



ENTERED
11/02/2015

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

In re:	§	
	§	Case No. 14-70427
AZIZ CONVENIENCE STORES, L.L.C.,	§	
	§	Chapter 11
Debtor.	§	

**ORDER CONFIRMING DEBTOR’S PLAN OF REORGANIZATION AND
GRANTING FINAL APPROVAL OF RELATED DISCLOSURE STATEMENT**
(Relates to Doc. # 366)

CAME ON FOR CONSIDERATION the Plan of Reorganization and Related Disclosure Statement [Doc. #366] (the “Plan”) of Aziz Convenience Stores, L.L.C. (“Debtor”) debtor in the above-referenced chapter 11 case. The Debtor, by and through its counsel of record, appeared and participated at the hearing on the Plan (the “Hearing”). At the Hearing, the Court considered the Plan, the evidence presented, and the arguments of counsel thereon.

After considering the evidence presented, the Court is of the opinion and finds:

JURISDICTION

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a “core proceedings” pursuant to, without limitation, 28 U.S.C. § 157(b)(2)(A), (L) and (O), and this Court has jurisdiction to enter a Final Order confirming the Plan.

ADEQUATE NOTICE

2. The Debtor’s Plan, the ballots and the Order (I) Conditionally Approving Disclosure Statement; and (II) Setting Date for Consolidated Hearing on (A) Final Approval of Disclosure Statement, and (B) Confirmation of Plan [Doc. #375] were mailed to all creditors,

equity holders and parties in interest by United States first class mail, postage prepaid, on September 30, 2015.

CONFIRMATION STANDARDS

3. The Plan complies with the applicable provisions of the Bankruptcy Code.
4. The Debtor, as the proponent of the Plan, has complied with the applicable provisions of the Bankruptcy Code.
5. The Plan has been proposed in good faith and not by any means forbidden by law.
6. Any payment made or promised by the Debtor or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with the case, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.
7. The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as director, officer, or Plan Agent of the Reorganized Debtor and the nature of any compensation for such insiders. The appointment to, or continuance in, such office of such individuals, is consistent with the interests of creditors and equity security holders and with public policy.
8. The requirement for confirmation imposed by 11 U.S.C. § 1129(a)(6) is inapplicable to the Plan.
9. With respect to each class of impaired claims, either each holder of a claim or interest of such class has accepted the Plan, or will receive or retain under the Plan on account of such claim or interest property of a value, as of the Effective Date of the Plan, that is not less

than the amount that such holder would so receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Bankruptcy Code.

10. Pursuant to the Ballot Summary filed by the Debtor each class of claims or interests has accepted the Plan.

11. The Plan provides that each holder of an administrative expense claim allowed under § 503 of the Bankruptcy Code will be paid in full on the Effective Date of the Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor. Allowed Administrative Expense Claims will be paid on the later of the Effective Date or the date such claim becomes an Allowed Administrative Claim by Final Order, except that:

(i) All holders of Administrative Expense Claims other than Professionals shall file an application for the allowance of an Administrative Expense Claim with the Bankruptcy Court on or before fifteen (15) days following the Effective Date. Holders of Administrative Expense Claims, including such Persons asserting a Claim under § 503(b)(9) of the Bankruptcy Code, who do not file a request by such deadline shall be forever barred from asserting such Claims against the Debtor, the Reorganized Debtor or its property and assets (whether cash or otherwise).

(ii) In addition to all of the foregoing, a request for payment made by an entity seeking an award of compensation for services rendered or reimbursement of expenses incurred under 11 U.S.C. §§ 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) shall be in the form of an application and shall comply with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules governing applications for compensation and reimbursement.

(iii) Administrative Claims filed on a Proof of Claim Form will not constitute a properly filed request for payment of an Administrative Claim and shall be deemed disallowed upon the Effective Date of the Plan without prejudice to such party submitting an application in accordance with this paragraph. An Administrative Claim that is not evidenced by a request for payment that is properly and timely filed and served shall be forever barred and discharged.

(iv) Except as provided herein, all Professionals shall file a final application for the allowance of a Fee Claim on or before sixty (60) days following the Effective Date. Such applications and objections thereto (if any) shall be filed in accordance with and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules, applicable local rules, and the Fee Procedures Order.

(v) Each holder of an Allowed Priority Tax Claim shall be paid in full, in Cash, as soon as practicable following the later of (a) the Effective Date, (b) the date on which such Claim becomes an Allowed Claim, and (c) such other date as agreed by such holder and the Plan Agent.

12. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan.

