

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE:**  
Royal Flush, Inc.,

**Bankruptcy No. 16-23458 JAD**

**Debtor.**

**Chapter 11**

**Document No.**

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**THIRD AMENDED CHAPTER 11 PLAN OF REORGANIZATION  
OF ROYAL FLUSH INC.**

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**BY: /s/ Donald R. Calaiaro**  
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**DATED:** October 10, 2017

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**THIRD AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

**Royal Flush, Inc.**, a Pennsylvania corporation and the Debtor-in-Possession, proposes the following Plan of Reorganization ("Plan") pursuant to Section 1121(b) and (c) of the Bankruptcy Code ("Code"), 11 U.S.C. Section 1121(b) and (d).

**ARTICLE 1 - DEFINITIONS**

For purposes of this Plan, except as otherwise expressly provided herein or unless the context otherwise requires, the following capitalized terms shall have the meaning set forth below:

**1.1** Administrative Claims shall mean the costs and expenses of administration of this Chapter 11 case allowed under Section 503(b) and entitled to priority under Section 507(a)(1) of the Code.

**1.2** Allowed Claim shall mean a claim against the Debtor to the extent.

**a.** A proof of such claim was:

- (1)** Timely filed; or
- (2)** Deemed filed pursuant to Section 1111(a) of the Bankruptcy Code; or
- (3)** Filed late with leave of the Bankruptcy Court after notice and opportunity for hearing given to the Debtor's counsel; and

**b. (1)** Which is not a Disputed Claim; or

- (2) Which is not contingent; or
  - (3) Which is allowed (and only to the extent allowed) by a Final Order, after objection, if any, and hearing; and
- c. (1) With respect to any professionals seeking compensation in connection with this case, when said compensation has been allowed by Order of the Bankruptcy Court after notice and hearing as provided in the Bankruptcy Code.

**1.3** Litigation shall mean actions in the United States District Court or Bankruptcy Court for the Western District of Pennsylvania with any caption including the Debtor.

**1.4** Bankruptcy Court shall mean that unit of the United States District Court for the Western District of Pennsylvania known as the United States Bankruptcy Court for the Western District of Pennsylvania located at 54th Floor, U.S. Steel Tower, 600 Grant Street, Pittsburgh, Pennsylvania 15219 or any Court having jurisdiction to hear and determine appeals there from

**1.5** Business Day shall mean between 9:00 a.m. and 5:00 p.m. local Pittsburgh time on every day, except Saturdays, Sundays and national holidays.

**1.6** Claim shall have the meaning set forth in Section 101(4) of the Bankruptcy Code.

**1.7** Class shall mean the category of holders of claims or equity interests in such category as provided by 11 U.S.C. 1122 of the Code and as defined in the context of this Plan.

**1.8** Collateral shall mean any property in which the Debtor has an interest and which secures an allowed claim.

**1.9** Confirmation Date shall mean the date when the clerk of the Bankruptcy

Court shall have entered the Confirmation Order on the docket.

**1.10** Confirmation Order shall mean the Order entered by the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Code.

**1.11** Creditor shall mean any person having a claim against the Debtor that arose on or before the filing date or a claim against the Debtor's estate of a kind specified in Section 502(g)(h) or (I) of the Code.

**1.12** Disclosure Statement shall mean the Disclosure Statement of the Debtor, filed with and approved by the Court pursuant to Section 1125 of the Code.

**1.13** Disputed Claims shall mean alleged claims against the Debtor listed as disputed, contingent or unliquidated on the Debtor's schedules or amended schedules for which a timely proof of claim is filed, or to which an objection has been timely filed within sixty (60) days after the confirmation date by a party in interest and which objection is not the subject of a Final Order or has not been withdrawn.

**1.14** Effective Date of the Plan shall mean for each allowed claim, which is to receive cash under the Plan the sixtieth (60th) business day after the Confirmation Order becomes a Final Order.

**1.15** Excess Quarterly Cash shall mean the cash remaining in the budget prepared by the Reorganized Debtor on a Quarterly basis, after appropriate reserves for instability in the Debtors cash flow for the succeeding quarter, capital reserve for future repairs and maintenance of equipment, a reserve for payment of professional fees, and reserve for future acquisitions.

**1.16** Filing Date shall mean **September 15, 2016**, the date on which **Royal Flush, Inc.** filed its petition for under chapter 11 of the Bankruptcy Code with the Clerk of the

Bankruptcy Court.

**1.17** Final Order shall mean an order, judgment or decree of the Bankruptcy Court as to which **(a)** any appeal that has been timely taken has been finally determined or dismissed; **(b)** the time for appeal has expired and no appeal has been timely taken in accordance with Rule 8002 of the Rules of Bankruptcy Procedure and any applicable local procedural rule; or **(c)** an appeal has been timely taken, but such Order has not been stayed by appropriate cash bond or equivalent under Rule 8005 of the Rules of Bankruptcy Procedure.

**1.18** Plan shall mean this Third Amended Plan of Reorganization dated October 10, 2017, as the same may be amended or modified from time to time in accordance with the provisions of this Plan and Section 1127 of the Code, all addenda, exhibits, schedules, releases and other attachments hereto, all of which are incorporated herein by reference as though fully set forth herein.

**1.19** Priority Claim shall mean any claim entitled to priority pursuant to Section 507(a) **(1)** [Administrative]; **(2)** [Wages]; **(3)** [Employee Benefits], of the Code to the extent it is an allowed claim; except for priority tax claims.

**1.20** Priority Tax Claim shall mean any claim entitled to priority pursuant to Section 507(a) (7) of the Code to the extent it is an allowed claim.

**1.21** Proponent of this Plan shall mean the Debtor, **Royal Flush, Inc.**

**1.22** Quarterly Budget shall mean the quarterly budget prepared by the Reorganized Debtor on a Quarterly Basis which shall set forth anticipated revenues, anticipated expenses, cash reserves to protect against instability in anticipated future cash flow, a capital reserve for repairs and maintenance of equipment, a reserve for

payment of professional fees, and a capital reserve for future equipment acquisition

**1.23** Schedules shall mean the schedules or amended schedules of assets and liabilities filed by **Royal Flush, Inc.**, with the Bankruptcy Court as required by Section 521 of the Code, and any amendments thereto as allowed by the Bankruptcy Court.

**1.24** Secured Claim shall mean an allowed claim in respect of which a security interest is held in or against any property of the Debtor's estate, to the extent of the value of such Creditor's interest in the estate's interest in such property; and to the extent the claim is perfected against a trustee under 11 U.S.C. Section 544. If the value of such Creditor's interest is less than the amount of the allowed claim held by it, then such Creditor shall hold an unsecured claim for the deficiency amount; if the Creditor's claimed security is not perfected, it will have an unsecured claim; but only to the extent the Creditor has filed a claim.

**1.25** Secured Creditor shall mean any person or entity, which holds a secured claim.

**1.26** Security Interest shall mean a lien; as such term is defined in Section 101(33) of the Code on any of the property of the Debtor's estate.

**1.27** Unsecured Claim shall mean any claim other than an administrative claim, secured claim or a priority claim to the extent it is an allowed claim.

**1.28** Gender and Number when used herein, words importing any gender may be applied to and include all persons; words importing the plural number may be applied to and mean a single person or thing, and words importing the singular number may be applied to and mean more than single person or thing.

**1.29** General Rules of Interpretation unless otherwise defined herein, all terms

used in this Plan shall have the meanings set forth in the Bankruptcy Code.

**1.30** Disbursing Agent shall be Donald R. Calaiaro, Esquire with an address of 428 Forbes Avenue, Suite 900, Pittsburgh, PA 15219. In the event that Donald R. Calaiaro is incapacitated or unable to perform the duties of the Disbursing Agent, he may designate a replacement Disbursing Agent. The Disbursing Agent shall collect and disburse funds to Classes 12 and 13 under this Plan.

