

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

IN RE:

Royal Flush, Inc.,

Debtor.**Bankruptcy No. 16-23458 JAD****Related Document No.****Document No.**

SUMMARY OF FOURTH AMENDED CHAPTER 11 PLAN

(A) Class 1, Administrative Claims Class 1 administrative claims will be paid in full on the Plan Effective Date unless the parties agree on a different payment arrangement.

(B) Class 2, Secured Claim of First National Bank of Pennsylvania (“FNB”): FNB is the holder of first priority perfected security interests and liens in the personal property assets of the 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 (the “Loan Documents”) executed by the Debtor. The Debtor has guaranteed certain obligations of C Swank owed to FNB on certain loans made by FNB to C Swank, which guaranties are secured by the personal assets of the Debtor. The total outstanding balance on the Secured Claim owed jointly severally by the Debtor and C Swank to FNB as of September 12, 2017 was \$2,474,850.23, inclusive of post-petition interest, fees and costs, including without limitation, reasonable attorneys’ fees and costs in the amount of \$104,688.18 (as of August 31, 2017), which FNB is entitled to under Section 506 of the Bankruptcy Code. Said amount will continue to accrue post-petition interest, costs and fees, including reasonable attorney fees and costs, up through and including the Effective Date of the Plan. For ease of administration, the balances owed to FNB by the Debtor shall be administratively consolidated into one monthly payment to be made by the Debtor to FNB.¹

The Secured Claim of FNB consists of the following:

<u>Date/Note Amount/Loan Number</u>	<u>Borrower(s)</u>	<u>Guarantor</u>	<u>Loan Balance as of Petition Date (The balance owed to FNB as of the Effective Date of the Plan will include unpaid post-petition interest, costs and fees, including attorney fees)</u>
April 9, 2014 \$750,000 Loan No. 45301210	Royal Flush Carol Swank	C Swank April 9, 2014	\$766,372.06
April 9, 2014 \$100,000 Loan No. 45300205	Royal Flush Carol Swank	C Swank April 9, 2014	\$47,603.00
April 9, 2014 \$64,800 Loan No. 45301225	Royal Flush Carol Swank	C Swank April 9, 2014	\$30,846
May 23, 2014 \$80,640 Loan No. 45350410	Royal Flush Carol Swank	C Swank May 23, 2014	\$29,888.13
July 8, 2016 \$200,000 Loan No. 45925095	Royal Flush Carol Swank	C Swank July 8, 2016	\$76,753.27
December 5, 2014 \$492,400 Loan No. 45522085	C Swank Carol Swank	Royal Flush December 5, 2014	\$266,697.32
April 28, 2015 \$2,200,000 Loan No. 45624140	C Swank Carol Swank	Royal Flush April 28, 2015	\$1,516,019.32

¹ Substantively the FNB Loans shall remain as separate loans with FNB.

On or about August 30, 2016, FNB filed a Complaint in Confession of Judgment against the Debtor and Carol A. Swank on the loans in the Court of Common Pleas of Armstrong County, Pennsylvania at Case No. 2016-01167 entering judgment against the Debtor in the amount of \$948,327.33, plus continuing interest, fees, and costs;

On or about August 30, 2016, FNB filed a Complaint in Confession of Judgment against the Debtor on certain loans to C Swank Enterprises, LLC and Carol A. Swank, which the Debtor guaranteed, in the Court of Common Pleas of Armstrong County, Pennsylvania at Case No. 2016-01176 entering judgment against the Debtor in the amount of \$1,723,166.92, plus continuing interest, fees, and costs.

On the Petition Date, the amount owed to FNB on the loans the Debtor is a borrower totaled \$951,463.13. On the Petition Date, the amount owed to FNB on the loans under which this Debtor is a Guarantor totaled \$1,782,716.64. The total amount owed to FNB on the Petition Date was \$2,734,179.70. During the Debtor's Chapter 11 case and pursuant to various orders approving the use of cash collateral, the Debtor and C Swank made adequate protection payments to FNB. After application of those adequate protection payments and with the addition of unpaid post-petition interest, costs and fees, including reasonable attorney fees and costs, the balance owed to FNB by the Debtor and C Swank, jointly and severally, as of September 12, 2017 was \$2,474,850.23. As of the Effective Date of the Plan, FNB shall have an Allowed Secured Claim in the amount of \$2,474,850.23, plus any accrued and unpaid interest, costs and fees, including reasonable attorney fees and costs, and less any adequate protection payments made by the Debtor or C Swank that have accrued or been paid from September 12, 2017 up to the Effective Date of the Plan. The FNB Allowed Secured Claim will also be reduced in the amount of \$2,100.00 a month, which amount is being contributed by Carol Swank to FNB on account of its Allowed Secured Claim as Carol swank makes those payments.

