

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION**

IN RE:

CHAPTER 11

GEORGETOWN MOBILE ESTATES, LLC

Case No. 15-50945

DEBTOR

**AGREED ORDER OF CONFIRMATION OF DEBTOR'S  
FOURTH AMENDED PLAN OF REORGANIZATION**

The Confirmation Hearing on the Debtor's "Fourth Amended Plan of Reorganization" filed herein on October 16, 2015 ("Plan") [Doc. #265], having been held on October 21, 2015 pursuant to the Disclosure Statement Approval Order and [Doc. #190]; the Court having reviewed the Plan, the Second Modified Amended Disclosure Statement ("Disclosure Statement") [Doc. #185], all Exhibits and modifications thereto; the Debtor having filed two "Reports of Balloting" on September 25, 2012<sup>5</sup> and October 20, 2015 [Doc. #240 and 272, respectively]; and a re-notice of the Confirmation Hearing having been scheduled for October 21, 2015 in that certain "Order Granting Motion to Refer Matter to Mediation and Continuing Hearings," which was filed herein on September 17, 2015 [Doc. #222] and at such hearing on October 21, 2015 the Debtor made avowals of evidence to the Court as to the matters contained in this Order; and the Court having heard arguments from the parties as to confirmation of the Plan; and the Objections to confirmation filed in the Court's record by Theresa Kerr and Kevin Balcirak [Doc. #218], Greg and Heather Scheller [Doc. #234], Rebecca Feasby [Doc. #235], Gary M. House, Gary's Cycle and Auto, Inc., and Cycles, Inc., d/b/a Southern Tire and Honda [Doc. #236], Jonathan Williams [Doc. #237], Greg Cooper, Camelot Development I, LLC and Mark Mauer [Doc. #238], which have all been withdrawn pursuant to the entry of this Order or

by previous notice of withdrawal; and the Court being otherwise sufficiently advised, the Court makes the following findings of fact and conclusions of law:

1. Jurisdiction and Venue:

- (A) On May 11, 2015 (“Petition Date”), the Debtors filed its voluntary petition under Title 11 of the United States Code, a/k/a the Bankruptcy Code (“Code”), and relief was ordered (Doc. #1);
- (B) Since the Petition Date (the capitalized terms herein have the same meaning as set forth in the Plan unless specifically redefined herein), the Debtor has not managed its property and financial affairs as debtor-in-possession pursuant to Code §§ 1107(a) and 1108 but a Receiver and Manager, being CFLane, LLC, was authorized pursuant to the previous Agreed Orders of this Court [Doc. #43 and 88] to operate the Property pursuant to the Receivership Order;
- (C) This Court has jurisdiction over this case pursuant to Title 28, U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding pursuant to Title 28, U.S.C. §157(b)(2). Under Title 28, U.S.C. §§ 1408 and 1409 venue in the Eastern District of Kentucky was proper as of the Petition Date and continues to be proper.

2. Plan Provisions, Notice and Voting:

- (A) The Plan complies with all applicable provisions of Chapter 11 of the Code, including but not limited to Code §§ 1122, 1123 and 1129;
- (B) The Debtor, as the proponent of the Plan, has complied with the applicable provisions of Chapter 11 of the Code and has provided “adequate information” pursuant to Code §1125 to allow parties in interest to make an informed judgment about confirmation of the Plan. The Disclosure Statement, the Plan, the Ballots and the Confirmation Hearing Notice were transmitted and served as required by the Disclosure Statement Approval Order [Doc. #190], and have been transmitted and served in compliance with the Code, the Bankruptcy Rules and all local bankruptcy rules, and no other or further notice is or shall be required;
- (C) The Plan properly classifies the Claims and equity interests in conformity with Code §1122 and applicable case law;
- (D) The Plan has been proposed in good faith and is not by any means forbidden by law;

- (E) Any payment made or to be made under the Plan by the Debtor, or by any person representing it, for services or for costs and expenses in, or in connection with the Case, or in connection with the Plan and incidental to the Case through the Effective Date, other than Professionals' fees to be allowed by the Court, has been approved by, or are subject to the approval of, or will be disclosed to, the Court;
- (F) The Debtor has disclosed the identity and affiliations of the Receiver and Manager proposed to serve after Confirmation of the Plan as disbursing agent of the Debtor, and such appointment to, or continuance in, such office of such entity is consistent with the interests of Creditors and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the Debtor, and the nature of any compensation for such insider;
- (G) With respect to each Impaired Class of Claims or equity interests, the Plan provides that each holder of a Claim or Interest in each Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or equity interest an interest in property of a value as of the Effective Date of the Plan that is not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Code;
- (H) With respect to each Class of Claims or Interests, the Plan provides such Class has accepted the Plan, is not impaired under the Plan, or if impaired, such Class shall be deemed to have accepted the Plan because the Plan is fair and equitable and does not unfairly discriminate against Creditors holding such Claims or Interests.
- (I) Except to the extent that the holder of a Claim has agreed to a different treatment, the Plan provides that with respect to each Claim and a Class of Claims of a kind specified in Code §507(a), each holder of such a Claim will receive payments of a value equal to the allowed amount of such Claim;
- (J) Votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Code, the Bankruptcy Rules and industry practice.
- (K) At least one Impaired Class has accepted the Plan, determined without including any acceptances of the Plan by an insider holding a Claim in such Class;
- (L) Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor, unless such liquidation or reorganization is proposed in the Plan;