## **ARTICLE 2 - CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

**2.1** Class 1 shall consist of Administrative Claims, including fees to the U.S. Trustee; the Clerk of Courts and any professional's fees which are entitled to priority under 11 U.S.C. Section 507(a)(1). These shall include the following:

- (a)** Attorneys for Debtor, Calaiaro Valencik; John Steiner, Attorney for the Official Committee of Unsecured Creditors, the accountant for the Debtor, Matt Tymoczko
- (b)** All U.S. Trustee's fees and Clerk of Bankruptcy Court charges.
- (c)** This Class shall also include administrative expenses incurred during the administration, including the following:
  - 1. Utilities
  - 2. Fuel purchases
  - 3. Post-petition expenses of Operations

**2.2** Class 2 consists of the allowed perfected secured claims of First National Bank of Pennsylvania ("FNB"). FNB is the holder of first priority security interest liens in the personal property assets of Debtor, including inventory, chattel paper, accounts, receivables, equipment, documents and general intangibles as well as certain titled motor vehicles as more fully set forth in certain notes, security agreements, guarantees and

other loan security documents ("Loan Documents") executed by the Debtor. As of September 17, 2017, the total secured claim of FNB is \$2,734,179.77 with additional interest at the contractual per diem rate plus late charges and fees and costs, including without limitation attorneys' fees and costs allowed under Section 506 of the Bankruptcy Code. FNB's secured claim is composed of the following seven (7) Loans ("FNB Loans"):

- A. \$64,800.00 Loan #45301225. The Debtor borrowed \$64,800.00 from FNB and executed a security agreement in the Debtor's assets as provided for more fully in the Loan Documents. The balance due as of September 15, 2016 was \$30,804.79 plus continuing interest and fees and costs as provided for under the Loan Documents and §506 of the Bankruptcy Code.
- B. \$100,000.00 Loan #5300205. The Debtor borrowed \$100,000.00 from FNB and executed a security agreement in the Debtor's assets as provided for more fully in the Loan Documents. The balance due as of September 15, 2016 was \$47,538.38 plus continuing interest and fees and costs as provided for under the Loan Documents and §506 of the Bankruptcy Code.
- C. \$750,000.00 Loan #45301210. The Debtor borrowed \$750,000.00 from FNB and executed a security agreement in the Debtor's assets as provided for more fully in the Loan Documents. The balance due as of September 15, 2016 was \$766,310.60 plus continuing interest and fees and costs as provided for under the Loan Documents and §506 of the Bankruptcy Code.
- D. \$80,640.00 Loan #45350410. The Debtor borrowed \$80,640.00 from FNB and executed a security agreement in the Debtor's assets as provided for more fully in the Loan Documents. The balance due as of September 15, 2016, was \$29,848.29 plus continuing interest and fees and costs as provided for under the Loan Documents and §506 of the Bankruptcy Code.
- E. \$200,000.00 Loan #45925095. The Debtor borrowed \$200,000.00 from FNB and executed a security agreement in the Debtor's assets as provided for more fully in the loan documents. The balance due as of September 15, 2016, was \$76,635.25 plus continuing interest and fees and costs as provided for under the loan documents and §506 of the Bankruptcy Code.
- F. \$2,200,000.00 Loan #45624140. The Debtor guaranteed a \$2,200,000.00 loan to C Swank secured by the aforementioned security agreements in the Debtor's assets and related Loan Documents. The balance due as of September 15, 2016, was \$1,514,041.66 plus continuing interest and fees and costs as provided for under the Loan Documents and §506 of the Bankruptcy Code.



- G. \$492,400.00 Loan #4552208. On or about December 5, 2014, Debtor guaranteed \$492,400.00 loan to C Swank secured by the aforementioned security agreements in the Debtor's assets and related Loan Documents. The balance due as of September 15, 2016, was \$266,343.08 plus continuing interest and fees and costs as provided for under the Loan Documents and §506 of the Bankruptcy Code.

During the Chapter 11 case the Debtor and FNB entered into certain Stipulations Allowing the Use of Cash Collateral and Establishing Adequate Protection docketed at Docket Nos. 22, 51, 80, 125 and 178 and Orders approving the same at Docket Nos. 29, 53, 82, 133 and 179 ("Cash Collateral Stipulations and Orders"). In the Cash Collateral Stipulations and Orders, the Debtor reaffirmed the Debt and the Loan Documents referred to therein and obtained the right to use the cash collateral under terms which were approved by the Bankruptcy Court, after notice and a hearing on that agreement.

**2.3** Class 3 shall consist of **Ally Bank**, the holder of a perfected security interest and encumbrance on a 2014 Dodge Caravan. The Creditor has filed a claim at POC # 11 in the amount of \$13,427.10. **Ally Bank** is the holder of a perfected security interest and encumbrance on a 2014 Jeep Wrangler. The Creditor has filed a claim at POC # 10 in the amount of \$21,599.63. **Ally Bank** is the holder of a perfected security interest and encumbrance on a 2014 Ram 5500. The Creditor has filed a claim at POC # 9 in the amount of \$32,091.29. Ally Bank is the holder of a perfected security interest and encumbrance on a 2014 Ram 2500. The Creditor has filed a claim at POC # 8 in the amount of \$24,113.32. The total secured claim of the Creditor is \$91,231.34.

**2.4** Class 4 shall consist of **Chrysler Capital**, is the holder of liens on two 2014 Ram 2500, a 2014 Ram 1500, and a 2015 Ram 1500. The Creditor has filed claims at POC #5 in the amount of \$18,067.69, at POC #6 in the amount of \$18,070.99, and at POC # 7 in the amount of \$24,571.19. The Creditor did not file a claim for the 2015 Ram

1500, VIN: 4922, for which the Debtor believes that the Creditor is owed \$26,487.30. The total secured claim of this Creditor is \$87,197.17.

**2.5** Class 5 shall consist of **J.P Morgan Chase Bank N.A.**, the holder of a perfected security interest and encumbrance on a 2014 Subaru. The Creditor has filed a claim at POC # 22 in the amount of \$16,012.11.

**2.6** Class 6 shall consist of claims of **Priority Tax Creditors** who were owed taxes as of September 15, 2016. Participation in this class shall be limited to pre-petition tax and interest through September 15, 2016, as follows:

#### PRIORITY CLAIMS

Creditor	Total Amount	Type of Collateral	(D)(L)(U) *
Berkheimer	\$8,377.77	Local Withholding	Disputed
Berkheimer	\$1,077.00	LST Tax	Disputed
Internal Revenue Service POC # 17- Disputed	\$308,962.20	Taxes	Disputed
Internal Revenue Service POC # 17- amended Disputed- (Includes unassessed liabilities)	\$1,990.47	Taxes	Disputed
Office of UC Tax Services	\$43,306.87	PA UC Fund-Employer Portion	Disputed
Office of UC Tax Services	\$1,354.69	Employee Withholding	Disputed
OH Department of Job and Family Services	\$13,009.30	OH Unemployment	Disputed
OH Dept. of Taxation	\$15,244.78	OH Withholding	Disputed
PA Department of Labor & industry-	\$39,549.37	PA Withholding	
PA Department of Revenue POC # 13- -	\$78,052.90	PA Withholding	Admitted.
Unemployment Compensation Division	\$217.38	WV Unemployment	Disputed
WV State Tax Department- Disputed	\$7,989.00	WV Withholding	Disputed
TOTAL	\$517,141.26		

**2.7 Class 7** shall consist of Essential Creditors who had an allowed claim against the Debtor as of September 15, 2016. This class consists of the Unsecured Creditors who have continued to provide goods and services to the Debtor at preferred

pricing and who will continue to provide goods and services on credit terms to the Reorganized Debtor. These creditors provide essential goods and services to the Debtor.

The following list sets forth the members in Class 7:

**GENERAL UNSECURED NON-TAX CLAIMS- Essential Creditors Who Continue to Work with the Debtor – Class 9**

<b>Creditor</b>	<b>Class</b>	<b>Total Amount Owed</b>	<b>Reason why this creditor is in class 9</b>
Guttmann Oil-POC # 18	7	\$76,378.51	Supplies fuel at a discount and on preferred credit terms.
Jacobs Petroleum Products, Inc.- POC # 41	7	\$63,617.18	Supplies fuel at a discount and on preferred credit terms
Hunter's Truck Sales & Service Inc.- POC # 43	7	\$64,061.85	Provides truck repairs and parts at a discount and on preferred credit terms
<b>TOTAL</b>		<b>\$204,057.54</b>	

Any creditor may opt out of Class 7 if they choose to cease doing business with the Debtor. Any creditors who opt out of class 7 prior to payment of their claim in full shall be transferred class 10 for the balance of their payments. In order to remain in class 9, class 9 participants must continue to provide goods and services to the Debtor on a preferred pricing and extend post-confirmation credit terms to the Debtor.

Guttmann Oil is a party to an executory contract with the Debtor. The Bankruptcy Court previously assumed the assumption of that contract and this plan treatment is in accordance with the prior Order approving that assumption. The other members of this class assert they have executory contracts. Their contracts, as modified by their agreement to participate in class 7 and to be bound by the Plan, are assumed by the confirmation of this Plan.

**3.8 Class 8** shall consist of **General Unsecured Creditors** who had an allowed claim against the Debtor as of **September 15, 2016**. This class is made up of **General**

**Unsecured Claims** in the approximate amount of \$ 885,453.59<sup>1</sup>. Some of the creditors' claims in this class are disputed. Participation in this class shall be limited to the amount due as of **September 15, 2016**. The claims in this class shall not include any late charges, interest or attorney's fees after date of filing. This class does NOT include the claims of Class 9 Essential Creditors of \$204,057.54; and it also excludes the contingent guaranty claims in Class 9 in the approximate amount of \$1,594,348.75 who hold the guaranties of the Debtor who are members of class 9.

