



**ORDERED in the Southern District of Florida on September 6, 2017.**

A handwritten signature in black ink, appearing to read "Robert A. Mark", written over a horizontal line.

Robert A. Mark, Judge  
United States Bankruptcy Court

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

In re: Case No. 16-12988-BKC-RAM  
SEAN MCGREGOR COUTTS, Chapter 11  
Debtor.

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**ORDER CONFIRMING FIRST AMENDED PLAN OF REORGANIZATION OF SEAN MCGREGOR COUTTS AND SETTING BAR DATE FOR LEASE AND EXECUTORY CONTRACT REJECTION CLAIMS AND ADMINISTRATIVE CLAIMS**

THIS MATTER came before the Court on August 24, 2017 at 2:00 p.m. (the "Hearing") upon the First Amended Plan of Reorganization of Sean McGregor Coutts (the "Plan") [ECF No. 213], proposed by Sean McGregor Coutts (the "Debtor" or "Proponent").

In connection with the confirmation of the Plan, the Court has reviewed and considered the: (i) Certificate of Proponent of Plan on Acceptance of Plan, Report on Amount to Be Deposited, Certificate of Amount Deposited and Payment of Fees (the "Ballot Certificate") [ECF No. 265]; (ii) Confirmation Affidavit of Sean McGregor Coutts (the "Confirmation Affidavit") [ECF No. 266]; and (iii) Individual Debtor Certificate for Confirmation Regarding Payment of Domestic Support Obligations and Filing of Required Tax Returns [ECF No. 267]. The Court has also reviewed and considered the entire record in this Chapter 11 Case, including the Proponent's

First Amended Disclosure Statement (the “Disclosure Statement”) [ECF No. 214] and the Plan, as well as proffers made by the Debtor’s counsel at the Hearing.

**I. FINDINGS OF FACT/CONCLUSIONS OF LAW**

Based upon the above and in consideration of the record in this case, the Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(a):<sup>1</sup>

A. The Disclosure Statement and Plan were properly served upon all creditors and parties in interest pursuant to the Bankruptcy Rules and the Court’s Order (I) Approving Disclosure Statement; (II) Setting Hearing on Confirmation of Plan; (III) Setting Hearing on Fee Applications; (IV) Setting Various Deadlines; and (V) Describing Plan Proponent’s Obligations (the “Disclosure Statement Order”) [ECF No. 222]. There was also adequate and sufficient notice of the deadline to file and serve objections to the confirmation of the Plan, the deadline for voting on the Plan, and the hearing date on the Confirmation of the Plan.

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

C. The Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 105, 1121 through 1129 and 1141; 28 U.S.C. §§ 157(a), (b)(1), and (b)(2)(L), 1334(a) and (b), the United States District Court’s general order of reference, and other various applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

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

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

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<sup>1</sup> Where appropriate, findings of fact shall constitute conclusions of law and conclusions of law shall constitute findings of fact. See *In re American Family Enterprises*, 256 B.R. 377, 385 n.2 (Bankr. D. N.J. 2000); *In re Antar*, 122 B.R. 788, 789 (Bankr. S.D. Fla. 1990).

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

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

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

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

J. With respect to each impaired class of claims or interests, each holder of a claim or interest has accepted the Plan, or will receive or retain under the Plan on account of such claim or interest property of a value, as of the Effective Date<sup>2</sup> of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on such date. Therefore, the Plan satisfies 11 U.S.C. § 1126(c).

K. The Ballot Certificate correctly sets forth the tabulation of votes, as required by the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of the Bankruptcy Court for the Southern District of Florida.

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

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

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

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<sup>2</sup> All capitalized terms shall have the meaning ascribed to them under the Plan unless otherwise noted

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

P. At least one class of claims impaired under the Plan has accepted the Plan, not including acceptance of the Plan by any insiders.

Q. All fees payable under 28 U.S.C. § 1930 have been paid and the Plan provides for the payment of all such fees.

R. The Debtor is not the provider of any retirement plan, and the Debtor therefore has no obligation to provide such benefits.

S. The Plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under and has not accepted the Plan, and otherwise complies with all the provisions of 11 U.S.C. § 1129(b) with respect to each class of claims or interests that are impaired under the Plan; Creditors holding unsecured claims will receive more on account of their Claims under the Plan than they would receive in a Chapter 7 liquidation.

T. The Plan and Disclosure Statement were accompanied by projections that support the financial viability of the Reorganized Debtor and, therefore, the Plan and Disclosure Statement satisfy 11 U.S.C. § 1129(a)(11).

