail below (the "**Bar Order**").

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

The Court has noted that notice of the Motion and the request for a Bar Order was given to those potentially interested parties identified on the service list referenced in _____. The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is

ORDERED as follows:

1. The Motion is **GRANTED**. The Settlement is approved.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).
3. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.
4. The Court has been apprised of the negotiations that preceded the Agreement and finds that the Motion and request for Bar Order is a result of arms' length bargaining among the parties. There is no evidence that the settlement reached by the Trustee with the Prevosts is the result of collusion among the parties or that there has been any intent to prejudice the persons or entities that will be subject to this Order.
5. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the Proposed Settlement and that good cause therefore exists for the entry of this Order, and is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).
6. The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 7 below:

“**Releasors**” shall mean (1) any creditors of either of the Debtors; (2) any limited partners of either of the Debtors and (3) any parties identified on Exhibit F attached to the Stipulation.

“Prevost Parties” shall mean Bruce and Colleen Prevost and their children.

“Claim” or ***“Claims”*** shall have the meaning ascribed to such term as set forth in 11 U.S.C. § 101.

“Barred Claim” or ***“Barred Claims”*** shall mean any and all direct, indirect and/or derivative Claims, whether known or unknown, by any and all Releasors against the Prevost Parties that relate in any manner whatsoever to the Debtors.

7. Except as expressly provided below, Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against the Prevost Parties, any and all liabilities, judgments, rights, claims, cross-claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that any Releasor now has, ever had or may claim to have in the future that is a Barred Claim; provided that nothing in this Order shall (i) enjoin, impair or delay the Securities and Exchange Commission (***“SEC”***) from commencing or continuing any claims, causes of action, proceedings or investigations against any person or entity, including the Prevost Parties, or (ii) release or discharge any person or entity, including the Prevost Parties, from any claims, rights, powers or interests held or assertable by the SEC.

8. The Court retains jurisdiction to enforce or interpret this Order.

9. The Contingency Fee is approved and shall be paid without the need of further Court Order. The Contingency Fee, subject to the Pro Rata Allocation Formula, shall be paid in the following manner:

- a. Upon receipt of the cash consideration to be paid by the Prevosts, 10% of the amount received by each of the Debtors;
- b. Upon the Debtors’ receipt of any of the Prevosts’ tax refund for 2009, 10% of the amount received by each of the Debtors;

- c. Upon the Debtors' receipt of any funds from the sale of the vessel, 10% of the net amount received by each of the Debtors;
- d. Upon the Prevosts' paying the Note securing the mortgage on their personal residence, 10% of the amount received by each of the Debtors; and
- e. In the event Liquidating Trustee elects to take possession, for the benefit of the Debtors, any entity then held by the Prevosts and later sells such entity, 10% of any gross sales price received by each of the Debtors.

###

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(Attorney Budwick is directed to mail a conformed copy of this Order upon all interested parties and to file a certificate of service.)

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