The Allowed Secured Claim of FNB shall be paid by the Debtor as follows:

- i. The first payment of \$14,371.06 will be made to FNB on the Effective Date of the Plan (the "Initial Payment") (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.) Thereafter, FNB's Allowed Secured Claim will be paid in full over time at a fixed interest rate of five percent (5%) per annum with monthly minimum payments of \$14,371.06 being paid on the 15th day of each month beginning in the month immediately following the month in which Initial Payment is made. All payments made by the Debtor shall be applied first to the loans in which the Debtor is the Borrower allocated amongst such loans by FNB in its sole discretion, and, second, to the loans in which the Debtor is a guarantor allocated amongst such loans by FNB in its sole discretion. Until the Effective Date, the Debtor shall continue to pay to FNB the monthly adequate protection payments agreed to by the parties and approved by the Court. Notwithstanding any other provision in this Disclosure Statement and the 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 modified and amended by the Plan 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 Allowed Secured Claim 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 owed to FNB, including C Swank and Carol Swank. Upon confirmation of the Plan, all pre-confirmation defaults will be waived by FNB.

- ii. Pursuant to the C Swank plan of reorganization, FNB's allowed Secured Claim will be paid in full by C Swank at a fixed interest rate of five percent (5%) per annum with monthly minimum payments of \$30,497.11 paid on the 15th day of each month. After FNB leasing is paid under the C Swank Plan, the money allocated to the FNB Commercial Leasing payment will then go to FNB until the Allowed Secured Claim of FNB is paid in full.
- iii. To be free of doubt, the total amount due and payable to FNB, whether paid under this Plan or the C Swank plan of reorganization, or a combination of both, is the amount equal to its Allowed Secured Claim as of the Effective Date of the Plan and the C Swank plan of reorganization.
- iv. Also on account of the FNB Allowed Secured Claim, Carol Swank, the principal of the Debtor, and a co-borrower or guarantor on the FNB loans, will separately contribute \$ 2,100.00 a month to FNB, which payments shall be applied by FNB to its Allowed Secured Claim.
- v. At least fifteen (15) days prior to the end of any 3 month period following the Effective Date and continuing until the Allowed Secured Claim of FNB and the Allowed Claims in Class 8 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. This budget shall be provided to FNB and counsel for the Committee, John M. Steiner. 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 2 claims of First National Bank of Pennsylvania, and once paid in full, to pay the Allowed Claims in Class 8.

- vi. Other than those salaries set forth in Section 5.4 of the Plan to which Brian and Carol Swank are entitled, the Debtor will not make any distributions, declare any dividends and/or make loans to its shareholders, members and/or equity Interest holders until all obligations and payments under the Plan have been fully paid and satisfied.

vii.

(C) Class 3, Ally Financial, is the holder of liens on a 2014 Ram 2500, a 2014 Ram 5500, a 2014 Jeep Wrangler, and a 2014 Dodge Grand Caravan. The Creditor has filed claims at POC # 8 in the amount of \$24,113.32, at POC # 9 in the amount of \$32,091.29, at POC #10 in the amount of \$21,599.63, and at POC # 11 in the amount of \$13,427.10. The total secured claim of the Creditor is \$91,231.34. The Creditor will be paid in full over five (5) years with a fixed interest rate of five percent (5%).

(D) Class 4, 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 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. Chrysler Capital will be paid in full over five (5) years with a fixed interest rate of five percent (5%).

(E) Class 5, J.P. Morgan Chase Bank N.A., is the holder of a lien on a 2014 Subaru and has filed a claim at POC # 22 in the amount of \$16,012.11. The Creditor will be paid in full over five (5) years with a fixed interest rate of 5 percent (5%).

(F) Class 6, Priority Claims, Holders of Allowed Priority Claims (in the approximate amount of \$517,141.26 will be paid in full over 5 years at 3% or 4% interest or the statutory rate² of post- confirmation interest from the Effective Date. Payments to Holders of Allowed Class 6 Claims shall be made monthly.