U. The Debtor has solicited acceptance of the Plan in good faith and in compliance with the applicable provisions of Chapter 11.

**THEREFORE, BASED UPON THE FOREGOING FINDINGS, IT IS ORDERED AS FOLLOWS:**

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

2. The findings of fact and conclusions of law set forth above shall constitute the findings of fact and conclusions of law of this Court pursuant to Fed. R. Bankr. P. 7052. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

3. All of the terms and provisions of the Disclosure Statement and Plan are approved, as modified herein.

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

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

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

7. The Reorganized Debtor shall continue to operate his various business interests, if any, in the ordinary course.

8. The Reorganized Debtor shall be entitled to retain and compensate professionals to assist him in carrying out his obligations as Reorganized Debtor without necessity of further approval of this Court. The Debtor is named as Disbursing Agent and shall make all payments to creditors as required by the Plan.

9. Any judgment obtained in any court other than this Court is null and void as a determination of the personal liability of the Debtor with respect to debts dischargeable or determined by this Court to be discharged under 11 U.S.C. § 1141.

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

11. The Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), through Confirmation, within fourteen (14) business days of entry of this Confirmation Order. The Reorganized Debtor shall file with the Court post-confirmation Quarterly Operating Reports and pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements, until the earlier of the closing of this case by the issuance of a Final Decree by the Bankruptcy Court or pursuant to the early case closing procedures set forth in paragraph 22 below, or upon the entry of an Order by the Bankruptcy Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code.

12. The Reorganized Debtor shall pay all allowed claims at such time and in such amounts as provided for in the Plan, or as otherwise provided by this Order.

13. The failure to reference or address all or part of any particular provision of the Plan herein shall have no effect on the validity, binding effect, or enforceability of such provision, and such provision shall have the same validity, binding effect, and enforceability as every other provision of the Plan. To the extent that any inconsistencies exist between the terms of the Plan and this Confirmation Order, the terms of this Confirmation Order shall control, except as otherwise provided herein.

14. Notwithstanding any of the terms set forth herein or in the Plan, the Plan shall be amended as follows, with respect to Class 6B, the Secured Claim of MTGLQ Investors, L.P. (“MTGLQ Investors”), relating to the real property located at 220 Farmington St SW, Palm Bay, FL 32908 (the “220 Property”):

i. MTGLQ Investors is entitled to an allowed secured claim against the 220 Property in the amount of \$8,750.00, specifically with regard to its Second Mortgage.

ii. MTGLQ Investors’ allowed secured claim will be paid at the fixed rate of 0% over 140 months, which will result in equal monthly payments of \$62.50, beginning on the first day of the month following the Effective Date of the Debtor’s Plan, and continuing on the first day of every month thereafter. Taxes and insurance shall not be escrowed and shall be the responsibility of the Debtor.

iii. In the event of default, post-confirmation of the Debtor’s Plan, MTGLQ Investors shall have *in rem* relief to exercise its default *in rem* remedies, without further order from this Court.

iv. MTGLQ Investors shall be entitled to an allowed general unsecured claim in the amount set forth in the Debtor’s Plan, regardless of the classification in any proof of claim that has been filed.

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

the Plan, and all documents, instruments, and agreements related thereto, or any amendments or modifications thereto.

16. Pursuant to 11 U.S.C. § 1127(e), upon the request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to: (1) increase or reduce the amount of payments under the Plan on claims of a particular class; (2) extend or reduce the time period for such payments; or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan. The rights of the above-referenced parties to seek a modification of the Plan post-confirmation are expressly reserved.

17. The Debtor has complied with all of the provisions of the U.S. Bankruptcy Code and the Federal Bankruptcy Rules concerning notice, disclosure, and solicitation in connection with the Plan, and the Disclosure Statement, and all other matters considered by this Court in connection with this Chapter 11 case. The Debtor properly served the Disclosure Statement Order and gave proper notice of the Confirmation Hearing in accordance with Fed. R. Bankr. P. 2002, 3017(d), and 3020(b)(2). The notice and the opportunity given for a hearing before the Court on the approval of the Disclosure Statement and the confirmation of the Plan were adequate and satisfactory under the circumstances of this case.

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



19. **Furthermore, pursuant to the Plan, the deadline for any creditor to file an administrative claim in this proceeding shall be fifteen (15) days from the date of this Order.**

20. The Debtor is authorized to execute any and all documents reasonably required to effectuate the provisions of the Plan or prior Orders of this Court.

