

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

**In Re:**  
C Swank Enterprises, LLC,  
**Debtor.**

**Bankruptcy No.** 16-23451 JAD  
**Chapter** 11  
**Document No.**

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**THIRD AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

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**BY:** /s/ Donald R. Calaiaro  
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**DATED:** November 13, 2017

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**CHAPTER 11 PLAN OF REORGANIZATION**

**C Swank Enterprises, LLC** a 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 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 Ballot: The form distributed, together with the Disclosure Statement, to the holders of Claims in Classes that are impaired and entitled to vote on this Plan for purpose of indicating acceptance or rejection of this Plan.

1.4 Bankruptcy Code: Title 11 of the United States Code, as amended from time to time, as applicable to Chapter 11 cases.

1.5 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, USX Tower, Pittsburgh, Pennsylvania, 15219, or any Court having jurisdiction to hear and determine appeals there from.

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. Section 1122 of the Code, each such Class being more fully defined in Article 3 of the Plan.

1.8 Common Stock shall mean the shares of common stock of **C SwankEnterprises, LLC**.

**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** Convenience Claim: Any Unsecured Claim that is (i) Allowed for an Amount of \$500.00 or less or (ii) is Allowed in an amount greater than \$ 500.00, but which is reduced to \$500.00 by election of the Holder thereof pursuant to such Holder's Ballot. In no event shall any Convenience Claim exceed \$500.00 for purposes of allowance, treatment or distribution under this Plan.

**1.12** 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 (l) of the Code.

**1.13** Creditor's Committee: The Official Committee of Unsecured Creditors appointed in these Chapter 11 cases pursuant to 1102(a) of the Bankruptcy Code, as may be constituted from time to time. **A Creditor's Committee was not formed in this case.**

**1.14** Disbursing Agent shall mean Donald R. Calaiaro with an address of 20 Warriors Road, Pittsburgh, PA 15205, or his designee in the event of his death or disability.

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

**1.16** Effective Date of the Plan shall mean the fifteenth (15<sup>th</sup>) day after the entry of the Confirmation Order..

**1.17** Equity Interests shall mean all the interests and claims held by holders of common shares of Advanced II, Inc. prior to confirmation.

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.

**1.18** Filing Date shall mean **September 15, 2016**, the date on which C Swank Enterprises, LLC filed its petition for reorganization with the Bankruptcy Court.

**1.19** 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.

**1.20** Fiscal Quarter shall mean a three-month period ending on the last day of March, June, September or December as the appropriate case may be.

**1.21** Impaired: Any Class of Claims or Interests that is Impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.22** Plan shall mean this Plan of Reorganization dated **November 13, 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.

**1.23** 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.

**1.24** 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.

**1.25** Priority Wage Claim shall mean any claim entitled to priority in payment under Section 507(a) (3) or (4) of the Code, to the extent it is an allowed claim.

**1.26** Tax Attributes shall mean any right or claim for credits that the Debtor has as of the date of confirmation of the Plan.

**1.27** Proponent of this Plan shall mean C Swank Enterprises, LLC.

**1.28** Schedules shall mean the schedules of assets and liabilities filed by C Swank Enterprises, LLC with the Bankruptcy Court as required by Section 521 of the Code, and any amendments thereto as allowed by the Bankruptcy Court.

**1.29** 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.

**1.30** Secured Creditor shall mean any person, which holds a secured claim.

**1.31** 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.

**1.32** Unimpaired: Any Class of Claims or Interests that is not impaired by this Plan of Reorganization within the meaning of section 1124 of the Bankruptcy Code.

**1.33** 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.

**1.34** 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.

**1.35** General Rule of Interpretation unless otherwise defined herein, all terms used in this Plan shall have the meanings set forth in the Bankruptcy Code.

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

**Class 1, Administrative Claims** Class 1 will be paid in full on the Plan Effective Date unless the parties agree on a different payment arrangement.  
**[Unimpaired]**

<b>Class 2, <u>First National Bank of Pennsylvania</u></b>	<b>[Impaired]</b>
<b>Class 3, <u>Paccar Financial</u></b>	<b>[Impaired]</b>
<b>Class 4, <u>Santander</u></b>	<b>[Impaired]</b>
<b>Class 5, <u>TCF Equipment Finance</u></b>	<b>[Impaired]</b>
<b>Class 6, <u>Ally Bank</u></b>	<b>[Impaired]</b>
<b>Class 7, <u>Chrysler Capital</u></b>	<b>[Impaired]</b>
<b>Class 8, <u>De Lage Landen Financial Services, Inc.</u></b>	<b>[Impaired]</b>
<b>Class 9, <u>BMO Harris</u></b>	<b>[Impaired]</b>
<b>Class 10 <u>BMO Harris</u></b>	<b>[Impaired]</b>
<b>Class 11, M &amp; T Bank</b>	<b>[Impaired]</b>
<b>Class 12 <u>Equipment leases with FNB</u></b>	<b>[Impaired]</b>
<b>Class 13, <u>Executory Contract with Wells Fargo</u></b>	<b>[Impaired]</b>
<b>Class 14, <u>Priority Creditors</u></b>	<b>[Impaired]</b>
<b>Class 15, <u>Executory Contracts with Royal Flush.</u></b>	<b>[Impaired]</b>
<b>Class 16, <u>General Unsecured Creditors</u></b>	<b>[Not Impaired]</b>
<b>Class 17, <u>Creditors who have claims arising from Guaranties of related entities.</u></b>	<b>[Impaired]</b>
<b>Class 18, <u>Equity Shareholder Claims and Rights.</u></b>	<b>[Impaired]</b>



### **ARTICLE 3 - DESIGNATION OF CLASSES**

**3.1** Class 1 shall consist of 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) Any attorney who successfully recovers any money on behalf of the estate 11 U.S.C. Section 503(b) (3) (D).
- (b) Attorneys for Debtor, Calaiaro Valencik
- (c) Accountant for the Debtor. 11 U.S.C. Section 503(b) (4).

This Class shall also include administrative expenses incurred during the Administration:

- (d) Internal Revenue Service; if any.
- (e) Claims for any unpaid ongoing expenses accrued during the course of the Debtor's operation; if any.
- (f) All U.S. Trustee's fees and Clerk of Bankruptcy Court charges.
- (g) Unpaid administrative rent, as allowed.
- (h) Unpaid administrative wages, as allowed.
- (i) All professional fees are subject to the Bankruptcy Court's approval under Section 330(a) (1) of the Bankruptcy Code and Bankruptcy Rule 2016(a); and only to the extent professionals preserved the estate.