13. The Plan is feasible. The Plan is workable and has a reasonable likelihood of success.

14. All fees payable under 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing have been paid or the Plan provides for the payment of all such fees on or immediately after the Effective Date of the Plan.

15. 11 U.S.C. § 1129(a)(13), (14) & (15) are inapplicable to the Debtor.

16. All transfers of property of the Plan will be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation.

GENERAL FINDINGS

17. The Plan complies with the standards of 11 U.S.C. §§ 1122, 1123, and 1129.

18. The Plan should in all things be confirmed.

19. The foregoing findings and conclusions satisfy the requirements of Federal Rule of Bankruptcy Procedure 7052. All offers of proof and discussions for the record at the Hearing shall constitute additional findings and conclusions with respect to this Order.

Accordingly, it is ORDERED THAT:

DISCLOSURE STATEMENT

20. The Debtor's Disclosure Statement, which is contained within the Plan, contains adequate information and otherwise complies with § 1125 of the Bankruptcy Code.

SECTION 1129 CRITERIA & CONFIRMATION

21. The Plan complies with the standards of 11 U.S.C. §§ 1122, 1123, and 1129. The Plan, which is filed on the Court's docket at #366 should in all things be confirmed. The terms of this Order are controlling if any inconsistency exists between the Plan and this Order.

22. The Plan is confirmed pursuant to the provisions of Chapter 11 of the Bankruptcy Code, including 11 U.S.C. §§ 1128 and 1129.

23. All capitalized terms used herein are deemed to have the meanings set out in the Plan.

VESTING OF PROPERTY IN THE REORGANIZED DEBTOR

24. Douglas J. Brickley shall serve as the Plan Agent, until death, resignation or discharge or the appointment of a successor Plan Agent in accordance with the Plan, at which point such successor Plan Agent shall be the Plan Agent. The Plan Agent shall be the sole officer, director and shareholder of the Reorganized Debtor. In the exercise of his authority on behalf of the Debtor and Reorganized Debtor, the Plan Agent will have certain responsibilities and powers, as set out in detail in the Plan.

25. On the Effective Date, the Plan Reserve, which shall include causes of action, alter-ego rights, derivative claims, breach of fiduciary duty claims, veil piercing rights, and the right to pursue such claims, shall vest in the Reorganized Debtor, free and clear of all liens, claims and encumbrances, except as otherwise provided in the Plan.

26. On the Effective Date, the Reorganized Debtor is deemed to have satisfied all liabilities for purposes of dissolution under applicable state law. Provided, however, upon ceasing to operate, the Debtor will owe a final franchise tax to the Texas Comptroller of Public Accounts pursuant to Tex. Tax Code § 171.0011. The Reorganized Debtor or Plan Agent will file and pay the final franchise tax return within sixty (60) days of the Effective Date without requiring the Comptroller to file an application for payment. The setoff rights of the Texas comptroller are preserved as provided by 11 U.S.C § 553. The Plan Agent is authorized to execute and file all documents necessary to effectuate the dissolution of the Reorganized Debtor.

27. The Plan Agent is authorized and directed to make such distributions as provided in the Plan and consistent with the Waterfall Analysis presented in court at the confirmation hearing. Once the Plan Agent has paid all Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed General Unsecured Claims and satisfied all costs of administering the Plan,

all remaining funds in the Plan Reserve shall be paid to AZIZ QUICK STOP, LLC, or its assignee.

TRANSFER OF RESIDUAL ESTATE TO NEWCO

28. On the Effective Date the Residual Estate, which shall consist of all property listed on **Exhibit A** hereto and all other remaining property of the Estate as defined in § 541 of the Bankruptcy Code, to the extent not explicitly retained by the Reorganized Debtor, shall vest in AZIZ QUICK STOP, LLC, or its assignee, free and clear of all liens, claims and encumbrances, except as otherwise provided in the Plan.

29. The Plan Agent is authorized to execute and file all documents necessary to effectuate the transfer of the Residual Estate to AZIZ QUICK STOP, LLC, or its assignee, including, but not limited to, the execution of the Plan Documents filed at #397 on the Court's docket, the form of which is hereby approved.