- (M) The Plan can be confirmed pursuant to Code §1129(b) in that the Plan meets all of the requirements set forth in Code §1129(a), and is fair and equitable and does not unfairly discriminate against any Creditor or Interest, or, if it does discriminate against any Creditor or Interest, such discrimination is fair;
- (N) The value of the proposed payments under the Plan is not less than the projected disposable income of the Debtors (as defined in Code §1325(b)(2), to be received on the date that the first payment is due under the Plan, or during the period for which the Plan provides payments, whichever is longer.
- (O) All fees payable under Title 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 before the Effective Date;
- (P) On the Effective Date, certain events noted in the Plan *passim* will occur and these events are fair, equitable and not unfairly discriminating and are in the best interests of the Debtors and Creditors herein.

3. Effect of Findings. All findings made in this Order (and any finding made at the Confirmation Hearing from the Bench) shall, pursuant to Bankruptcy Rule 7052 (made applicable herein by Bankruptcy Rule 9014), constitute findings of fact and conclusions of law and to the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed and *vice versa*.

4. Adequacy of Notices. The Debtor has given adequate notice of the filing of the Plan, adequate notice to the Creditors in Impaired Classes of their right to vote for or against the Plan; and adequate notice of the hearing on the Confirmation of the Plan. Further, the provisions of Plan regarding notice to holders of Unknown Claims establishes a fair method of notice and is reasonably calculated to provide Unknown Claimants with notice and a reasonable time to file a Proof of Claim. Such compliance by the Debtor shall be deemed adequate notice to the Impaired Creditors and to Unknown Claimants for all purposes.

Pursuant to the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED AND ADJUDGED:**

5. Objections and Voting. Any objections to Confirmation of the Plan filed herein by any party, including those of Theresa Kerr and Kevin Balcirak [Doc. #218], Greg and Heather Scheller [Doc. #234], Rebecca Feasby [Doc. #235], Gary M. House, Gary's Cycle and Auto, Inc., and Cycles, Inc., d/b/a Southern Tire and Honda [Doc. #236], Jonathan Williams [Doc. #237], Greg Cooper, Camelot Development I, LLC and Mark Mauer [Doc. #238], were withdrawn or deemed moot, as based upon representations made by the parties in open court, and to the extent that any other objections have not been withdrawn or otherwise resolved, all such other objections of the Plan are overruled.

6. Confirmation. As a result of the foregoing, this Court hereby confirms the Plan pursuant to Code §1129(b).

7. (A) Appointment of Receiver and Manager. In conformity with Plan §6.1.1, CFLane, LLC, shall be appointed as Receiver and Manager as those terms are defined in the Plan and it shall (1) post a fidelity bond approved by this District Court, if not already done; (2) perform all of the duties set forth in Plan §6.1.2; (3) be subject to all of the provisions of Plan §6.1; and (4) file such reports as required by Plan §6.1.3.6. Such appointment shall end upon the future orders from this Court, unless extended by order of this Court. Notwithstanding any provision in Plan §6.1, the Receiver and its duties shall terminate upon the Property Transfer Date.

(B) Reorganized Debtor. The Debtor, after the Effective Date and in conformity with the various duties and obligations of disbursements and distributions contained

in the Plan *passim*, shall and are hereby ordered and authorized to perform such duties and obligations.

(C) Counsel. As contained in Plan §2.6 Counsel shall continue as counsel and attorneys for the Reorganized Debtor until the date when the last active matters pending before the Court are resolved by a Final Order.

8. Occurrences. All events and occurrences to occur or not to occur, as set forth in the Plan, are hereby authorized to occur or not to occur, as the Plan so provides.

9. Conflicts. To the extent that any provision of this Order conflicts or may conflict with (a) the Disclosure Statement, (b) any other agreement between the Debtor and any party, (c) any earlier order of this Court, or (d) the Plan, then the Plan controls the Disclosure Statement, any such agreements and any prior orders of this Court. This Order controls the Plan.