**3.2** Class 2, **First National Bank of Pennsylvania** consists of the allowed perfected secured claim of First National Bank of Pennsylvania ("FNB"). FNB is the holder of first priority blanket 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, guarantys and other loan security documents ("Loan Documents") executed by the Debtor. As of the September 12, 2017, the total allowed secured claim of FNB is \$2,474,850.23 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 allowed secured claim is composed of the following seven (7) Loans ("FNB Loans"):

- A.     492,400.00 Loan #45522085. On or about December 5, 2014, Debtor borrowed a \$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.
- B.     \$2,200,000.00 Loan #45624140. On or about April 28, 2015 the Debtor borrowed \$2,200,000.00 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.
- C.     \$64,800.00 Loan #45301225. On or about April 9, 2014, the Debtor guarantyd a \$64,800.00 loan 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.
- D.     \$100,000.00 Loan #5300205. On or about April 9, 2014, the Debtor guaranteed a \$100,000.00 loan 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.
- E.     \$750,000.00 Loan #45301210. On or about April 9, 2014, the Debtor guaranteed a \$750,000.00 loan 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 \$765,310.60 plus continuing interest and fees and costs as provided for under the Loan Documents and §506 of the Bankruptcy Code.

F. \$80,640.00 Loan #45350410. On or about May 23, 2014, the Debtor guaranteed an \$80,640.00 loan 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.

G. \$200,000.00 Loan #45925095. On or about July 8, 2016, the Debtor guaranteed a \$200,000.00 loan 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.

FNB has filed claims at POC#s 26, 27, 28,29,30,31, and 32 for the amounts set forth above totaling \$ 2,730,522.05. 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.

Upon confirmation of the Plan, the balances on the FNB Loans shall be administratively consolidated by the Debtor into one loan amount<sup>1</sup>. FNB's allowed secured

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<sup>1</sup> Substantively the FNB Loans shall remain as separate loans with FNB.

claim will be paid in full with a fixed interest rate of five percent (5%) per annum with monthly minimum payments of \$30,497.11 to FNB paid on the 15<sup>th</sup> day of each month, plus the \$14,769.89 a month paid to Bank Capital Services, LLC d/b/a FNB Commercial Leasing (“FNB Commercial Leasing”) in Class 12 will also be paid monthly to FNB commencing after the lease payment claim in Class 12 is paid in full to FNB Commercial Leasing. All payments shall in be applied and allocated by FNB in its sole discretion to the indebtedness under the Loans, first to payment of obligations on which the Debtor is primary Obligor, and then to obligations on which the Debtor is Guarantor. 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 guarantys 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 entitled to payment of its reasonable attorneys’ fees and costs pursuant to 11 U.S.C. §506(d). 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, Royal Flush, Inc. and Carol Swank. Upon confirmation of the Plan, all pre-confirmation defaults will be waived.

**3.3** Class 3, **Paccar Financial**, is the holder of liens on two 2016 Peterbilt 389 (2NXPL40X8GM298538) and (2NPXL40XXGM298539), 2016 Peterbilt 367 (VIN 2NPTL40X3GM308536), 2013 Peterbilt 388 (VIN 1NPWL40X1DD185303), 2015

Peterbilt 389 (VIN 1NPTL40X0FD306957), and 2012 Peterbilt 388 (VIN 1NPWX4EX9CD133851). The Creditor has filed claims at POC # 1 in the amount of \$66,096.37, POC # 8 in the amount of \$138,330.87, and POC #9 in the amount of \$379,273.52. The total secured claims of this creditor are \$583,700.76. Paccar Financial filed a Motion for Relief from Stay at document # 58. The Debtor filed a response at document # 84 and the court ordered adequate protection payments of \$ 8,902.04 monthly.

**3.4** Class 4, **Santander**, is the holder of liens on a 2013 International 5900i (1HTXYSJT9DJ145603), a 2012 Peterbilt 388 (1NPWL40X9CDI69302); 2015 Peterbilt 367 (1NPCL40X4FD290309); two 2016 Peterbilt 367s (2NPTL40X4GM308528 and (2NPTL40X6GM308529). The Creditor has filed 4 claims at POC # 14 in the amount of \$101,137.20 - 2013 International 5900i, POC # 15 in the amount of \$101,848.80-2012 Peterbilt 388 , POC # 16 in the amount of \$130,369.80- 2015 Peterbilt 367, and POC # 17 in the amount of \$347,443.65- two 2016 Peterbilt 367s. Santander filed a Motion for Relief from Stay at Document # 78. On January 10, 2017, the court ordered the debtor to make adequate protection payments of \$7,066.95 monthly.

**3.5** Class 5, **TCF Equipment Finance**, is the holder of liens on a 2014 International 5900i. The Creditor has filed a claim at POC #22 in the amount of \$325,682.99. It encumbers 2014 International; 5900 i (3HTNUAPT8EN022538) AND 2014 International; 5900 i (3HTNUAPT6EN022540). It filed a motion for Relief from Stay at Document # 36. The Court authorized an adequate protection payment on January 10, 2017 at Document # 174 in the amount of \$ 6,360.00 monthly.

**3.6** Class 6, **Ally Bank**, is the lien holder of a 2012 Dodge Ram 2500 Crew Cab, a 2013 Dodge Ram 1500, and a 2012 Dodge Ram 4500. The Creditor has filed claims at POC # 11 in the amount of \$3,981.45 – 2012 Dodge Ram 2500 Truck- , POC # 12 in the amount of \$2,961.76 - 2012 Dodge Ram 4500 Truck, POC # 13 in the amount of \$11,499.84-2013 Dodge Ram 1500. The total secured claim of this Creditor is \$18,443.05. On January 17, 2017, Ally Bank filed a Motion for Relief from Stay at Document # 182. The hearing for that motion is on February 14, 2017.

**3.7** Class 7, **Chrysler Capital**, is the lien holder of two 2013 Dodge Ram 5500s and two 2014 Dodge Ram 5500. The Creditor has not filed a proof of claim. The Debtor believes this Creditor's secured claim is \$104,517.47.