ASSIGNMENT AND PROSECUTION OF CAUSES OF ACTION

30. Pursuant to and in accordance with §§ 105(a), 1123(b)(3), and 1141(b) of the Bankruptcy Code, upon the entry of the Confirmation Order, all Causes of Action, including Chapter 5 Causes of Action brought under §§ 542, 544, 547, 548, 550, 551 and 553, shall be, and hereby are reserved, retained, and vested in the Reorganized Debtor for the benefit of holders of Allowed Claims and Allowed Equity Interests pursuant to the terms of the Plan. All Causes of Action shall survive and continue Post-Confirmation, free and clear of all liens, claims, interests, encumbrances, defenses of res judicata, waiver, laches and estoppel, for investigation, prosecution, enforcement, settlement, abandonment, adjustment, or collection by the Plan Agent. The Plan Agent shall be authorized and have standing to pursue Causes of Action on behalf of,

and in the name of, the Reorganized Debtor. Further, the Plan Agent shall have standing to object to any Claims.

31. The Plan Agent shall have the exclusive right to file and prosecute any Claims and Causes of Action on behalf of the Debtor/Reorganized Debtor, including all derivative Causes of Action. The Plan Agent shall have the authority to compromise, settle or otherwise resolve all Claims and Causes of Action filed or asserted without approval of the Bankruptcy Court.

MISCELLANEOUS DECRETALS

32. The Debtor's obligation of filing monthly financial reports with the United States Trustee shall pass to and become the obligation of the Reorganized Debtor as applicable and such obligation shall continue following Confirmation until the obligation to pay the United States Plan Agent's fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) ends, except such monthly reports will be filed quarterly. The Reorganized Debtor shall prepare, sign, and file all Post-Confirmation reports and shall pay any U.S. Plan Agent's fees due and owing from the funds of the Plan Reserve. Copies of such reports shall be served on the United States Trustee and on any Claimant requesting continued service of same.

33. Unless otherwise provided herein or otherwise ordered by the court, all injunctions or stays set forth in §§ 105 or 362 of the Bankruptcy Code (11 U.S.C. §§ 105 and 362) shall remain in full force and effect until the Effective Date rather than the Confirmation Date.

34. The Debtor, the Reorganized Debtor and its authorized officers are authorized to execute such documents and take such other action as is necessary to effectuate the transactions provided for the Plan.

35. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain, after the Effective Date, jurisdiction of all matters arising out of, arising in or related to, this chapter 11 case to the fullest extent permitted by applicable law.

36. So long as such amendments or modifications do not materially affect the interests of holders of Claims or Interests, the proponent of the Plan may propose amendments or modifications to the Plan after the entry of this Order, subject to, upon notice and hearing, the approval of the Court, in order to remedy any defect or omission, or reconcile any inconsistencies in the Plan or in this Order, as may be necessary to carry out the purpose and intent of the Plan.

37. The substantial consummation of the Plan, within the meaning of § 1127 of the Bankruptcy Code, shall be, and hereby is, deemed to have occurred on the Effective Date.

38. Notwithstanding section 3.2.28 of the Plan, the Plan shall become effective on the seventh (7th) day following entry of this order.

39. The fees in the amount of \$1,385,500.00, which fees were previously authorized and paid, owed to Keen-Summit Capital Partners LLC (“Keen-Summit”) pursuant to the Retention Agreement between the Debtors and GA Keen dated November 25, 2014 shall be approved on a final basis. All out-of-pocket expenses incurred by Keen up to the Budget amount of \$39,786.00 (*see* Agreed Order Authorizing the Employment of GA Keen Realty Advisors, LLC, as Investment Banker for the Debtor, Pursuant to §§ 105(a), 327(a) and 328(a) of the Bankruptcy Code [Docket No. 178]) shall be approved on a final basis. Notwithstanding any prior order of this Court, Keen shall not be required to submit a final fee application.

40. The reversal or modification of this Order on appeal shall not affect the acts taken pursuant to the Plan, the Plan documents, or any other agreement, document, instrument or action authorized by this Order or under the Plan as to the Debtor, Reorganized Debtor or any other person acting in good faith, whether or not such person knows of the appeal, unless this Order is stayed pending appeal.

41. To the extent appropriate, conclusions of law are deemed to be findings of fact and the findings of fact are deemed to be conclusions of law.

Dated: 11-2-15


UNITED STATES BANKRUPTCY JUDGE

**Aziz Convenience Stores, LLC
Southern District of Texas
McAllen Division
Case 14-70427**

Assets To Be Transferred to NewCo

Real Property (Store #2)	\$ 830,000.00
Credit Card Receivables	2,169.53
Inventory	24,222.52
Retainers	10,000.00
Insurance Bond	100,000.00
Environmental Escrow*	519,000.00
Cash	<u>2,032,483.69</u>
Total	<u><u>\$ 3,517,875.74</u></u>

*Includes full amount of original escrow. Remaining balance, if any, is unknown.