10. Terms of the Plan. All terms and definitions contained in the Plan are approved in their entirety and are incorporated into this Order as if set forth at length herein.

11. Performance of Plan Terms. Upon the Effective Date, the Reorganized Debtor and any retained Professionals shall commence performance of all of their duties as set forth in this Order and the Plan; and they are authorized to do, perform, act and accomplish all rights and powers granted in the Plan and to accomplish the goals set forth therein.

12. Reference to Plan. Failure specifically to include or reference particular sections or provisions of the Plan or any related agreement thereto in this Order shall not diminish or impair the effectiveness of such sections or provisions, it being the intent and the order of the Court that such related agreements be approved in their entirety.

13. Distributions. Commencing after the Effective Date, the Receiver and Manager are authorized to commence distribution of the Disposable Income to the Claims of Creditors in the various Classes in conformity with the terms and priorities of the Plan.

14. Reservation of Jurisdiction. Notwithstanding the Confirmation of the Plan pursuant to this Order, all jurisdiction reserved *passim* in the Plan shall be reserved to this Court.

15. Executory Contracts and Unexpired Leases. Pursuant to Plan §10.1, all executory contracts and unexpired Leases, as defined in the Plan and by Code §365, shall be deemed rejected as of the Effective Date and any resulting rejected claims shall be allowed as Unsecured Claims. Notwithstanding the foregoing, all unexpired leases and executory contracts assumed by Plan §10.2 shall be deemed cured and assumed on the Effective Date.

16. Bar Date for Certain Unclassified Claims. As specified in Plan Article 2, any claim for an allowance of an Administrative Expense and all Professionals shall file such claims within twenty-one (21) days after the Effective Date or such claims shall be forever barred.

17. Proofs of Claim. Except as provided in Plan §8, each Creditor shall file a Proof of Claim no later than November 9, 2015 or have their Claim forever barred. Any Creditor who has previously filed a Proof of Claim shall not be required to file a new Proof of Claim and cannot amend to increase to a higher amount.

18. Injunctions and Stays. Pursuant to Article 5.4.2, except as specifically excepted by the terms of the Plan, any Creditor holding an Unsecured Claim shall be subject to the extended stay during the Term as set forth in Plan § 6.5, *infra*, and against all officers, directors, members, personal guarantors, including Daniel E. Sexton and Jonathan Williams and any and all corporate affiliates of Sexton and Williams, including but not limited to, DES Realty, LLC, DS Realty, LLC, Jonathan C. Williams, P.S.C. After

the Term and all Allowed Claims are paid all co-borrowers, officers, directors, members, and guarantors shall be released of any deficiency Claim, if any, held by any Allowed Creditor. All state court litigation by any Creditor shall be stayed or dismissed, including but not limited to, the following: the claims of Theresa Kerr and Kevin Balcirak shall be allowed to have a judgment entered in their favor but they shall not record any judgment lien or execute thereon during the Term, and the claims of Rebecca Feasby and Gary House shall be dismissed without prejudice and a statute of limitations tolling agreement entered into between the parties during the pendency of the Term. Pursuant to Article 6.5 of the Plan, except as specifically excepted by the terms of this Plan, on the Effective Date every Creditor, including but not limited to, a Creditor asserting or holding any Claim, including a nondischargeable Claim or Disputed Claim, shall be precluded and stayed from asserting or continuing to assert, pursue or collect or execute on any claim or judgment against the Debtor, the Debtor's Officer or Director, Members, Daniel E. Sexton, Jonathan C. Williams, including but not limited to, any of Sexton or Williams' corporations, any Claim that arose before the Petition Date, and the automatic stay under Code §362 shall be extended to the end of the Term or to the date of the entry of the Discharge, whichever is later in time.

19. Exculpation for Post-Petition Events and Limitation of Liability. Except for fraud, gross negligence or gross mismanagement, Counsel, Accountant, Financial Consultants, and any Professional shall not have or incur any liability to, or be subject to any right of action by, the Debtor, the Creditors, any holder of a Claim or interest, or any other Person or any of their respective agents, shareholders, employees, representatives, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, (a)



any act taken or omitted to be taken before, on or after the Petition Date through the Effective Date, (b) the Disclosure Statement, the Plan, and documents necessary to effectuate the Plan, (c) the solicitation of acceptances and rejections of the Plan, (d) the Debtor's Case or its filing thereof, and (e) the administration of the Plan. In all respects the aforesaid Professionals shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

20. Monthly Reports and U.S. Trustee Fees.

(A) Reports. The Debtors' obligation to file monthly reports under the U.S. Trustee's operating guidelines shall end and terminate upon the closing of this Case. The Manager shall submit all such financial reports as required herein on behalf of the Debtor.