**3.8** Class 8, **De Lage Landen Financial Services, LLC**, is the lien holder of a 2013 International 5900i. The Creditor has not filed a proof of claim. The Debtor believes this Creditor's secured claim is \$67,545.78.

**3.9** Class 9 , **BMO Harris as assignee of GE Capital and GE Navistar Capital**, is the lien holder of a 2014 Peterbilt 337 (2NP2HM7X9EM247176), 2013 Peterbilt 367 (1NPTL4EXXDD175834), and 2013 Heritage 120BBL Tank (HS421). The Creditor filed a claim at POC # 20 in the amount of \$189,191.33. The Creditor filed a Motion for Relief from Stay at document # 138. The Court granted an Order at document # 184 that required the Debtor to make adequate protection payments of \$2,614.77 monthly.

**3.10** Class 10, **M&T Bank**, is the lien holder of 2014 Alpine 5th Wheel. The Creditor has filed a proof of claim at POC # 24 in the amount of \$33,457.56. Class 11, Hunter Truck Sales & Service.

**3.11 Class 11,** Hunter Truck Sales & Service is the holder of 8 equipment finance loans. These vehicles were sold to the Debtor by Hunter Truck Sales & Service as a vendor. They were financed through Paccar. Hunter Truck sales and Service was “on recourse” as part of the financing. When the Debtor filed the bankruptcy, Hunter Truck Sales & Service paid the balance of the loans to Paccar in exchange for purchasing the primary security interests over the vehicles, as agreed to by the parties and as expressly ordered by this Court. As such, Hunter Truck Sales & Service holds the primary secured lien on:

- A. 2016 Peterbilt 367-1NPTL40X1GM308535- RF# 73
- B. 2016 Peterbilt 367-1NPTL40X5GM308537- RF# 74
- C. 2016 Peterbilt 367-2NPTL40X5GM308527– RF # 75
- D. 2013 Peterbilt 388-1NPWX4EX9DD178788- RF# 38
- E. 2013 Peterbilt 388-1NPWX4EX7DD178787- RF# 37
- F. 2013 Peterbilt 388-1NPWX4EX8DD178778- RF# 56
- G. 2013 Peterbilt 388-1NPWX4EX8DD178779- RF# 57
- H. 2015 Peterbilt -1NPWL40X3FD251417- RF# 50

This lien is has been resolved and the parties acknowledged that Hunter is secured and that their lien is perfected, as further reflected by Order of this Court.

**3.12 Class 12,** Equipment Leases with FNB. Bank Capital Services, LLC d/b/a FNB Commercial Leasing (“FNB Commercial Leasing”) has leased 3 vehicles to the Debtor. They are three (3) 2016 Peterbilt tucks. 2016 Peterbilt 367-VIN: 2NPTL40X9GM308525-RF#83, 2016 Peterbilt 389-VIN: 1NPXL40X3GD334545- RF#84

and a 2016 Peterbilt 389-VIN: 1NPXL40X5GD333557- RF#85. The lease payment on these trucks is \$ 14,769.89 a month. The pre-bankruptcy arrears are the August and September 2016 payments or \$ 29,539.78. The Debtor leases these vehicles to Royal Flush, Inc. FNB Commercial Leasing has filed a claim at POC# 33 for \$273,742.47.

**3.13** Class 13, Executory Contract with Wells Fargo. The only member of this class is Wells Fargo that is the current lessor of an office copier for \$502.00 monthly and appropriate taxes. The lease was dated July 22, 2015 and it was for 36 months. There is a pre-petition arrearage of \$1,299.92. The Balance due under the remainder of the lease is \$ 15,545.81. They filed claim number 18.

**3.14** Class 14, Priority Claims of the IRS, Pa DOR and Berkheimer. The following claims are in this class:

- A. Pa DOR Claim 23 \$ 1,028.96
- B. IRS Claim 21 \$ 33,812.08 - Unassessed Liability – Disputed
- C. Berkheimer NONE \$ 383.34

**3.15** Class 15, Equipment Leases with Royal Flush, Inc. This class is comprised of 57 leases of equipment of the Debtor which the Debtor leases to Royal Flush. The following leases of the Debtor are listed in connection with the creditors who hold liens against each vehicle:

Class 2 – First National Bank of Pennsylvania in addition to any non-titled personal property leased to Royal Flush, Inc.

5	28	2012 Peterbilt 388	1NPWXPEX2CD169432	FNB Loan 45624140
6	32	2012 Peterbilt 388	1NPWX4EX8CD169417	FNB Loan 45624140



7	29	2012 Peterbilt 388	1NPWX4EXXCD169418	FNB Loan 45624140
8	39	2013 Peterbilt 388 / 5 axles	1NPWL40XXDD185395	FNB Loan 45624140
9	40	2013 Peterbilt 388 / 5 axles	1NPWL40X7DD185418	FNB Loan 45624140
10	41	2015 Peterbilt 388 / 4 axles (RO)	1NPWL40X7FD267172	FNB Loan 45624140
11	52	2012 Peterbilt 388 / 4 axles	1NPWL40XXCD169292	FNB Loan 45624140
12	53	2012 Peterbilt 388 / 4 axles	1NPWL40X1CD169293	FNB Loan 45624140
13	54	2013 Peterbilt 388 / 4 axles	1NPWL40X8DD185315	FNB Loan 45624140
14	55	2013 Peterbilt 388 / 4 axles	1NPWL40X4CD169319	FNB Loan 45624140
15	25	2012(new)Peterbilt 388	1NPWX4EXXCD169421	FNB Loan 45624140
16	35	2013 Peterbilt 388 - roll off	1NPWX4EX0DD178792	FNB Loan 45624140
17	36	2013 Peterbilt 388 - quad axle	1NPWX4EX8DD178782	FNB Loan 45624140
18	61	2013 Peterbilt 388 / 4 axles	1NPWXPEX1DD178754	FNB Loan 45624140
19	62	2013 Peterbilt 388 / 4 axles	1NPWXPEX3DD178755	FNB Loan 45624140
20	69	2014 Peterbilt 367	1NPCLP0X0ED218233	FNB/45522085
21	71	2015 Int'l 5900i	3HTNUAPT0FN719213	FNB/45522085
22	72	2014 Peterbilt 567	1NPCLP0X8ED247477	FNB/45522085