**3.9 Class 9** shall include the claims of creditors who loaned money to an affiliate of the Debtor and the Debtor guaranteed the debts of that affiliate. These debts are contingent liabilities. These guaranty liabilities are being separately classified. This class is comprised of:

**Creditors who have claims arising from guaranties of related entities.-Class 9 Claims**

<b>Creditor</b>	<b>Class</b>	<b>Total Amount Owed</b>	<b>Percent of Dividend</b>
First Commonwealth Bank-POC # 15	9	\$750,963.36	No Dividend
Paccar Financial Corp –POC # 2	9	\$ 138,330.87	No Dividend
Paccar Financial Corp –POC # 3	9	\$ 379,273.52	No Dividend
TCF Equipment Finance- POC # 21	9	\$325,682.99	No Dividend
GE Navistar Capital	9	\$99,698.56	No Dividend
<b>TOTAL</b>		<b>\$1,693,949.30</b>	

**3.10 Class 10** shall consist of the **Equity Shareholders** in the Debtor. The only member of this class is Carol Swank, who holds 100% of the Debtor.

**ARTICLE 3 - IMPAIRMENT**

The following classes are not impaired under this Plan:

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<sup>1</sup> This does not include the general unsecured tax claims of \$ 19,106.07

**Class 1 - Unimpaired**

The following classes are Impaired under this Plan; they are entitled to vote upon the confirmation:

**Class 2 - Impaired**

**Class 3 - Impaired**

**Class 4 - Impaired**

**Class 5 - Impaired**

**Class 6 - Impaired-**

**Class 7 - Impaired**

**Class 8 - Impaired**

**Class 9 - Impaired**

**Class 10- Impaired**

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**ARTICLE 4 - MEANS FOR IMPLEMENTATION OF THE PLAN**

**4.1**    Vesting of Assets in Reorganized Debtor On the Effective Date of the Plan, by operation of this Plan and the Confirmation Order, all Assets of the Debtor and its estate shall be transferred to, and vest in, the Reorganized Debtor.

**4.2**    Implementation The Plan is to be implemented by the reorganized Debtor through payments from the post-confirmation operation of the Debtor.

**4.3**    Corporate Action All matters provided for under the Plan involving the corporate structure of the Debtor or the Reorganized Debtor, or any corporate action to be taken by, or required of, the Debtor or the Reorganized Debtor, shall be deemed to have occurred and be effective as provided in the Plan and shall be authorized and approved in all respects without any requirement of further action by the stockholders or directors of the Debtor or the Reorganized Debtor, pursuant to Section 1903 of the Pennsylvania Business Corporation Law of 1988, as amended.

**4.4**    Management of the Reorganized Debtor The Management of the Day to Day business affairs of the Debtor shall be conducted by Brian Swank who shall be

employed as the President and Chief Executive Officer. Brian Swank has also agreed to limit his post confirmation salary to improve plan feasibility. Brian Swank has agreed that his post-confirmation salary for 2017 and 2018 will be \$ 0.00. His salary will not exceed \$60,000.00 per year in 2019; this salary shall not be increased until after Jan. 1, 2020. After January 1, 2020, Brian Swank's salary may be increased only if the Debtor is current on payments to classes 2, 3, 4, 5, 6, 7, 8, 9 and 10.

Carol Swank shall be managing Member and she will be the treasurer of the Reorganized Debtor. She shall contract with the Reorganized Debtor to work for an initial period of five years. Carol Swank has agreed that her post- confirmation salary for 2017 and 2018 will be \$ 0.00. Her salary will not exceed \$ 60,000.00 per year in 2019; this salary shall not be increased until after Jan. 1, 2020. After January 1, 2020, Carol Swank's salary may be increased only if the Debtor is current on payments to classes 2, 3, 4, 5, 6, 7, 8, 9 and 10. The Agreements for the employment of Brian Swank and Carol Swank ("Employment Agreements") will be executed by the Reorganized Debtor upon the entry of the Confirmation Order. Pursuant to the Employment Agreements, the Treasurer will be responsible for all aspects of operating and financial aspects of the business. The Executives agree that during the term of this Plan of Reorganization, they will not directly compete with the Reorganized Debtor.

**4.5 Funding of the Plan.** The Reorganized Debtor shall fund the Plan by using the profits from operating the business. Without limiting the generality of the foregoing, the Plan will be implemented by the Reorganized Debtor through the continued operation of the business.

**4.6 Contributions of Carol Swank** Carol Swank will contribute \$ 2,100.00 a month to FNB'S debt repayment as a guarantor in order to obtain their approval of this plan. That \$ 2,100.00 will be paid over approximately 5 years and she will contribute \$ 126,000.00 to FNB over the projected period of repayment. This contribution will accelerate payment to all creditors under the Plans.

Carol Swank, as the sole Member of C. Swank Enterprises LLC had 57 pre-Bankruptcy contracts to lease equipment to Royal Flush, Inc. C. Swank is restructuring its payments to secured creditors to make that debt service feasible. C. Swank Enterprises LLC is passing on the savings from those contract modifications to reduce the payments by Royal Flush to C Swank LLC. The estimate reduction in payments is more than \$5,000,000,000 over the life of the Plan. This savings will inure to the benefit of Royal Flush creditors in two ways. It will assist in the reduction of the cash flow and make the Royal Flush Case feasible and allow payments of 100% over time to unsecured creditors. However, when the Secured creditors are paid in full in the C swank Case, the lease payments to Royal Flush, Inc. will be suspended and then Royal Flush will have additional cash flow to accelerate the payments to pay the remaining amounts to Class 8.

Carol Swank has a right to be indemnified for expenses she incurs in connection with her position(s) with Royal Flush, Inc. or C Swank Enterprises, LLC. In the capacity of a guarantor of corporate debt to FNB, Paccar, Santander and De Lage Landen she has incurred more than \$ 25,000.00 in legal fees thus far. She will defer repayment of those costs until all creditors are paid in full.

Carol Swank is one of two owners of Bravo Charlie LLC. This entity owns the facility where both Royal Flush, Inc. and C Swank Enterprises, LLC operate. This entity was owed delinquent rent at the commencement of the case in the amount of \$ 45,000.00. This entity is also owe \$ 45,000.00 in unpaid post –petition rent. It will waive the payment of any arrears under the Plan. This is a waiver of \$ 90,000.00.

Carol Swank is the sole shareholder of the Debtor. In prior years though 2015, Carol Swank was paid a salary in Royal Flush, Inc. or C. Swank Enterprises, LLC of up to \$ 200,000.00. In order to improve feasibility and in attempt to be fiscally conservative, Carol Swank reduced her salary to \$ 90,000.00. As part of the plan in Royal Flush, Inc. or C. Swank Enterprises, LLC, Carol Swank has reduced her salary to \$ 90,000.00 until the creditors are paid. This not only assists in plan feasibility but it also enables the Debtors to accelerate payment to unsecured creditors. While Carol Swank believes that a CEO salary for a corporation with \$ 20,000,000.00 annual revenue is reasonable, she has deferred any salary increase for the life of the Plan. This contribution has a benefit to the Debtor of at least \$ 550,000.00.

Carol Swank has also agreed to suspend any payment of dividends until the creditors are all paid.

#### **4.7    Litigation Necessary or Possible to Consummate Plan.**

- (A)    Objections to claims.
- (B)    Allowance of any administrative claim by any professional or administrative claimant.
- (C)    Actions to enforce the confirmed plan.
- (D)    The post-confirmation Debtor shall be entitled to all defenses, rights and



counterclaims against any Creditor without allowed Claims in establishing the arrearages, or any amount due.

(E) An injunction under 11 U.S. C. § 105 enjoining parties with the exception of FNB and FNB Commercial Leasing which has entered into a forbearance agreements with Carol Swank, from the enforcement of any claim against C. Swank Enterprises, LLC, Carol Swank, Brian Swank for guaranties of Royal Flush Inc.'s debts.

The Plan does not contemplate the prosecution of any chapter 5 actions against any class 9, 10 or 11 member.

#### **4.8 Escrow of any Disputed Claims**

(A) At the time of distribution under the Plan, the Debtor may pay into an escrow account any payment(s) for disputed Creditors until such time as a final order allowing that claim is entered.

(B) The Debtor may escrow any payment to any Creditor if there is a possible claim or setoff that may be asserted against that Creditor.

(C) The escrow account shall bear interest. If the Creditor is fully secured, the interest earned shall be the property of the Creditor; but that Creditor's right to post-Confirmation interest shall be limited to the actual earned interest. If the disputed Creditor is unsecured, the interest shall be the property of the estate.

#### **4.9 Miscellaneous.**

(A) The Disbursing Agent and the Debtor shall have the right to negotiate with any administrative claimant, any secured Creditor, or any disputed Creditor, any insurance carrier, or any account receivable to discount or settle any dispute. The Debtor will not need Court approval to discount or settle any claim(s) after the confirmation of the

Plan

(B) All causes of action, all avoiding powers, and all choses in action of any type which were the property of the Debtor at the time of the commencement of this case shall remain the property of the Debtor under this Plan until administration of the estate is complete.

(C) Donald Robert Calaiaro shall act as the Disbursing Agent for Class 10. He shall be paid \$425.00 for each month following confirmation until both classes are paid in full. After Final Decree, these Disbursement Agent fees shall be in lieu of legal fees for any services necessary to implement the Plan and make distributions to Creditors. He shall be reimbursed for any out of pocket expenses for postage, copying and bookkeeping. These amounts shall be in addition to any actual expenses and shall not cover any legal fees due to Calaiaro Valencik.