(G) Class 7, Essential Vendors, 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 AND who will give the Reorganized Debtor post-confirmation credit terms and preferred pricing. The following list sets forth the members in Class 7:

- Guttmann Oil – POC #18
- Jacobs Petroleum Products, Inc. POC #41
- Hunter's Truck Sales & Service, Inc. – POC #43

The Debtor is assuming any executory contracts with holders of Claims in Class 7. The Debtor will cure all pre-bankruptcy obligations, less any amounts already paid to a holder of a Claim in Class 7 during the Bankruptcy Case on account of their Pre-Petition Claim and pursuant to order entered by the Bankruptcy Court, to each Class 7 member in monthly payments over a 24 month period. As part of the agreement

² The Pennsylvania Department of Revenue has a 4% statutory interest rate.

to assume the contracts with Holders of Class 7 Claims, 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. After notice, the Debtor shall have 5 (five) business 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 7 member for any unpaid post-petition charges. These parties have contracts with the Debtor and the Plan assumes these contracts under this Plan. The Assumption will be effective on the Date of the Confirmation of the Plan.

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.

Prior to the hearing on confirmation of the Plan, any Class 7 member may opt out of Class 7 treatment and the assumption of its agreement by providing the Debtor and its counsel with a written letter indicating that said creditor will opt out of the Class 7 treatment. If such letter is received by the Debtor prior to the hearing on confirmation of the Plan, then said creditor's ballot, if cast, shall be tabulated and treated in accordance with Holders of Claims in Class 8.

This class may vote upon on the plan because they are impaired under the plan and they have a right of adequate assurance of the future performance of their contracts.

(H) Class 8, General Unsecured Creditors, holders of Allowed General Unsecured Claims will be paid the full amount of their claim, without interest, over seven (7) years. The Plan breaks this class into two subclasses. Small Claims less than \$2,500.00 and claims that exceed \$2,500. Holders of Allowed Small Claims will be paid in full in 12 monthly installments with the first payment due on the Effective Date and then every month thereafter for the next 11 months beginning on the 15th day of the month immediately following the month in which the Effective Date occurs.

Holders of Allowed Claims in Class 8 that are in excess of the Small Claim amount will be paid in full over 7 years in 28 quarterly installments. On the Effective Date, the Debtor will pay to the Disbursing Agent the first quarterly installment of \$30,580.02 (the "Class 8 First Quarterly Installment"). The Debtor shall then make 27 quarterly installment payments to the Disbursing Agent with the first quarterly installment to be made on the 1st business day of the month following the first full quarter computed on a calendar year basis after the Class 8 First Quarterly Installment has been made. The Debtor shall then make another 26 quarterly payments to the Disbursing Agent computed on a calendar year basis on the 1st business day of each month following the end of a quarter. By way of example, if the Class 8 First Quarterly Installment is made on November 15, 2017, the first full quarter computed on a calendar year basis following the Class 8 First Quarterly Installment would be the 1st quarter of 2018. Thus, the first of the 27 quarterly installments would be paid on April 2, 2018, and then on the 1st business

day of the month following the next 26 quarters computed on a calendar year basis (i.e. July 12 2018, October 1, 2018, January 2, 2019, etc.). The amount of the quarterly installments necessary to pay in full Allowed Class 8 Claims and to make the appropriate payment into a reserve for holders of Disputed Claims in Class 8, shall be determined at or prior to the hearing on confirmation of the Plan. After receiving a quarterly installment payment, the Disbursing Agent shall as soon as practicable make pro rata distributions to holders of Allowed Claims in Class 8 and make payment into the Disputed Claim Reserve, as necessary and applicable.

The Disbursing Agents shall escrow in his IOLTA trust account any funds due to a holder of a Disputed Class 8 Claim (the "Disputed Claim Reserve") until said Claim has become an Allowed Claim, at which time the Disbursing Agent shall then release the pro rata amount held in the Disputed Claim Reserve to the holder of such Class 8 Claim in an amount consistent with the provisions of the treatment of holders of Allowed Class 8 Claims under the Plan.

Prepayment Option and Discount. The Debtor may prepay holders of Allowed Class 8 Claims at any time after the Effective Date provided that: (i) FNB's Class 2 Allowed 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 amount owed to a particular holder of an Allowed Class 8 Claim for each month that said holder is paid ahead of schedule. (i.e. if the Debtor pays in full holders of Class 8 Claims in 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 pay in full the 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 accept 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.