Class 3 – PACCAR Financial

26	80	2015 Peterbilt 389	1NPCL40X0FD306957	Paccar - B: 100-683150-00056644917
27	81	2016 Peterbilt 389S	2NPXL40X8GM298538	Paccar - B: 100-683150-00056644917
28	82	2016 Peterbilt 389S	2NPXL40XXGM298539	Paccar - B: 100-683150-00056644917
29	78	2016 Peterbilt 367	2NPCL40X3GM308536	Paccar - B: 100-683150-00056644305
36	23	2012(used)Peterbilt 388	1NPWX4EX9CD133851	PACCAR: 100-683150-00006236145
39	20	2013 Peterbilt 388 – black	1NPWL40X1DD185303	PACCAR: 100-683150-00006222335

Class 4 – Santander

40	76	2016 Peterbilt 367	VIN-308528	Santander: 0020014812
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41	77	2016 Peterbilt 367	VIN-308529	Santander: 0020014812
43	51	2012 Peterbilt 388 / 4 axles	VIN-169302	Santander: 0020014812-001
44	33	2013 Int'l 5900i	1HTXYSJT9DJ145603	Santander: 0020014812-000
64	64	2015 Peterbilt 367	VIN- 1NPCL40X4FD290309	Santander: 0020014812-002

Class 5 – TCF Equipment Finance

45	66	2014 Int'l 5900i	VIN-022538	TCF/001-0667187500
46	65	2014 Int'l 5900i	VIN-022540	TCF/001-0667187501

Class 6 – Ally Bank

47	21	2012 Dodge RAM 2500 crew cab	3C6TD5HT5CG303618	Ally: 611917865243
48	26	2013 Dodge RAM 1500 - black	3CJR7AT0DG500972	Ally: 611919199737
49	8	2012 Dodge RAM 4500	3C7WDKEL1CG246197	Ally: 611920000705

Class 7 – Chrysler Capital

50	31	2013 Dodge RAM 5500	3C7WRNBL2DG521388	Chrysler Capital: 3344617
51	16	2013 Dodge RAM 5500	3C7WRMBLXDG537008	Chrysler Capital: 3411978
56	43	2014 Dodge RAM 5500 Flatbed	3C7WRNFL4EG180622	Chrysler
57	44	2014 Dodge RAM 5500	3C7WRNFL6EG162607	Chrysler

Class 8 – DeLage Landen Financial Services, LLC

1	24	2013 Int'l 5900i – red	1HTXYSJT9DJ145665	De Lage Landen: 595202
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Class 9- BMO Harris as assignee of GE Capital & GE Navistar Capital

23	45	2014 Peterbilt 377 (mechanic truck)	2NP2HM6X9EM247176	GE Capital: 7807709-001
24	70	2013 Peterbilt 367	VIN-175834	GE Capital/9789395001

Class 10 – M&T Bank

25	n/a	2014 Alpine 5th Wheel RV		M&T Bank
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Class 11 – Hunter Truck Sales & Service

30	75	2016 Peterbilt 367	VIN-308527	PACCAR: 100- 683150-00006632848
31	73	2016 Peterbilt 367	VIN-308535	PACCAR: 100- 683150-00006631121
32	74	2016 Peterbilt 367	VIN-308537	PACCAR: 100- 683150-00006631121
33	56	2013 Peterbilt 388 / 4 axles	VIN-178778	PACCAR: 100- 683150-00006341861
34	57	2013 Peterbilt 388 / 4 axles	VIN-178779	PACCAR: 100- 683150-00006341861
35	50	2015 Peterbilt 388 / 4 axles	VIN-251417	PACCAR: 100- 683150-00006335723
37	37	2013 Peterbilt 388 (incl. warranty)	1NPWX4EX7DD178787	PACCAR: 100- 683150-00006311682
38	38	2013 Peterbilt 388 (incl.warranty)	1NPWX4EX9DD178788	PACCAR: 100- 683150-00006311682

Class 12 – equipment leases with FNB

2	83	2016 Peterbilt 367	2NP4L40X9GM308525	FNB LEASE: 4627FML1
3	85	2016 Peterbilt 389S	1NPXL40X5GD333557	FNB LEASE: 4627FML1

4	84	2016 Peterbilt 389S	1NPXL40X3GD334545	FNB LEASE: 4627FML1
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Other leases –Unencumbered

52	2	2011 Ford F250	1FTBF2A68BEB47100	PAID
53	1	2011 Ford F250	1FTBF2A62BEA34825	PAID
54	5	2012 Isuzu NPR	54DC4W1B8CS800540	PAID
58	5	2015 Alpine 5 <sup>th</sup> Wheel		PAID
60	11	2012 Hino 238	5PVNE8JR8C4S50179	PAID

**Class 16**, General Unsecured Claims, shall consist of **General Unsecured Creditors** who had an allowed claim against the Debtor as of **September 15, 2016**. This class is estimated to be \$ 0.00<sup>2</sup>. 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.

It shall not include any claims of creditors who hold guarantys of the debtor who are members of class 17.

**3.17 Class 17 Creditors who have claims arising from Guaranty of debts of related entities**. Class 17 shall consist of the creditors who hold the unsecured guaranty of the Debtor of obligations of related entities. The only unsecured member of this class is First Commonwealth Bank<sup>3</sup> who loaned money to Bravo Charlie LLC will retain their claims against related entities. They shall be enjoined from taking any action against the related entities while the Borrower and C. Swank Enterprises LLC remains current on the

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<sup>2</sup> UPS filed a claim incorrectly against this Debtor.

<sup>3</sup> FNB has guaranty of this Debtor of other related entity debts; but those guarantees are secured.

contract or under C Swank's Plan. Their debts will not be discharged. Excluding the secured guaranty claims of FNB and FNB Commercial Leasing which are retained and treated under Classes 2 and 12 in this Plan, any creditor who holds guaranty against C Swank will receive their payment from the borrower and not this Debtor.

**3.18** Class 18, Equity ownership in the Debtor. The only member of this class is Carol Swank, who holds 100% of the Debtor.

#### **ARTICLE 4 - IMPAIRMENT**

The following classes are not impaired under this Plan:

**Class 1** - Unimpaired

The following classes are impaired under the Plan:

**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

**Class 11**- Impaired

**Class 12**- Impaired

**Class 13**- Impaired

**Class 14**- Impaired

**Class 15**- Impaired- Not Entitled to Vote on the Plan **Class**

**16**- Not Impaired

**Class 17**- Impaired- Not Entitled to Vote on the Plan

#### **ARTICLE 5 - MEANS FOR IMPLEMENTATION OF THE PLAN**

**5.1** The Plan is to be implemented by the Reorganized Debtor through the continued operation of the Debtor's leasing trucks to Royal Flush, Inc.