(B) United States Trustee Fees. All U.S. Trustee fees due and owing for all Debtors shall be paid in full on or before the Effective Date, or when said fees become due and owing after the Effective Date, by the Debtor. Following the Effective Date, the Reorganized Debtor's obligations to pay U.S. Trustee fees shall continue until the Case is converted, dismissed or closed, whichever event occurs first.

**21. Claimants' Changes of Addresses. Every Claimant shall keep the Reorganized Debtors advised of such Claimant's change of address. The provisions for forfeiture of Claims on undeliverable distributions and unclaimed distributions set forth in Plan §§ 8.7 and 8.8, are specifically approved.**

22. Distribution on Stay of Appeal. Any stay pending appeal shall apply only to amounts in controversy and distribution of amounts not in controversy shall continue in accordance with the terms of the Plan.

23. Reservation and Enforcement of Chapter 5 Claims. Notwithstanding Code §§ 105(a), 1123(b)(3), and 1141(b), and except as otherwise provided in Plan §§ 5.1.8 and 6.6, upon the Effective Date all present and future rights, claims, remedies, defenses, setoffs, recoupments, interests, suits, actions, and proceedings belonging to or held by the Debtor and its estate against any Person, whether arising before or after the Petition Date, including but not limited to (a) any preference or fraudulent conveyance claims or other rights to recover money or property pursuant to Code §§ 542, 543, 544, 545, 547, 548, 549, 550, 551, or 553; or (b) any and all other claims, causes of action, avoiding powers or remedies arising under the Code or any other state or federal law, rule or regulation, shall be and hereby are preserved for the Reorganized Debtor, shall not be waived, forgiven, remitted and deemed unenforceable, shall survive and continue Post-Confirmation, and shall not be considered abandoned from the case pursuant to Code §554. Notwithstanding the foregoing, the Reorganized Debtor shall not bring any claims or causes of action against Daniel E. Sexton, Jonathan Williams or any companies related to either individual in accordance with Plan §6.6.

24. Closing of Case. Upon motion after the Duel Finance Hearing, any party may file a motion to close the Case, but such closing shall (a) not alter, amend, revoke, or supersede the terms of the confirmed Plan, (b) not affect any rights of the Debtor, Unclassified Claimants, Creditors or other Persons treated under the Plan, (c) continue to cause the terms of the confirmed Plan to remain binding on all Persons, (d) cause all Orders of the Court to remain in full force and effect, (e) permit the entry of the Discharge without re-opening the Case; and (f) cause the Court to retain all jurisdiction set forth in Plan §7.3.

25. Discharge. Upon the filing of the final report of distribution pursuant to Plan §7.6.2, the Reorganized Debtor shall be discharged of (a) all Claims treated by this Plan; (b) all

Claims listed in the Schedules unless such Claims are reaffirmed in conformity with the provisions of Code §524(c) and Rule 4008; (c) all Unknown Claims; (d) all amounts not covered by insurance that are disallowed under Plan §6.13; and (e) all Disallowed Claims, but shall not be discharged of the taxes mentioned in Plan §6.15.2. The Reorganized Debtor shall submit either Local Form 4004-3(a) or 4004-3(b), or the otherwise appropriate form, certifying completion of the Plan and requesting a Discharge. The Court thereupon shall consider the entry of an Order of Discharge in conformity with the provisions set forth in Code § 727(b) and §1141(d). No Discharge shall be entered by the Court until such time as all Disposable Income has been distributed by the Disbursing Agent and the Class 4 Unsecured Creditors has been paid in full.

26. Treatment of Future Income Taxes. Notwithstanding the terms in the Plan relating to the taxing units, the terms in Plan §6.17 containing provisions relating to future income taxes shall control and be applicable to the Debtor and the taxing units for the Term. All such Estimated Tax Deposits, Estimated Tax Escrow and Estimated Insurance Escrow shall be paid by the Manager on behalf of the Debtor resulting from its business operations.

29. Notice of Effective Date. The finality endorsement set forth in the next paragraph shall be fixed at fourteen (14) days from the entry of this Order, and the Effective Date shall be three (3) days thereafter. If either the fourteenth (14th) day or third (3rd) day falls on a weekend or federal holiday, the time period shall be the next business day.

30. Finality. There being no further matters to be heard at the Confirmation hearing, the hearing was concluded. There being no just cause for delay in the entry of this Confirmation Order, this is a final and appealable Order.

AGREED TO AND TO BE ENTERED:

**BUNCH & BROCK**

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The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



**Signed By:**  
**Tracey N. Wise**  
**Bankruptcy Judge**  
**Dated: Thursday, October 22, 2015**  
**(tnw)**