#### **ARTICLE 5 - PROVISIONS FOR CLAIMS AND EQUITY** **SECURITY INTERESTS GENERALLY**

**5.1** At the time the Confirmation Order becomes a Final Order, the Debtor and the reorganized Debtor shall have its relationships modified and superseded by the terms of the Plan. Any amount, which is not to be paid under the Plan, shall be discharged upon the confirmation of the Plan.

The reorganized Debtor shall be deemed to have the benefits of Code Section 1141(c) and the Debtor shall be fully discharged and released from any amounts not contemplated to be paid under this plan.

**5.2** In the event that the claim of any creditor is contingent, unliquidated or subject to dispute on the confirmation date, the Debtor or the Creditor may, in their sole

discretion, request the Bankruptcy Court to estimate for the purpose of allowance under Section 502 of the Code, as soon as practicable after the confirmation date, **(a)** any disputed, contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of this Chapter 11 case, and **(b)** any right to payment arising from a right to an equitable remedy for breach of performance.

Any Disputed Creditor, who has not sought the right to vote an estimated amount prior to a hearing on the confirmation hearing, shall not be entitled to vote upon this Plan of Reorganization.

**5.3 Post Confirmation Injunction.** Except as otherwise provided for herein, all entities that hold a claim against the Debtor is enjoined from taking any actions on account of any such claims, debts or liabilities:

A. Commencing or continuing in any manner any action or other proceedings against the Reorganized Debtor, Debtor's Estate or any property included in that estate, unless there has been a material default under the Confirmed Plan.

B. Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against Reorganized Debtor, Debtor's Estate, or any property included in that estate, unless there has been a material default under the Confirmed Plan.

C. Enforcing any guaranty of the Debt of Royal Flush against any shareholder, officer or affiliate of the Debtor, except FNB which has a forbearance agreement with Carol Swank, Brian Swank or any other related entity. This injunction will be conditional. As long as the Debtor has not materially defaulted on the Plan, any creditor who has a claim against any shareholder, officer or affiliate of the Debtor will not be permitted to

enforce that guaranty and it is stayed from taking any action to enforce that guaranty. If there is a Material default under the Plan which is not cured, the injunction will be dissolve after the default is declared. At the completion of payments to any creditor require under this Plan, the creditor who holds the guaranty shall be permanently enjoined from collecting any unpaid debt or claim under the Original guaranty. The shareholder, officers or affiliate of the Debtor have agreed that the periods of limitations or statutes of repose shall be tolled and suspended for the period h conditional injunction is in effect.

D. Creating, perfecting or enforcing any lien or encumbrance Reorganized Debtor, Debtor's Estate, or any property included in that estate, unless there has been a material default under the Confirmed Plan.

E. Taking any action which is inconsistent with the Confirmed Plan.

## **ARTICLE 6 - TREATMENT UNDER THE PLAN AND PROVISION FOR PAYMENT**

**6.1 Administrative Claims.** The Class 1 claims, to the extent that they are allowed administrative claims, shall be paid their principal claim in full without interest on or before the Effective Date by a cash payment to the holder of such a claim except as provided below or as otherwise agreed by each member of the class of persons in this class. Professional persons in Class 1 whose claims have been finally approved and allowed by the court pursuant to Code Section 330 or 503, if not sooner paid, shall be paid on the Plan Effective Date. The professional persons and the Debtor may agree to pay these allowed fees over time with interest and the Debtor may grant a security interest in its assets to insure these payments.

**6.2 Class 2 - First National Bank of Pennsylvania -** The debt(s) owed

to First National Bank of Pennsylvania (FNB) will have a modified Secured Claim of \$2,474,850.23 as of September 12, 2017 (which includes reasonable attorneys fees and costs of \$104,688.18 as of August 31, 2017) plus continuing interest, late charges and fees and costs, including without limitation attorneys' fees and costs which FNB is entitled to under Section 506 of the Bankruptcy Code., as set out in the Cash Collateral Stipulations and Orders, less adequate protection payments; but including allowed counsel fees and costs. The modified Secured Claim shall be treated pursuant to the provisions of the Bankruptcy Code §1129 (b) (2) (A) as follows:

(A) **ADEQUATE PROTECTION PAYMENTS.** The Debtor will make adequate protection payments until the Effective Date.

(B) **MODIFIED SECURED CLAIM/ CONSOLIDATION OF LOANS.** Upon confirmation, the modified Secured Claim, less credit for adequate protection payments and additional payments, shall be restructured to reflect the reduced balance. The balances on the FNB Loans shall be administratively consolidated by the Debtor into one Secured Claim amount<sup>2</sup>.

- a. The first payment of \$14,371.06 will be made on the Plan Effective Date and until that date, the Debtor shall continue to pay FNB each month the adequate protection payments agreed to by the parties and approved by the Court. FNB's allowed secured claim will be paid in full with a fixed interest rate of five percent (5%) per annum with monthly minimum payments of \$14,371.06 paid on the 15th day of each month after the initial payment on the Effective Date. All payments shall in be applied

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<sup>2</sup> Substantively the FNB Loans shall remain as separate loans with FNB.

and allocated by FNB in its sole discretion to the indebtedness under the Loans. Notwithstanding any other provision in this Disclosure Statement and the Chapter 11 Plan, all of FNB's liens and judgments are retained. The obligations, terms, and conditions set forth in FNB's Loan Documents including the notes, loan agreements, security agreements and guaranties judgments and any other documents with the Debtors are reinstated and reaffirmed unless otherwise amended herein and shall remain in full force and effect. FNB shall be paid its reasonable attorneys' fees and costs pursuant to 11 U.S.C. §506(d) as it is fully secured. The treatment of FNB's secured claim herein shall not in any manner discharge, or affect the rights and claims of FNB against any other persons or entities or the obligations of any person or entity to FNB with respect to the indebtedness, including C Swank Enterprises, LLC and Carol Swank. Upon confirmation of the Plan, all pre-confirmation defaults will be waived.

- b. The Principal of the Debtor will also contribute additional payments to FNB in the amount of \$2,100 in a forbearance agreement.

(C) **WAIVER OF PRE-CONFIRMATION DEFAULTS** All pre-confirmation defaults will be waived upon the confirmation of the Plan.

(D) **RESTATEMENT OF LOANS** The Loan Documents and terms and conditions shall be reserved unless where they are in conflict with the Terms of this plan. Upon Confirmation of the Plan the Debtor will reaffirm and ratify all of the Loan Documents, including all terms, conditions and obligations thereunder and further

acknowledges and agrees that as of September 21, 2016, the indebtedness under the terms of the Loan Documents was \$2,734,179.77 as set forth in the Cash Collateral Stipulations and Orders together with additional interest at the contractual per diem rate plus late charges and fees and costs, including without limitation attorney's fees and costs which FNB is entitled to under Section 506 of the Bankruptcy Code. Debtor further agrees that FNB shall have allowed fully secured claims for the indebtedness relating to the FNB Loans, and the Debtor and C Swank Enterprises, LLC, their agents, officers, directors, employees, successors and assigns, release and waive any and all defenses, offsets or claims, including any FNB liability claims.

(E) **FORBEARANCE.** Provided payments are made to FNB as provided hereunder, in the C Swank Plan and the Carol Swank forbearance agreement, FNB will forbear from enforcing any guaranty against the guarantors during the repayment period of the modified Secured Claim under the Plan. The guarantors will execute any agreement that stipulates that no defense, including statute of limitations or waiver, will occur as a result of the lender accepting this treatment under this plan of reorganization. Provided the reorganized Debtor makes all payments under this plan and the C Swank Chapter 11 Plan and FNB is paid in full, FNB will waive any claims against the guarantors for any amount in excess of the plan payments. FNB will forbear from exercising any execution of its judgments, Case No. 2016-01167 and No. 2016-01176 against the Debtor while the Debtor is in compliance with the Plan and provided C Swank is in compliance with its Plan.

(F) **DEFAULT.** Upon the occurrence of any Event of Default arising from a failure to comply with the plan requirements set forth herein, in the C Swank Plan and/or

the Carol Swank forbearance agreement, which is not cured within ten (10) business days after FNB shall have provided written notice to the Debtor and its counsel via email of such Event of Default or the failure to cure any other Event of Default within ten (10) business days after FNB shall have provided written notice to the Debtor and its counsel via email of such Event of Default, FNB shall be permitted to exercise its remedies under the Loan Documents and the Judgments, including invoking the contractual default rate of interest after the default.

(G) **EXCESS QUARTERLY CASH** Royal Flush, Inc. will not declare any dividends to its shareholders during the period of the repayment to Class 2. The Debtor may retain necessary cash reserves to protect against any instability in its cash flow, a capital reserve for future repairs and maintenance of its equipment and an appropriate reserve for future capital acquisitions. At least 15 days prior to the beginning of each quarter, the Debtor shall prepare the Quarterly Budget and provide it to FNB. Any Excess Quarterly Cash will be paid to FNB until its claims are paid in full.