**5.2** 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.

**5.3** 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 \$90,000.00. His salary shall not be increased until after Jan. 1, 2019. After January 1, 2019, 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, 10, 11, 12, 13 and 14, and only at the rate of 7 % per annum and is in compliance with all terms and conditions of the Plan. 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 \$90,000.00. After January 1, 2019, 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, 10, 11 12 13 and 14 is in compliance with all terms and conditions of the Plan, and only at the rate of 7% per annum.. 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.

**5.4 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.

**5.5 Litigation Necessary or Possible to Consummate Plan.**

- (A) Objections to claims, if any.
- (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.

**5.6 Escrow of any Disputed Claim.**

- (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.

**5.7 Escrow of any Disputed Claim.**

(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.

**5.8 Miscellaneous.**

(A) The Reorganized 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 Reorganized



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.

## **ARTICLE 6 - PROVISIONS FOR CLAIMS AND EQUITYSECURITY INTERESTS** **GENERALLY**

**6.1** 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.

**6.2** 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.

**6.3 Post Confirmation Injunction.** Except as otherwise provided for herein, all entities that hold a claim against the Debtor are 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 C Swank Enterprises, LLC against any member, officer or affiliate of the Debtor, except FNB which has a forbearance agreement with Carol Swank, Brian Swank or any other related entity.

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.

**6.4 Insurance** Vehicles leased or purchased by C Swank will be insured by Royal Flush, Inc. In such event, Royal Flush will provide the purchase lender or lessor proof of insurance, naming the secured creditor as loss payee.

## **ARTICLE 7 - TREATMENT UNDER THE PLAN AND PROVISION FOR PAYMENT**

**7.1 Administrative Claims.** The Class 1 claims, to the extent each is an allowed administrative claim, shall be paid their principal claim in full without interest on or before the Effective Date, or in the ordinary course of business by a cash payment to the holder of such a claim except as otherwise agreed by the holder of such claim. The following claims arising after the filing date and related to the ongoing business expenses of C Swank Enterprises, LLC. shall be paid by the Reorganized Debtor according to the stated payment terms of such liability: **(a)** all allowed accounts payable, **(b)** unemployment compensation and related principal withholding taxes, on the obligations, **(c)** all executory contracts, unexpired leases, purchase orders and sales orders, **(d)** all unpaid utility bills, **(e)** the liability for federal and state income taxes or other taxes, up to the maximum amount payable under Class 1 arising in the ordinary course of business, **(f)** fees and expenses of the Debtor's counsel and **(g)** other professionals for services to be rendered after the closing date in prosecuting any causes of action, prosecuting objections to claims, settling claims or advising the Reorganized Debtor with respect to claims, any other services provided to the purchaser in connection with the implementation for this Plan all subject to court approval, after notice and a hearing.

**7.2** Class 2, First National Bank of Pennsylvania, is the holder of first priority blanket 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 including fifteen Peterbilt 388s, one Peterbilt 567, one Peterbilt 367 and one International tractor/ trucks and dumpsters as more fully set forth in certain notes, security agreements, guarantys and other loan security documents executed by the Debtor. ("Loan Documents"), and its claims are cross-collateralized and guaranteed by the Royal Flush, Inc. 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 attorney's' fees and costs of \$104,688.18 as of August 31, 2017), plus 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 confirmation.

(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>4</sup>

- a. The first payment will be made on the Plan Effective Date by the Reorganized Debtor. 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 \$30,497.11 to FNB paid on the 15<sup>th</sup> day of each month commencing the first full month after the Effective Date (FNB shall receive adequate protection payments under the Cash Collateral Stipulations up to the Effective Date), plus the \$14,769.89 a month paid to FNB Commercial Leasing in Class 12 will also be paid monthly to FNB commencing after the lease payment claim in Class 12 is paid in full to FNB Commercial Leasing. All payments shall in be applied and allocated by FNB in its sole discretion to the indebtedness under the Loans, first to obligations on which the Debtor is the primary obligor, and then to obligations on which the Debtor is Guarantor. 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 guarantys judgments and any other documents with the Debtors are reinstated and reaffirmed

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<sup>4</sup> Substantively the FNB loans shall remain as separate loans with FNB

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 of \$2,100 per month to FNB on terms mutually agreed upon by the Parties in a forbearance agreement.
- c. The Debtor shall also make the lease payment of \$ 14,796.89 to FNB Leasing under the assumed leases which payment will be paid to FNB each month in addition to the above-referenced plan payment commencing after the lease claim in Class 12 is paid in full to FNB Commercial Leasing.

**(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. The Debtor reaffirms and ratifies all of the Loan Documents, including all terms, conditions

and obligations thereunder and further acknowledges and agrees that as of September 21, 2016, the total 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, its affiliates, including parents, subsidiaries, partners, joint ventures, divisions 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 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 Royal Flush, Inc. 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 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) The Debtor, C Swank Enterprises, LLC agrees that it will not declare any dividends to its Member shareholders during the period of the repayment to Class 2.

**7.3** Class 3, Paccar Financial, is the holder of liens on three Peterbilt 389s, two 2016 Peterbilt 367s, two 2016 Peterbilt, two 2013 Peterbilt 388s, 2015 Peterbilt 388, 2012 Peterbilt 388, and three 2013 Peterbilt 388. The Creditor has filed claims at POC #9 in the amount of \$379,273.52, POC # 1 in the amount of \$66,096.37, POC # 2 in the amount of \$52,287.22, and POC #8 in the amount of \$138,330.87. The total secured claim of this creditor is \$635,987.98.

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

**7.3.2** 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.

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

**7.3.4** At the Election of Paccar Financial on or before the Voting Date the “Modified Secured Claim” will be amortized over 5 years with interest at the rate of 5% per annum. Should such election be made Paccar Financial will be deemed to reduce the amount of any and all guarantys of the Debtors Obligations to the amount paid under the Plan, provided all payments under the Plan are paid in full and no Default under the Plan occurs and is continuing. Should a default occur and be continuing Paccar will be entitled to enforce any and all guarantys according to their terms.