21. Pursuant to 11 U.S.C. § 1141(d)(5)(A), the Debtor shall be discharged from all pre-Confirmation debts except as is provided in the Plan, pursuant to the procedures set forth herein, upon completion of all payments required under the Plan to Class 1A, 1C, 2D, 4F, 5D, 6C and 8 creditors. Upon the satisfaction of all payments required under the Plan to the creditors referenced above in this paragraph, the Reorganized Debtor shall file a Final Report of Estate and Motion for Final Decree Closing Case on the Court approved local form.

22. Notwithstanding the above, the Debtor may request that the Court close this bankruptcy proceeding prior to the entry of an Order of Discharge, pursuant to the following procedures:

a. The Debtor may file a Motion to Temporarily Close Bankruptcy Case Prior to Entry of Order of Discharge (the "Motion to Close") after the following events have occurred: (i) payment of the initial payment(s) to creditors pursuant to the Plan; (ii) payment of all outstanding quarterly United States Trustee Fees associated with the initial payment (as well as any other disbursements as of the date of the Motion to Close); (iii) filing of all required Post-Confirmation Quarterly Operating Reports; and (iv) the filing of all outstanding federal income tax returns. The Motion to Close shall certify that each of the above conditions has been met.

b. The Motion to Close (and Notice of Hearing thereto) shall be served to all creditors and interested parties. The Court may grant the Motion to Close, pursuant to 11 U.S.C. § 350(a), if each of the above conditions have been met.

c. During the time that this bankruptcy case is temporarily closed, the provisions of this Order (the "Confirmation Order") shall remain in effect with respect to the treatment of

creditor claims that existed as of the bankruptcy petition date, that being March 1, 2016, as long as the Debtor continues to be in compliance with the Plan and the Confirmation Order, and as long as the Debtor timely makes all of the payments contemplated under the Plan, pursuant to and subject to the provisions set forth in the Plan.

d. Upon the satisfaction of all payments required under the Plan to Class 1A, 1C, 2D, 4F, 5D, 6C and 8 creditors (only), the Debtor may file a motion to reopen this bankruptcy proceeding, pursuant to 11 U.S.C. § 350(b). If and when the Debtor chooses to file such a motion, any Clerk of Court fees associated with filing of the motion to reopen shall be waived. The motion to reopen shall be served upon all creditors and parties in interest and shall demonstrate that the Debtor has made all of the payments contemplated under the Plan to Class 1A, 1C, 2D, 4F, 5D, 6C and 8 creditors.

e. Upon the re-opening of this bankruptcy proceeding, the Debtor shall promptly file a Final Report of Estate and Motion for Final Decree Closing Case on the Court-approved local form in effect at that time, which shall certify that all payments required under the Plan to Class 1A, 1C, 2D, 4F, 5D, 6C and 8 creditors have been made. The Court may then grant the Debtor a discharge, pursuant to 11 U.S.C. § 1141(d)(5), if all other conditions are satisfied.

23. The Bankruptcy Court shall retain jurisdiction:

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

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

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

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

- e. To determine the validity, extent and priority of all liens, if any, against property of the estate;
- f. To determine all assertions or an ownership interest in, the value of, or title to, any property of the estate;
- g. To determine all objections to Administrative Claims;
- h. To determine all (1) adversary proceedings, contested or litigation matters brought before the Bankruptcy Court; and, (2) any and all claims or Causes of Action asserted by the Debtor, either by and through the Debtor or Reorganized Debtor;
- i. Without limiting the generality of the preceding paragraph, to determine any Avoidance Action brought by the Debtor;
- j. To determine all controversies arising out of any purchase, sale, modification, or contract made or undertaken by the Debtor prior to the Confirmation Date;
- k. To enforce all agreements assumed, if any, and to recover all property of the estate, wherever located;
- l. To determine any tax liability of the estate in connection with the Plan, actions taken, distributions or transfers made thereunder;
- m. To enforce any and all injunctions created pursuant to the terms of the Plan;
- n. To modify the Plan or to remedy any defect or omission or reconcile any inconsistencies in the Plan either before or after the entry of the Confirmation Order;
- o. To hear and determine all controversies, suits, and disputes that may arise in connection with the interpretation or enforcement of the Plan;
- p. To enter a Final Decree; and
- q. To make such orders as are necessary or appropriate to carry out the provisions of the Plan.

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**Submitted by:**

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**Copies furnished to:**

Zach B. Shelomith, Esq.

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