**6.3 Class 3 - Ally Bank-** The Class 3 claims of Ally Bank, now known as Santander, arising from loans a 2014 Ram 2500, a 2014 Ram 5500, a 2014 Jeep Wrangler, and a 2014 Dodge Grand Caravan will be modified under this plan. Each of Ally Bank's loans will be modified into a single "Modified Secured Claim" for the unpaid principal, interest and other amounts due as of the Plan Effective Date. This amount shall be the "Modified Secured Claim".

**6.3.1** The "Modified Secured Claim" due, will be reamortized by the Debtor over **five years**. The "Modified Secured Claim" will accrue post-confirmation interest at **5%** simple interest per annum for the life of the modified obligation.



**6.3.2** The Debtor will make adequate protection payments until confirmation. Upon confirmation, the Modified Secured Claim, less credit for adequate protection payments and additional payments, shall be restructured to reflect the reduced balance. The first payment will be made on the Plan Effective Date.

**6.3.3** All pre-confirmation defaults will be waived upon the confirmation of the Plan. All post- bankruptcy late fees shall be waived upon confirmation.

**6.3.4** Ally/Santander will forbear from enforcing any guaranty against any guarantors during the repayment period of the “Modified Secured Claim” under the Plan. The individual guarantors will execute any agreement that stipulates that no defense, including statute of limitations or waiver, will occur as a result of the lender accepting this treatment under this plan of reorganization. Provided the Debtor fully performs as the payments to this creditor, the Class 3 claims shall be deemed paid, and no further sums shall be owed by Debtor or any guarantor or surety. Ally/Santander will be enjoined from collecting any claims against the guarantors for any amount in excess of the plan payments

**6.3.5** The Debtor and the Lender will document this modification by executing a loan modification agreement.

**6.3.5** Ally/Santander may not enforce any remedies under its contract, note, or encumbrance unless the Debtor has materially defaulted under the Plan. A material default has not occurred until the Debtor has failed to make two payments AND the Creditor has given notice by certified mail to the Debtor and the Disbursing Agent of the default. The Debtor shall have 30 days to cure any default after receipt of Notice of Default. If the Debtor fails to cure the default, then the Creditor shall send an Affidavit of

Default to the Debtor and the Disbursing Agent by Certified Mail. Upon receipt of that Affidavit by the Disbursing Agent, the Creditor may enforce its rights under Pennsylvania State Law as modified under this Plan.

**6.4 Class 4-Chrysler Capital-** The Class 4 claims of Chrysler Capital arising from loans on two 2014 Ram 2500, a 2014 Ram 1500, and a 2015 Ram 1500. The Creditor has filed claims at POC #5 in the amount of \$18,067.69, at POC #6 in the amount of \$18,070.99, and at POC # 7 in the amount of POC #24,571.19. The Creditor did not file a claim for the 2015 Ram 1500 VIN: 4922. The Debtor believes that the Creditor is owed \$26,487.30. The total secured claim of this Creditor is \$87,197.17. Each of Chrysler Capital's loans will be modified into a single "Modified Secured Claim" for the unpaid principal, interest and other amounts due as of the Plan Effective Date. This amount shall be the "Modified Secured Claim".

**6.4.1** The "Modified Secured Claim" due, will be reamortized by the Debtor over **five years**. The "Modified Secured Claim" will accrue post-confirmation interest at **5%** simple interest per annum for the life of the modified obligation.

**6.4.2** The Debtor will make adequate protection payments until confirmation. Upon confirmation, the Modified Secured Claim, less credit for adequate protection payments and additional payments, shall be restructured to reflect the reduced balance. The first payment will be made on the Plan Effective Date.

**6.4.3** All pre-confirmation defaults will be waived upon the confirmation of the Plan. All post- bankruptcy late fees shall be waived upon confirmation.

**6.4.4** Chrysler Capital will forbear from enforcing any guaranty against any

guarantors during the repayment period of the “Modified Secured Claim” under the Plan. The individual guarantors will execute any agreement that stipulates that no defense, including statute of limitations or waiver, will occur as a result of the lender accepting this treatment under this plan of reorganization. Provided the Debtor fully performs as the payments to this creditor, the Class 4 claims shall be deemed paid, and no further sums shall be owed by Debtor or any guarantor or surety. Chrysler Capital will be enjoined from collecting any claims against the guarantors for any amount in excess of the plan payments.

**6.4.5** The Debtor and the Lender will document this modification by executing a loan modification agreement.

Chrysler Capital may not enforce any remedies under its contract, note, or encumbrance unless the Debtor has materially defaulted under the Plan. A material default has not occurred until the Debtor has failed to make two payments AND the Creditor has given notice by Certified Mail to the Debtor and the Disbursing Agent of the default. The Debtor shall have 30 days to cure any default after receipt of Notice of Default. If the Debtor fails to cure the default, then the Creditor shall send an Affidavit of Default to the Debtor and the Disbursing Agent by Certified Mail. Upon receipt of that Affidavit by the Disbursing Agent, the Creditor may enforce its rights under Pennsylvania State Law as modified under this Plan.

**6.5** **Class 5 - J.P. Morgan Chase Bank N.A. -** The Class 5 claim of J.P. Morgan Chase Bank N.A., arises from a loan on a 2014 Subaru and the Creditor has filed a claim at POC # 22 in the amount of \$16,012.11. J.P. Morgan Chase Bank’s loan will be modified into a single “Modified Secured Claim” for the unpaid principal, interest and other

amounts due as of the Plan Effective Date. This amount shall be the “Modified Secured Claim”.

**6.5.1** The “Modified Secured Claim” due, will be reamortized by the Debtor over **five years**. The “Modified Secured Claim” will accrue post-confirmation interest at **5%** simple interest per annum for the life of the modified obligation.

**6.5.2** The Debtor will make adequate protection payments until confirmation. Upon confirmation, the Modified Secured Claim, less credit for adequate protection payments and additional payments, shall be restructured to reflect the reduced balance. The first payment will be made on the Plan Effective Date.

**6.5.3** All pre-confirmation defaults will be waived upon the confirmation of the Plan. All post- bankruptcy late fees shall be waived upon confirmation.

**6.5.4** J.P. Morgan Chase Bank will forbear from enforcing any guaranty against any guarantors during the repayment period of the “Modified Secured Claim” under the Plan. The individual guarantors will execute any agreement that stipulates that no defense, including statute of limitations or waiver, will occur as a result of the lender accepting this treatment under this plan of reorganization. Provided the Debtor fully performs as the payments to this creditor, the Class 5 claims shall be deemed paid, and no further sums shall be owed by Debtor or any guarantor or surety. J P Morgan Chase Bank will be enjoined from collecting any claims against the guarantors for any amount in excess of the plan payments provided the reorganized Debtor makes all payments under this amended plan.

**6.5.5** The Debtor and the Lender will document this modification by executing a loan modification agreement.

**6.5.6** J.P. Morgan Chase Bank may not enforce any remedies under its contract, note, or encumbrance unless the Debtor has materially defaulted under the Plan. A material default has not occurred until the Debtor has failed to make two payments AND the Creditor has given notice by Certified Mail to the Debtor and the Disbursing Agent of the default. The Debtor shall have 30 days to cure any default after receipt of Notice of Default. If the Debtor fails to cure the default, then the Creditor shall send an Affidavit of Default to the Debtor and the Disbursing Agent by Certified Mail. Upon receipt of that Affidavit by the Disbursing Agent, the Creditor may enforce its rights under Pennsylvania State Law as modified under this Plan.

**6.1 - Priority Tax Claims.** The priority tax claims, as defined by article 3.8 of this Plan, pursuant to Code Section 1129 (a) (9) (C), shall be paid in full; to the extent they are allowed priority claims, they shall be paid 100% of their principal and interest under this Plan of Reorganization. They will be paid over 5 years with 3% or 4%, the statutory rate of post confirmation interest. The first payment will be made on the Plan Effective Date. The Debtor will make 60 equal payments to the taxing bodies. The lien(s) of the taxing bodies will be retained until they have been paid in full. Notwithstanding the above provisions or the Confirmation of this Plan of reorganization, The Debtor reserves its rights under section 505 of the Bankruptcy Code to seek a determination of the validity, secured status or priority of any tax claim filed a pre-petition claim or as an administrative tax claim.

The penalty portion of the tax claims for non-pecuniary amounts may not be allowed under 11 U.S.C. § 507 (G).