**7.3.5** Paccar Financial 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 reorganized Debtor makes all payments under this plan, Paccar Financial will reduce any claims against the guarantors for any amount in excess of the plan payments.

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

**7.3.7** Paccar Financial 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.

**7.4** Class 4, Santander, is the holder of liens on three 2016 Peterbilt 367s, 2012 Peterbilt 388, and 2013 International 5900i. The Creditor has filed claims at POC # 14 in the amount of \$101,137.20, POC # 15 in the amount of \$101,848.80, POC # 16 in the amount of \$130,369.80, and POC # 17 in the amount of \$347,443.65. The total secured claim of this creditor is \$680,799.45. Each of Santander'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".

**7.4.1** The "Modified Secured Claim" due, will be reamortized by the Debtor over **seven (7) years**. The "Modified Secured Claim" will accrue post-confirmation interest at **5%** simple interest per annum for the life of the modified obligation.

**7.4.2** 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.

**7.4.3** All pre-confirmation defaults will be waived upon the confirmation of the

Plan. All post- bankruptcy late fees shall be waived upon confirmation.

**7.4.4** At the Election of Santander on or before the Voting Date the “Modified Secured Claim” will be amortized over 5 years with interest at the rate of 5% per annum. Should such election be made Santander will be deemed to reduce the amount of any and all guarantys of the Debtors Obligations to the amount paid under the Plan, provided all payments under the Plan are paid in full and no Default under the Plan occurs and is continuing. Should a default occur and be continuing Santander will be entitled to enforce any and all guarantys according to their terms.

**7.4.5** 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 reorganized Debtor makes all payments under this plan, Santander will reduce any claims against the guarantors for any amount in excess of the plan payments.

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

**7.4.7** 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.

**7.5** Class 5, TCF Equipment Finance, is the holder of liens on a 2014 International 5900i. The Creditor has filed a claim at POC #22 in the amount of \$325,682.99. Each of TCF Equipment Finance'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".

**7.5.1** The "Modified Secured Claim" due, will be re-amortized by the Debtor over **Seven (7) years**. The "Modified Secured Claim" will accrue post-confirmation interest at **5%** simple interest per annum for the life of the modified obligation.

**7.5.2** 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.

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

**7.5.4** At the Election of TCF Equipment Finance on or before the Voting Date, the "Modified Secured Claim" will be amortized over five (5) years with interest at the rate of 5% per annum. Should such election be made, TCF Equipment Finance will be

deemed to reduce the amount of any and all guarantys of the Debtor's obligations to the amount paid under the Plan, provided all payments under the Plan are paid in full and no default under the Plan occurs and is continuing. Should a default occur and be continuing, TCF Equipment Finance will be entitled to enforce any and all guarantys according to their terms.

**7.5.5** TCF Equipment Finance 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 reorganized Debtor makes all payments under this plan, TCF Equipment Finance will reduce any claims against the guarantors for any amount in excess of the plan payments.

**7.5.6** The Debtor and the Lender will document this modification by executing a loan modification agreement. The modifications will include an Agreement by Carol Swank to the entry of a judgment in favor of the lender in the event of a default under the Plan which is not timely cured. The judgment shall be in the amount of the Lender's Secured Claim, less plan payments actually made.

**7.5.7** TCF Equipment Finance 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 either: (1) failed to make a payment when due; or (2) otherwise defaulted under the terms of the parties' contracts AND the

Creditor has given notice of such default by Certified Mail or FEDEX to the Debtor and the Disbursing Agent of the default. The Debtor shall have 10 days to cure any default after receipt of Notice of Default. If the Debtor fails to cure the default within such ten (10), day period then the Creditor may enforce its rights under Pennsylvania State Law as modified under this Plan including its rights under any personal guaranty.

**7.6** Class 6, Ally Bank, is the lien holder of a 2012 Dodge Ram 2500 Crew Cab, a 2013 Dodge Ram 1500, and a 2012 Dodge Ram 4500. The Creditor has filed claims at POC # 11 in the amount of \$3,981.45, POC # 13 in the amount of \$11,499.84, and POC # 12 in the amount of \$2,961.76. The total secured claim of this Creditor is \$18,443.05.

Each of Ally Bank's loans will be modified into "Modified Secured Claims" for the unpaid principal, interest and other amounts due as of the Plan Effective Date. This amount shall be the "Modified Secured Claim".

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

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

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

**7.6.4** At the Election of TCF Equipment Finance on or before the Voting Date the “Modified Secured Claim” will be amortized over 5 years with interest at the rate of 5% per annum. Should such election be made TCF Equipment Finance will be deemed to reduce the amount of any and all guarantys of the Debtors Obligations to the amount paid under the Plan, provided all payments under the Plan are paid in full and no Default under the Plan occurs and is continuing. Should a default occur and be continuing Paccar will be entitled to enforce any and all guarantys according to their terms.

**7.6.5** Ally Bank will forbear from enforcing any guaranty against any guarantors during the repayment period of the “Modified Secured Claims” 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 reorganized Debtor makes all payments under this plan, Ally Bank will waive any claims against the guarantors for any amount in excess of the plan payments.

**7.6.6** The Debtor and the Lender will document this modification by executing a loan modification agreement. The agreement will retain all the loan terms which are not amended by this plan. The agreement will revise the term of the loans, the interest rate and the monthly payments.

**7.6.7** Ally 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 payments for more than 30 days AND the Creditor has given notice by e-mail to the Debtor and the Disbursing Agent

of the default. The Debtor shall have 10 days to cure any default after receipt of Notice of Default. If the Debtor fails to cure the default, then the creditor may enforce the rights under its contracts under Pennsylvania State Law as modified under this Plan.

**7.7** Class 7, Chrysler Capital, is the lien holder of two 2013 Dodge Ram 5500s and two 2014 Dodge Ram 5500. The Creditor has not filed a proof of claim. The Debtor believes this Creditor's secured claim is \$104,517.47. The amount will be paid in full over five (5) years with a fixed interest rate of five percent (5%). 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".

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

**7.7.2** 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.

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

**7.7.4** 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 reorganized Debtor makes all payments under this plan, Chrysler Capital will waive any claims against the guarantors for any amount in excess of the plan payments.