Excess Funds after the Payment of FNB' Allowed Secured Claim. At least fifteen (15) days prior to the end of any 3 month period following the Effective Date and continuing until the Allowed Secured Claim of FNB and the Allowed Claims in Class 8 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. This budget shall be provided to FNB and counsel for the Committee, John M. Steiner. 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 2 claims of

First National Bank of Pennsylvania, and once the Class 2 Claim is paid in full, to pay the Allowed Claims in Class 8.

Other than those salaries set forth in Section 5.4 of the Plan to which Brian and Carol Swank are entitled, the Debtor will not make any distributions, declare any dividends and/or make loans to its shareholders, members and/or equity Interest holders until all obligations and payments under the Plan have been fully paid and satisfied.

I. Class 9, Holders of Contingent Claims Arising from the Guaranties of the Debtor. The members of Class 9 loaned money to one or more third parties who are related to or affiliated with the Debtor, and Debtor guaranteed the third party's obligations to the creditor in connection with those loans. Class 9 excludes FNB which has its Allowed Secured (guaranty) Claims treated in Class 2. Holders of Allowed Class 9 Claims will retain their Allowed Claims against the Debtor and any third party who is liable for such debt and such Claim shall not be deemed discharged as to the Debtor or any third party who may be obligated to the holder of the Allowed Class 9 Claim.

However, this Plan does not contemplate any distribution to such creditors by the Debtor. Rather, as further explained below, 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, 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 enjoined from taking any action against the Debtor so long as the third party from which payment is to be made in fact makes such payments and otherwise fulfills its obligations to the Class 9 creditors. Upon confirmation of the Plan, the obligations of the Debtor, any third party obligors, and the Class 9 creditors shall be governed by the applicable agreements, contracts and other documents between them, except as expressly modified by 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.

J. Class 10, Equity Security Interests/Shareholder Claims and Rights, holders of Equity Security interests in the Debtor will retain their Equity Security interests as modified by the Plan.

In order to improve plan feasibility, Carol Swank will be paying on account of FNB's Class 2 Allowed Secured Claim the sum of \$2,100.00 monthly until the FNB claim is paid in full. Further, Carol Swank has agreed that her post-confirmation salary will be \$ 0.00. 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. If all obligations and payments due under the Plan are current and not in default, Brian Swank's salary for 2019 will increase to an amount not exceed \$60,000.00. Thereafter, if all obligations and payments under the Plan are current and not in default and until all obligations and payments under the Plan are fully paid and satisfied, Brian Swank's annual salary may be increased on the 1st day of January for each succeeding year by seven percent (7%).

Of note, the C Swank plan of reorganization currently provides that Carol and Brian Swank will be drawing annual salaries from C Swank for years 2017 and 2018 in the amount of \$90,000 each, until the creditors are paid in full.

Other than those salaries set forth in Section 5.4 of the Plan to which Brian and Carol Swank are entitled, the Debtor will not make any distributions, declare any dividends and/or make loans to its shareholders, members and/or equity Interest holders until all obligations and payments under the Plan have been fully paid and satisfied.

The Debtor, holders of Equity Security interests, Brian Swank, Carol Swank and C Swank, and its member, Carol Swank, stipulate, agree and acknowledge that any Claim and/or cause of action, including but not limited to, any claim for contribution and/or indemnification arising out of or relating to the payment of any obligation, debt or Claim of C Swank by the Debtor or any Claim or cause of action that may be brought under Chapter 5 of the Bankruptcy Code, that the Debtor and/or its bankruptcy estate has against them is reserved and preserved under the Plan and that the C Swank plan of reorganization will not and does not seek a discharge of any such Claim or cause of action. The Debtor, holders of Equity Security interests, Brian Swank, Carol Swank and C Swank, and its member, Carol Swank, stipulate, agree and acknowledge that until all obligations and payments under the Plan or fully paid and satisfied, they waive any passage of time from the Petition Date and otherwise agree to a tolling of any statute of limitation or statute of repose, or any similar defense, to any and all Claims and causes of action that may be brought against them by the Debtor and/or its bankruptcy estate.

Respectfully Submitted,

Date: November 13, 2017

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