1. Department of Treasury – Internal Revenue Service
2. Berkheimer-Local Taxes

3. Office of UC Tax Services
4. OH Department of Job and Family Services
5. OH Department of Taxation
6. PA Department of Revenue
7. WV Unemployment Compensation
8. WV State Tax Department

**6.7 Class 7 – Vendors who are essential to the Debtor’s Operations-** This

class consists of the Unsecured Creditors who have continued to provide goods and services to the Debtor and who will continue to provide goods and services to the Reorganized Debtor. These creditors have executory contracts which provided fuel and services at preferred pricing and provided the Debtor with payment terms. The following list sets forth the members in Class 9:

**GENERAL UNSECURED NON-TAX CLAIMS- Essential Creditors Who Continue to Work with the Debtor – Class 7**

Creditor	Class	Total Amount Owed	Percent of Dividend
Guttmann Oil- POC #18	7	\$76,378.51	100%
Jacobs Petroleum Products, Inc. POC # 41	7	\$63,617.18	100%
Hunter’s Truck Sales & Service Inc.- POC # 43	7	\$64,061.85	100%
TOTAL		\$ 204,057.54	

The Debtor is assuming any executory contracts with Class 7. It will cure all pre-bankruptcy obligations to each Class 7 member over a 24 month period. As part of the agreement to assume the contracts, the members in Class 7 agree to extend the Debtor their premium wholesale pricing and credit terms available to premium customers. This arrangement shall continue for the life of the plan provided the Debtor adheres to the payment terms for post-petition purchases and the Debtor pays the “Cure” payments as required by the Plan. Upon the occurrence of any default, any Class 7 member shall

provide notice to the Debtor and its counsel of a notice of an alleged default by electronic notice. Notice shall be sent to the Debtor to [brianswank@royalflushinc.com](mailto:brianswank@royalflushinc.com) and [dcalaiaro@c-vlaw.com](mailto:dcalaiaro@c-vlaw.com). After notice the Debtor shall have 5 days to cure any default. If no cure is timely made, then that Class 7 member shall be permitted to terminate the preferred pricing and preferred credit terms. The Class 7 member who has declared a default shall nonetheless be entitled to receive the balance of the "Cure" payments and it shall be entitled to assert any claims or damages for any failure to pay the Class 9 member for any unpaid post-petition charges.

Guttmann Oil is a party to an executory contract with the Debtor. The Bankruptcy Court previously assumed the assumption of that contract and this plan treatment is in accordance with the prior Order approving that assumption.

Any Class 7 member may opt out of Class 7 Treatment; provided that if they opt out of Class 7 treatment, they shall be paid in accordance with Class 8.

**6.8 Class 8- General Unsecured Creditors**- Class 8 claims will be paid in full over 84 months without interest. The first payment to the Disbursing Agent for Class 8 will be made on the Plan Effective Date. All distributions to Class 8 shall be paid to the Disbursing Agents, who shall make quarterly distributions to Class 8 with the first quarterly installment to be made on the first day of the first full month following the first full quarter computed on a calendar basis after the Class 8 First Quarterly Installment has been made. The Disbursing Agent shall, as soon as practical after receiving quarterly installment payments, make pro rata distributions to holders of Allowed Class 8 claims, and make payment into the Disputed Claims Reserve, as necessary and applicable. The Disbursing Agent shall deduct the costs of distribution and the disbursing agent's fees.

The Disbursing agents shall disburse funds to Class 8 on a quarterly basis. The Members in this class are divided into two groups:

### **CLASS 8 –Small Claims**

<b>Creditor</b>	<b>Class</b>	<b>Total Amount Owed</b>	<b>Percent of Dividend</b>
Advanced Auto Parts	8	\$596.18	100%
BUY DMI Inc.	8	\$37.17	100%
City of Salem	8	\$64.45	100%
Cleaning Systems	8	\$100.00	100%
Curry Supply	8	\$2,405.20	100%
Diamond Oil Services	8	\$2,450.00	100%
Ernie's Waste Oil	8	\$120.00	100%
Frontier	8	\$127.13	100%
Galloway	8	\$60.96	100%
Guardian Life Insurance - POC # 34	8	\$2,384.86	100%
Hartman Drug and Health	8	\$145.00	100%
IPFS Corporation- Disputed	8	\$1,481.69	100%
J&J Chemical-Disputed	8	\$1,215.00	100%
KLX Energy Services	8	\$347.68	100%
Kleese Development Associates	8	\$352.00	100%
MAG Trucking Inc.	8	\$521.85	100%
Mason's Depot & Filling Station	8	\$47.00	100%
Moundsville Sanitary Authority	8	\$2,069.82	100%
Ohio Valley Hospital	8	\$1,425.00	100%
Peoples Natural Gas Co.- POC # 24	8	\$479.59	100%
Pop-A-Lock of Pittsburgh	8	\$241.15	100%
Robinson Vacuum Tanks, Inc.	8	\$1,080.00	100%
Safety Kleen	8	\$974.66	100%
Schwab MFG & Environmental Supply	8	\$1,942.80	100%
Southwest Regional Medical Center	8	\$20.00	100%
Square One Marketing	8	\$334.88	100%
Straight-N-Clear	8	\$1,160.00	100%
Uniontown Auto Spring Co.	8	\$945.52	100%
Verizon Wireless	8	\$2,454.00	100%
Vision Benefits of America	8	\$394.40	100%
Washington Health Systems-Greene	8	\$97.00	100%
Wayne Lumber Company	8	\$258.62	100%
West Penn Power POC #19	8	\$2,012.78	100%



Windstream	8	\$860.23	100%
TOTAL		\$ 29,206.62	

**CLASS 8**  
**General Unsecured Claims in Excess of \$ 2,500.00**

Creditor	Class	Total Amount Owed	Percent of Dividend
Apex Energy Services, LLC	8	\$8,120.00	100%
Appalachian Water Services, LLC- POC # 36-Disputed	8	\$6,254.00	100%
BDI	8	\$2,697.38	100%
Burns Drilling & Excavating	8	\$2,760.00	100%
Cambrian Well Services- POC # 23- <i>Not Listed*</i>	8	\$4,748.09	100%
Cumberland Truck Parts	8	\$13,607.16	100%
D.D.T.A. Services Inc.	8	\$3,071.50	100%
Dr. Robert Corcetti	8	\$62,891.77	100%
E&R Energy Services	8	\$23,167.00	100%
Erie Indemnity Company POC # 4 (disputed audit liability)	8	\$243,570.72	100%
First National Bank of PA POC # 1	8	\$7,516.91	100%
Fleet Pride Truck & Trailer Parts	8	\$5,274.02	100%
Fleetmatics USA LLC	8	\$2,645.76	100%
Franklin Township Sewer Authority- Disputed	8	\$4,077.60	100%
Good Tire Service, Inc.	8	\$3,103.00	100%
Greene County Water Treatment, LLC	8	\$2,892.50	100%
Highmark Blue Shield POC # 14- Disputed	8	\$105,438.63	100%
Hinerman Automotive Inc.	8	\$2,607.90	100%
Iron City Industrial Cleaning Corp. –POC # 39- Disputed – Not Listed*	8	\$57,772.32	100%
J & E Sanitation- Disputed-POC # 40	8	\$111,082.30	100%
JM Teagarden	8	\$4,165.28	100%
Keystone Spring Services Inc.	8	\$2,964.21	100%
Kimble Landfill-POC # 25	8	\$12,260.66	100%
Kleese Development Associates	8	\$352.00	100%
L.A.D./Hapchuck Inc.	8	\$19,038.75	100%
Liquid Waste Solidification- POC # 33	8	\$17,425.56	100%
MB & Companies, Inc. POC # 16	8	\$9,742.87	100%
M&M Pump & Supply	8	\$5,318.68	100%
Thomas Mason & Anthony Mason- POC # 12	8	\$37,100.00	100%
Med Express	8	\$8,514.50	100%

Model Uniforms- Disputed	8	\$18,795.03	100%
Sherrard German, & Kelly, P.C.- POC # 37	8	\$2,967.39	100%
Sommer Law Group, PC POC # 20	8	\$2,984.56	100%
Tri-County Joint Municipal Authority- Disputed	8	\$9,937.67	100%
UPMC Health Network-Disputed	8	\$14,833.54	100%
US Tank and Supply	8	\$2,720.77	100%
Washington Water Service, LLC- POC # 35	8	\$14,178.94	100%
TOTAL		\$ 856,598/97.97	

**6.8.1 Disbursements to Class 8 Small Claims and Claims in excess of \$ 2,500.**

**A.** The Disbursing agent shall, pay small claims of less than \$2,500.00 in a shorter time period than paying larger claims for administrative convenience. These creditors will be paid over 12 months: in 4 quarterly installments of \$ 7,301.67 or monthly payments of \$2,433.89. The first monthly payment to Small Claims will be due to the Disbursing Agent on the Effective Date and on the 15<sup>th</sup> of every month thereafter.

**B.** Commencing on the Effective Date, the Disbursing agent shall pay claims greater than \$2,500.00 over 84 months: in 28 quarterly installments of \$30,592.82.<sup>3</sup> The first payment to class claims in excess of \$ 2,500.00 will due to the Disbursing Agent by the Effective Date and on the 15<sup>th</sup> of every month thereafter; and the first quarterly payment to this Class by the Disbursing Agent will be on or before the Effective Date. If some of the disputed claims are not allowed in their full amount, the monthly payment may be reduced.

**C.** The Disbursing Agent shall disburse all funds to all Class 8 creditors on a pro-rata basis.

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<sup>3</sup> 10,197.61 is the estimated monthly payment required to pay this class 100% of their principal claims over 7 years.

**6.8.2        Disputed claims in Class 8**

The Disbursing agents shall escrow any funds due to a disputed claimant in Class 8 in his IOLTA Account until a disputed claim becomes an Allowed Claim. The Debtor and the Disbursing Agent shall have the exclusive right to dispute any claim or enter into any settlement. The Disbursing Agent and the Debtor shall have the right to negotiate and settle and compromise any claim by offering a prepayment of their projected dividend in exchange for a discount. The Debtor may only offer discounted settlements from excess funds and not from the required monthly payment.