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

**7.7.6** 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.

**7.8** Class 8, De Lage Landen Financial Services, Inc., is the lien holder of a 2013 International 5900i. The Creditor has not filed a proof of claim. The Debtor believes this Creditor's secured claim is \$67,545.78. De Lage Landen's loan will be modified into a "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".

**7.8.1** The "Modified Secured Claim" due, will be reamortized by the Debtor over

**Seven (7) years.** The “Modified Secured Claim” will accrue post-confirmation interest at **5%** simple interest per annum for the life of the modified obligation.

**7.8.2** 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.

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

**7.8.4** At the Election of DeLage Laden on or before the Voting Date the “Modified Secured Claim” will be amortized over 5 years with interest at the rate of 5% per annum. Should such election be made DeLage Laden will be deemed to reduce the amount of any and all guarantys of the Debtors Obligations to the amount paid under the Plan, provided all payments under the Plan are paid in full and no Default under the Plan occurs and is continuing. Should a default occur and be continuing DeLage Laden will be entitled to enforce any and all guarantys according to their terms.

**7.8.5** De Lage Landen 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 reorganized Debtor makes all payments under this plan, De Lage Landen will reduce any claims against the guarantors for any amount in excess of the plan payments.

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

**7.8.7** De Lage Landen 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.

**7.9** Class 10, BMO Harris as assignee for GE Capital and GE Navistar Capital, is the lien holder of a 2014 Peterbilt 377. BMO Harris's loans will be modified into a "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".

**7.9.1** The "Modified Secured Claim" due, will be reamortized by the Debtor over **Seven (7) years**. The "Modified Secured Claim" will accrue post-confirmation interest at **5%** simple interest per annum for the life of the modified obligation.

**7.9.2** 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.

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

**7.9.4** At the Election of BMO Harris on or before the Voting Date the “Modified Secured Claim” will be amortized over 5 years with interest at the rate of 5% per annum. Should such election be made BMO Harris will be deemed to reduce the amount of any and all guarantys of the Debtors Obligations to the amount paid under the Plan, provided all payments under the Plan are paid in full and no Default under the Plan occurs and is continuing. Should a default occur and be continuing BMO Harris will be entitled to enforce any and all guarantys according to their terms.

**7.9.5** BMO Harris 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 reorganized Debtor makes all payments under this plan, BMO Harris will reduce any claims against the guarantors for any amount in excess of the plan payments.

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

**7.9.7** BMO Harris 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.

**7.10** M&T Bank is the lien holder of 2014 Alpine 5th Wheel. The Creditor has not filed a proof of claim. The Debtor believes this Creditor has a secured claim of \$31,891.66. M & T Bank's loan will be modified into a "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".

**7.10.1** The "Modified Secured Claim" due will be reamortized by the Debtor over **Seven (7) years**. The "Modified Secured Claim" will accrue post-confirmation interest at **5%** simple interest per annum for the life of the modified obligation.

**7.11** **Class 11, Hunter Truck Sales & Service** Hunter Truck Sales & Service will be paid in full. If Hunter Truck Sales & Service holds a valid secured and perfected claim, then that unpaid claim shall be modified into a "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".

**7.11.1** This "Modified Secured Claim" shall be treated pursuant to the provisions of the Bankruptcy Code §1129 (b) (2) (A) as follows:

- (A) This secured creditor will realize the indubitable equivalent of its allowed Modified Secured Claim" on the date of distribution as provided in the Plan;

- (B) This secured creditor will receive treatment of its “Modified Secured Claim” in a manner consistent with the Bankruptcy Code:
  - (1) It will receive its “Modified Secured Claim” as allowed by the Bankruptcy Code, after modification and deduction for all credits for post-petition adequate protection payments;
  - (2) It is impaired under this Plan
- (C) This secured creditor has encumbrances and all perfected encumbrances such lien will be retained, as to the Reorganized Debtor, as modified, until this secured Creditor is paid the “Modified Secured Claim”;
- (D) The Debts will be modified and restructured into a single debt under this Plan.

**7.11.1** The “Modified Secured Claim” due will be reamortized by the Debtor over **Seven (7) years**. The “Modified Secured Claim” will accrue post-confirmation interest at three and three quarter’s percent (**3.75%**) simple interest per annum for the life of the modified obligation.

**7.11.2** 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.

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

**7.11.4** Hunter Truck Sales & Service 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 reorganized Debtor makes all payments under this plan, Hunter Truck Sales & Service will reduce any claims against the guarantors for any amount in excess of the plan payments. The Debtor and the Lender will document this modification by executing a loan modification agreement. The agreement will retain all the loan terms which are not amended by this plan. The agreement will revise the term of the loans, the interest rate and the monthly payments.

**7.11.5** Hunter Truck Sales & Service 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.

**7.12 Class 12, Equipment Leases with FNB.** FNB Commercial Leasing has leased 3 vehicles with the Debtor. They are three (3) 2016 Peterbilt trucks. 2016 Peterbilt 367-VIN: 2NPTL40X9GM308525-RF#83, 2016 Peterbilt 389-VIN: 1NPXL40X3GD334545- RF#84 and a 2016 Peterbilt 389-VIN: 1NPXL40X5GD333557-

RF#85. The lease payment on these trucks is \$ 14,769.89 a month. The pre-bankruptcy arrears are the August and September 2016 payments or \$ 29,539.78. The Debtor will assume these leases. On or Before the Effective Date, the Debtor will cure the arrears under the lease. The Debtor will make all future lease payments according to the contract until the lease any purchase prices are paid in full; at which point in time the \$14,769.89 payment will be applied to FNB's secured claim in Class 2 of the Plan. All pre-confirmation defaults are waived. All penalties under the leases for late payments prior to the confirmation are waived. Notwithstanding any other provision in this Disclosure Statement and the Chapter 11 Plan, all of FNB Commercial Leasing's claims and rights are retained. The obligations, terms, and conditions set forth in FNB Commercial Leasing's lease documents including the guarantys are reinstated and reaffirmed unless otherwise amended herein and shall remain in full force and effect. FNB Commercial Leasing shall be entitled to payment of its reasonable attorneys' fees and costs. The treatment of FNB Commercial Leasing's claim herein shall not in any manner discharge, or affect the rights and claims of FNB Commercial Leasing has against any other persons or entities or the obligations of any person or entity to FNB Commercial Leasing with respect to the indebtedness, including

Royal Flush, Inc. and Carol Swank.

**7.13 Class 13, Executory Contract with Wells Fargo** Wells Fargo is the current lessor of an office copier for \$502.00 monthly and appropriate taxes. The lease was dated July 22, 2015 and it was for 36 months. There is a pre-petition arrearage of \$1,299.92. The



Debtor will assume this lease and cure the pre-petition and post-petition arrears on the Plan Effective Date. The Debtor will make all future payments as required by the contract.

**7.14 Class 14 Priority Tax Claims.** Pursuant to Code Section 1129(a) (9) (c), the Internal Revenue Service claim and the claim of the Pennsylvania Department of Revenue and the Claim of Berkheimer, to the extent they are allowed secured and/or priority claims, shall be paid 100% of the principal and pre-bankruptcy interest claims over 60 months in 60 equal payments plus statutory post-confirmation interest until these claims are paid in full. The Class 14 claimants will retain their liens until paid in full; and they may file new liens to secure any amounts due under this Plan for which there are no existing liens.

**7.15 Class 15, Equipment Leases with Royal Flush, Inc.** This class consists of 58 leases of trucks and equipment which the Debtor leases to an affiliate, Royal Flush, Inc. The 58 leases of trucks and equipment have been identified below by their designated RF lease number in Article 3.15 in this Plan and in the Disclosure Statement:

These leases will be modified and the new monthly lease payment and term will be modified to an amount equal to the Modified Secured Claim payment being made by C Swank Enterprises LLC to its secured creditor for each leased vehicle under its treatment under its Plan of Reorganization to that secured creditor on that leased equipment AND an additional \$15,000.00 per month payment to C Swank Enterprises LLC for management and administration. Royal Flush shall be obligated to pay all expenses of operation, repair and insurance. Royal Flush shall properly maintain the equipment in accordance with Industry standards. Royal Flush shall insure the vehicles;

Royal Flush shall name the related secured creditor in the C Swank Chapter 11 case as loss payee until they are paid in full under the C Swank Plan.

C Swank Enterprises LLC shall not be entitled to any rejection damages for the rejection of the leases. C Swank Enterprises LLC shall not be entitled to any payment for any pre-bankruptcy bankruptcy arrears due under the leases.

**7.16 Unsecured Claims.** The Class 16 claims, to the extent there are any claims, will be paid in full on the Plan Effective Date. Class 16 claims will be paid in full without interest. The single payment to Class **16** will be made on the Plan Effective Date. The Members in this class are: NONE<sup>5</sup>

Any amount not paid under this plan will be discharged upon confirmation of the Plan.

This provision for payment of class 16 does not extend to claims included in class 17.

Royal Flush reserves the right to assert claims against C Swank in the event Royal Flush pays on obligations of C Swank guaranteed by Royal Flush and such claims will not be discharged by confirmation of this plan.

**7.17 Class 17 Creditors who have claims arising from Guaranty of debts of related entities.** Excluding the secured guaranty claims of FNB and FNB Commercial Leasing which are retained and treated under Classes 2 and 12 in this Plan, this Class is comprised of creditors who hold guarantys of obligations of C Swank Enterprises, LLC,

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<sup>5</sup> USPS filed a claim for \$ 546.74, the claim was filed incorrectly.

Carol Swank or Brian Swank. These claims are unsecured and remain contingent. The only member of this class who has filed a claim is First Commonwealth Bank. First Commonwealth Bank<sup>6</sup>, will be modified by the C Swank Plan; and it will be paid by Bravo Charlie LLC.

Any other creditor who holds a guaranty of C Swank Enterprises, LLC for a Royal Flush, Inc. obligation will be modified by this plan. These claims will be paid their principal and the modified interest rate so that they are paid their “Modified Claim” in full by Royal Flush, Inc. Class 17 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 the Bank 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, 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 17 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 17**

**creditors shall be prohibited from taking any action against the Debtor pursuant to the terms of the Confirmation Order so long as the entity from which payment is to be made in fact makes such payments and otherwise fulfills its obligations to the**

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<sup>6</sup> First Commonwealth Bank is being paid by Bravo Charlie.

**creditors.** Upon confirmation of the plan, the obligations of Debtor, any third party obligors, and the Class 17 creditors shall be governed by the applicable loan documents, except as expressly modified by the Plan.

In the event the third party fails to perform as required below, the prohibition of the confirmation Order shall be dissolved automatically, and the Class 11 Creditors may exercise any and all available rights and remedies they may have under the applicable loan documents or other applicable law against the Debtor or any other obligor to recover the balances owed in connection with their claims. 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, this class's creditors will reduce any claims against the guarantors for any amount in excess of the plan payments. Except for FNB, the Debtor in this case and in the Royal Flush, Inc. case is seeking a prohibition order under 11 U.S.C. 105 to enjoin the attempted collection against any guarantor or co-obligor while this Debtor makes payments on the underlying debts.

In the event a default by a third party, a Class 17 creditor shall provide written notice to the disbursing agent. Upon receipt of such notice, the disbursing agent shall treat such creditor as a Class 16 creditor.

**7.18 Equity Shareholder Claims and Rights** The Class 18 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 14 have been paid in full. In order to

improve plan feasibility, Carol Swank has agreed that her post- confirmation salary for and 2018 will be \$ 90,000.00. After January 1, 2019, 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, 10, 11, 12, 13 and 14, limited to 7% per annum. 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 will be \$ 90,000.00. After January 1, 2019, 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, 10, 11, 12,13 and 14, limited to 7% per annum

The Reorganized Debtor agrees that it will not declare any dividends to its members/ 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. In the event there are excess funds available not required for 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, then the Reorganized Debtor will use any excess funds to pre-pay the class 2 claims of First National Bank of Pennsylvania. In the event there is Excess Quarterly Cash it will be used to pay First National Bank until its Class 2 and Class 12 claims are paid in full

C Swank Enterprises, LLC and its member, Carol Swank and Royal Flush, Inc. and its shareholder, Carol Swank, stipulate that any claim that Royal Flush, Inc has against C. Swank Enterprises, LLC 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 Statute 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 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 Statute of Repose for those excluded periods.

#### **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 pursuant to Section 502 of the Code;
- (c) To hear and determine any objections filed within thirty (30) 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;
- (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; 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** 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, after a ballot of creditors.

**Respectfully Submitted,**

**Dated:** November 13, 2017

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