**6.8.3        Prepayment Option and Discount**

The Debtor may prepay class 8 at any time after confirmation provided that: (i) FNB's Class 2 Secured Claim is paid in full and (ii) provided the payment is to the entire class 8. The Debtor shall be entitled to a discount when creditors in class 8 are paid sooner than is required by this Plan. The Debtor shall be entitled to deduct 0.5% from the remaining dividend for each month that creditors are paid ahead of schedule. (i.e. if the Debtor pays creditors 22 months ahead of schedule, the Debtor gets an 11% discount of the then remaining amount due under the Plan). The Debtor, through the Disbursing Agent, shall notify holders of Allowed Class 8 Claims in writing prior to exercising the option to make prepayment in full to holders of Allowed Class 8 Claims at a discount (the "Prepayment Option Letter"). The Prepayment Option Letter shall afford holders of Allowed Class 8 Claims the option to receive the prepayment (at a discount) or continue to receive their respective quarterly payments as provided under the Plan. The Prepayment Option Letter shall contain a form to be returned to the Disbursing Agent within ten (10) business from the holder's receipt of the Prepayment Option Letter requesting that the holder of a Class 8 Allowed Claim indicate whether it will opt-in or opt-out of the prepayment option. The

Prepayment Option Letter shall also provide the amount the holder of the Allowed Class 8 Claim will receive in full satisfaction of its Allowed Class 8 Claim (less the appropriate discount) if selecting the prepayment option. Failure of a holder of an Allowed Class 8 Claim to respond to the Prepayment Option Letter shall be treated as if the holder of the Allowed Class 8 Claim opted-out of the prepayment option.

**6.8.4      Notice of Default-** Unless otherwise provided in this Plan, all creditors must give notice of any default to the Debtor and its counsel by written notice specifying the alleged default and the action needed to cure the default. The Debtor shall have (30) thirty days to cure any default after receipt of that notice. Unless otherwise provided in this Plan, No creditor may enforce any right or enforce any lien until this notice and opportunity to cure have been given. All notices of default must be mailed to the Debtor at its last known address; AND a copy of that notice shall be mailed to Donald Robert Calaiaro at 428 Forbes Avenue, Suite 900, Pittsburgh PA 15219. All notices under this paragraph must be sent by Certified mail, return receipt requested to be effective. The terms of these notice rights must be strictly enforced as a condition precedent to any rights under this plan.

**6.8.5      Excess Funds after the Payment of First National Bank of PA** If the Debtor or C Swank Enterprises, LLC pays off the obligations to FNB prior to the full payment of Class 8, then Royal Flush shall pay any Quarterly Excess Cash to Class 8 creditors on a pro rata basis until their claims are paid in full. The Debtor shall prepare a budget setting forth the necessary reserves to protect against any instability in its cash flow, a capital reserve for future repairs and maintenance of its equipment and an appropriate reserve for future capital acquisitions, income taxes and payment of

administrative claims of Professionals which it intends to retain for each 3 month period. In the event there are excess funds available at the end of the subject 3 month period in excess of the budgeted amounts for the reserves, the Reorganized Debtor will use all such cash reserves to pre-pay the Class 8.

Royal Flush, Inc. will not declare any dividends to its shareholders during the period of the repayment to Class 8.

**6.9 Class 9- Creditors who have claims arising from Guaranties of related entities.** Excluding the secured guaranty claims of FNB which are retained and treated under Class 2 in this Plan<sup>4</sup>, this Class is comprised of claims of creditors who hold guaranty(s) of obligations of C Swank Enterprises, LLC, Carol Swank or Brian Swank. These Class 9 claims are unsecured and remain contingent. These claims excluding First Commonwealth Bank<sup>5</sup>, as modified by the C Swank Plan, will be paid by C. Swank Enterprises, LLC. These claims will be paid their principal and the modified interest rate so that they are paid their modified claim in full. Their principal and post-confirmation interest claims, as modified by the C Swank Enterprises, LLC Plan, will not be discharged by this Plan. On the confirmation of this Plan, their right to the difference between the original contract rate of interest and the modified rate of interest being paid by C Swank Enterprises, LLC will not be permitted to be collected from the guarantors<sup>6</sup>. This Class will forbear from enforcing any guaranty against any guarantors during the repayment period of the

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<sup>4</sup> FNB Has agreed to forebear from exercising its guaranties as part of their agreement to accept treatment under the Plan.

<sup>5</sup> First Commonwealth Bank is being paid by Bravo Charlie.

<sup>6</sup> This is the same treatment the class 10 unsecured creditors. Their post-bankruptcy interest is being discharged under this Plan.

“Modified Secured Claim” under the Plan. The individual guarantors will execute any agreement that stipulates that no defense, including statute of limitations or waiver, will occur as a result of the confirmation of this plan and this treatment under this plan of reorganization. Provided the reorganized Debtor makes all payments under this amended plan, the Class 9 members’ claims against the guarantors for any amount in excess of the plan payments will be discharged.

Class 9 creditors will retain their claims against the Debtor and any third parties who are liable for such debts and such debts shall not be deemed discharged as to the Debtor or any third party who may be obligated to such creditors in connection with the same upon confirmation of the Plan. However, this Plan does not contemplate any distribution to such creditors by the Debtor. Rather, these creditors will receive payments from the third party borrower pursuant to the terms set forth below. Provided the third party fully performs as detailed herein, the Class 9 claims shall be deemed paid in full, and no further sums shall be owed by Debtor. Additionally, so long as the third party makes payments and otherwise fulfills its obligations as detailed below, the Class 9 creditors shall be prohibited by the Confirmation Order from taking any action against the Debtor so long as the entity from which payment is to be made in fact makes such payments and otherwise fulfills its obligations to the creditors. Upon confirmation of the plan, the obligations of Debtor, any third party obligors, and the Class 9 creditors shall be governed by the applicable loan documents, except as expressly modified by the Plan and the Order confirming the Plan.

In the event the third party fails to perform as required below, the injunction shall be dissolved automatically, and the Allowed Claim of the Class 9 creditor shall then be treated as a General Unsecured Class 8 Allowed Claim and shall be paid in full in accordance with

the treatment being afforded holders of Allowed Class 8 Claims under the Plan. The holder of a Class 9 Allowed Claim may exercise any and all available rights and remedies they may have under the applicable agreements, contracts and/or other documents and applicable law against the third party obligor to recover the balances owed in connection with their Class 9 Claims. Any amounts recovered shall serve to reduce the amount of such holder's Allowed Class 8 Claim. The Debtor's rights against any third party obligor, including for indemnification and/or contribution, are fully reserved and preserved under the Plan

**6.10 Class 10 – Equity Holders-** The Class 10 equity interests in the Debtor will be retained. The Reorganized Debtor shall not issue any dividends nor make any loans to shareholders until Classes 1 through 9 have been paid in full. In order to improve plan feasibility,

Royal Flush, Inc. agrees that it will not declare any dividends to its shareholders during the period of the repayment to Class 2- 9.

Royal Flush, Inc. and its shareholder, Carol Swank and C Swank Enterprises, LLC, and its member, Carol Swank, stipulate that any claim that Royal Flush, Inc. has under chapter 5 of the bankruptcy code shall not be discharged. They also agree that they waive any passage of time from the commencement of the case and after confirmation until the Plan is completed or until there has been a declared default under the plan as to any statute of limitations or Statue of Repose for those excluded periods.

Royal Flush, Inc. and its shareholder, Carol Swank and C Swank Enterprises, LLC, and its member, Carol Swank, stipulate that any claim that Royal Flush, Inc. has against C. Swank Enterprises, LLC shall not be discharged. This includes any claims of contribution that Royal Flush may acquire if it pays off the debts of C. Swank Enterprises,

LLC. They also agree that they waive any passage of time from the commencement of the case and after confirmation until the Plan is completed or until there has been a declared default under the plan as to any statute of limitations or Statue of Repose for those excluded periods.

The By Laws of the Debtor will be amended upon the Confirmation of this Plan to include the modifications upon the Debtor which are set forth in this article.

**ARTICLE 7-ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS OR  
UNEXPIRED LEASES**

Unless previously rejected prior to Confirmation of the Plan, or subject to a Motion to Reject filed prior to confirmation of the Plan, Confirmation of the Plan shall constitute an assumption of all executory contracts and unexpired leases of the Debtor.

The Debtor will assume the following leases with C Swank for the rental of the following equipment and/or vehicles:

- a. 2011 Ford F-250; 60 payments (RF-1)
- b. 2011 Ford F250 Pick-Up; 60 payments ( RF-2)
- c. Isuzu NPR; 36 payments ( RF-5)
- d. 2012 Dodge Ram 4500; 48 payments (RF-8)
- e. 2012 Hino 238; 48 payments ( RF-11)
- f. 2013 Dodge Ram 550; 60 payments with \$950.00 monthly ( RF-16)
- g. 2013 Peterbilt, ( RF 20)
- h. 2012 Dodge Ram 2500; 48 payments RF-21)
- i. 2012 Peterbilt 388; 60 payments with \$3000.00 monthly ( RF-23)
- j. 2013 International 5900i; 60 payments with \$3750.00 monthly (RF-24)
- k. 2012 Peterbilt; 60 payments with \$3500.00 monthly ( RF-25)
- l. 2013 Dodge Ram ( RF 26)
- m. 2012 Peterbilt 388; 60 payments with 26 months remaining (RF- 28)
- n. 2012 Peterbilt 388; 60 payments with \$3500.00 monthly (RF-29)
- o. 2013 Dodge Ram 5500; 60 payments with \$950.00 monthly (RF-31)



- p. 2012 Peterbilt 388; 60 payments with \$3500.00 monthly (RF-32)
- q. 2013 International 5900i; 60 payments with \$3500.00 monthly (RF-33)
- r. 2013 Peterbilt 388; 60 payments with \$4000.00 monthly (RF-35)
- s. 2013 Peterbilt 388; 60 payments with \$4000.00 monthly (RF-36)
- t. 2013 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-37)
- u. 2013 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-38)
- v. 2013 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-39)
- w. 2013 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-40)
- x. 2015 Peterbilt 388; 60 payments with \$4000.00 monthly (RF-41)
- y. 2014 Ram 5500; 60 payments with \$1500.00 monthly (RF-43)
- z. 2014 Ram 5500; 60 payments with \$1,500.00 monthly (RF-44)
- aa. 2014 Peterbilt 337; 60 payments with \$3500 monthly (RF-45)
- bb. 2015 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-50)
- cc. 2012 Peterbilt 388; 60 months with \$3500.00 monthly ( RF-51)
- dd. 2012 Peterbilt 388; 60 payments with \$ 4250.00 monthly ( RF-52)
- ee. 2012 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-53)
- ff. 2013 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-54)
- gg. 2012 Peterbilt 388; 48 payments with \$4250.00 monthly (RF-55)
- hh. 2013 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-56)
- ii. 2013 Peterbilt 388; 60 payments with \$4,250.00 monthly (RF-57)
- jj. 2013 Peterbilt 388; 60 payments with \$4250.00 monthly (RF-61)
- kk. 2013 Peterbilt 388; 60 Payments with \$4250.00 monthly (RF-62)
- ll. 2015 Peterbilt 367; 60 payments with \$4250.00 monthly (RF-64)
- mm. 2014 International 5900i's; 60 payments with \$5000.00 mthly (RF-65)
- nn. 2014 International 5900i's; 60 payments with \$5000.00 mthly

	(RF- 66)
oo.	2014 Peterbilt 367; 36 payments with \$5000.00 monthly (RF-69)
pp.	2013 Peterbilt 367; 48 payments with \$5000.00 monthly (RF-70)
qq.	2015 International 5900i; 36 payments \$5000.00 monthly (RF-71)
rr.	2014 Peterbilt 567; 36 payments with \$5000.00 monthly (RF-72)
ss.	2016 Peterbilt 367; 48 payments with \$5000.00 monthly (RF-73)
tt.	2016 Peterbilt 367; 48 payments with \$5000.00 monthly (RF-74)
uu.	2016 Peterbilt 389; 48 payments with \$5000.00 monthly (RF-75)
vv.	2016 Peterbilt 367; 60 payments with \$5000.00 monthly (RF-76)
ww.	2016 Peterbilt 367; 60 payments with \$5000.00 monthly (RF-77)
xx.	2016 Peterbilt 367; 48 payments with \$5000.00 monthly (RF-78)
yy.	2015 Peterbilt 389; 48 payments with \$5000.00 monthly (RF-80)
zz.	2016 Peterbilt 389 (RF-81)
aaa.	2016 Peterbilt 389; 48 payments with \$5000.00 monthly (RF-82)
bbb.	2016 Peterbilt 367; 36 payments with \$5000.00 monthly (RF-83)
ccc.	2016 Peterbilt 389S; 36 payments with \$5000.00 monthly (RF-84)
ddd.	2016 Peterbilt 389S; 36 payments with \$5000.00 monthly (RF-85)
eee.	2013 Aspen Trail; 12 payments
fff.	2015 Alpine 5 <sup>th</sup> Wheel; 36 payments with \$1500.00 monthly

These leases will be assumed by the Debtor on the Effective Date of the Plan. The terms and conditions of the leases shall be modified by the Plan to provide that the Debtor shall be obligated to pay to C Swank in consideration of the lease of said equipment and/or vehicles the sum of \$167,758 on the Effective Date and thereafter the monthly rental payment of \$105,610 for 83 consecutive months.

The Debtor will assume the following unexpired leases of non-residential real estate on the Effective Date of the Plan:

- a. 10 Industrial Park Drive, Carmichael, PA 15320, Landlord – Bravo Charlie

The Debtor and a related entity, Bravo Charlie, LLC, are parties to a Net Lease dated June 1, 2016, pursuant to which the Debtor is renting space from Bravo-Charlie, LLC. Confirmation of the Plan shall constitute an assumption of this lease, without modification, except that Bravo-Charlie, LLC, shall be deemed to have waived any claims for unpaid rent arising prior to the Effective Date. Bravo-Charlie, LLC, shall retain any claims for unpaid rent arising after the Effective Date. Bravo-Charlie, LLC, has consented to this treatment and has agreed not to assert any Claim or otherwise.

b. 1693 Route 56, Spring Church, PA 15686, Landlord – Kathryn Corcetti

The Debtor will assume this lease and cure the pre-petition arrears of \$22,165.29 on the Effective Date.

c. 61530 Bailey Road, Barnesville, OH 43712, Landlord – Deborah Kaiser

The Debtor will assume this lease and cure the pre-petition arrears of \$12,300.00 on the Effective Date. (\$10,500.00 [POC # 42- pre-petition] and \$ 1,800.00 post-petition)

d. 955 Canyon Road, Morgantown, WV, Landlord -Twins LLC

The Debtor will assume this lease on the Effective Date of the Plan. There are no pre-petition or post-petition arrears on this lease.

The Debtor will assume the following executory contract:

e. Comdoc copier lease- Assumed

The Debtor will cure the pre-petition arrears of \$1,115.12 on the Effective Date.

## **ARTICLE 8 - RETENTION OF JURISDICTION**

**8.1** The Bankruptcy Court shall, after the confirmation date and until final consummation, be entitled to exercise exclusive jurisdiction over the following matters:

- (a) To consider any modification of this Plan pursuant to Section 1127 of the Code;
- (b) To determine the allowance of all claims against the Debtor, which accrued prior to the confirmation of the Plan, pursuant to Section 502 of the Code; the Court shall not have jurisdiction to determine post-confirmation claims

against the Debtor.

- (c) To hear and determine any objections filed within sixty (60) days after confirmation date to the allowance of any claim;
- (d) To hear and determine any adversary proceeding or contested matter, controversy, suit or dispute over which the Bankruptcy Court has jurisdiction under 28 U.S.C. Sections 157 and 1334. The Debtor shall have 60 days after confirmation to file any adversary proceeding, contested matter or suit in Bankruptcy Court or in any Court with appropriate jurisdiction;
- (e) To hear and determine all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of the Plan;
- (f) To issue such orders as may be necessary for the administration and/or consummation of this Plan, including complaints to determine secured claims;
- (g) To set and determine all professional fees and other costs of administration in this Chapter 11 case prior the confirmation of the Plan of Reorganization; and
- (h) For such other purposes as may be set forth in the Confirmation Order.

## **ARTICLE 9 - GENERAL PROVISIONS**

**9.1**    Amendments    This Plan may be amended by the Plan Proponent at any time prior to the confirmation date and thereafter as provided in Section 1127 of the Code.

**9.2**    Headings    The headings included in this Plan are for the sake of convenience and reference only and shall not constitute part of this Plan for any other purpose.

**9.3**    Interest    Except as specifically set forth in the Plan or in any Final Order of the Court entered during this Chapter 11 case, interest shall be deemed not to have accrued with respect to any claim since the filing date and no payment of interest will be made pursuant to the Plan.

**9.4**    Final Decree-    This Plan contemplates that the case will be closed and a

final

decree entered as soon as all of the following have occurred:

- (a) All fee applications have been filed and approved. No fee application shall be allowed unless they have been filed prior to forty-five (45) days after the Order of Confirmation is entered;
- (b) All objections to claims and adversary actions are filed and resolved;
- (c) The Debtor has made the first payment to the administrative claimants; and
- (d) The Debtor has complied with the Post-Confirmation Order.

#### **ARTICLE 10 - AMENDMENT**

**10.1** The proponent of the Plan reserves the right to amend this Plan prior to confirmation. If there is a substantial event that alters the feasibility of this Plan or if the Plan fails to meet the requirements of 11 U.S.C. Section 1122 or if this Plan does not meet the requirements of 11 U.S.C. Section 1129, before or after a ballot of Creditors.

**Date:** October 10, 2017

**Respectfully Submitted,**

**BY:** /s/ Donald R. Calaiaro

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