

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 09-19087
)	
KIEBLER SLIPPERY ROCK, LLC,)	Chapter 11
)	
Debtor.)	Judge Randolph Baxter
)	

**CHAPTER 11 PLAN OF LIQUIDATION OF
DEBTOR KIEBLER SLIPPERY ROCK, LLC,**

FILED BY

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

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Committee

INTRODUCTION

The Official Committee of Unsecured Creditors (the “Committee”) of Kiebler Slippery Rock, LLC, the debtor and debtor-in-possession (the “Debtor”) in the above captioned Chapter 11 hereby proposes the following Chapter 11 plan of liquidation pursuant to section 1121 of the Bankruptcy Code.¹ Reference is made to the Disclosure Statement for a discussion of the Debtor’s history, business operations, and summary and analysis of the Plan and certain related matters. The Committee is the proponent (the “Proponent”) of the Plan within the meaning of section 1129 of the Bankruptcy Code.

The Debtor’s assets have been liquidated pursuant to the Sale. The Plan provides for the distribution of the remaining \$200,000 carved out of the sale proceeds by agreement with Huntington National Bank (“HNB” or “Lender”) for distribution to Unsecured Creditors with Allowed Claims. On the Effective Date, the \$200,000 will be distributed as set forth in the Plan.

Subject to the restrictions set forth in section 1127 of the Bankruptcy Code, Rule 3019 of the Federal Rules of Bankruptcy Procedure, and those restrictions on modifications set forth in Article XI of the Plan, the Proponent expressly reserves the right to alter, amend, or modify the Plan, one or more times, before its substantial consummation.

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

A. *Rules of Interpretation*

1. For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (e) the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

¹ All capitalized terms not otherwise defined in this Introduction shall have the meanings ascribed to them in Article I of this Plan.

2. The provisions of Fed. R. Bankr. P. 9006(a) shall apply in computing any period of time prescribed or allowed hereby.

3. All references herein to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

B. *Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Accrued Professional Compensation*” means, at any given moment, all accrued and/or unpaid fees and expenses (including, but not limited to: (a) fees or expenses allowed or awarded by a Final Order of the Bankruptcy Court or any other court of competent jurisdiction) for legal, financial advisory, accounting and other services and reimbursement of expenses that are awardable and allowable under sections 328, 330(a) or 331 of the Bankruptcy Code or otherwise rendered prior to the entry of the confirmation Order by all Retained Professionals in the Chapter 11 Case that the Bankruptcy Court has not denied by a Final Order, to the extent that any such fees and expenses have not been previously paid regardless of whether a fee application has been filed for any such amount. To the extent that the Bankruptcy Court or any higher court denies by a Final Order any amount of a Retained Professional’s fees or expenses, then those amounts shall no longer be Accrued Professional Compensation.
2. “*Administrative Claims*” means Claims that have been timely filed, pursuant to the deadline and procedure set forth in the Confirmation Order (except as otherwise provided by a separate order of the Bankruptcy Court), for costs and expenses of administration under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, but not limited to: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtor (such as wages, salaries or commissions for services and payments for goods and other services and leased premises); (b) Accrued Professional Compensation; (c) all fees and charges assessed against the Estate under chapter 123 of title 28 United States Code, 28 U.S.C. §§ 1911-1930; and (d) fees and expenses payable prior to entry of the Confirmation Order.
3. “*Administrative Claims Bar Date*” means the deadline by which the Administrative Claims are required to be filed with the Bankruptcy Court.
4. “*Affiliate*” has the meaning set forth at section 101(2) of the Bankruptcy Code.
5. “*Allowed*” means, with respect to any Claim or Equity Interest, except as otherwise provided herein: (a) a Claim or Equity Interest that has been scheduled by the Debtor in their schedules of liabilities as other than disputed, contingent or unliquidated and as to which the Committee, the Creditor Trust, the Debtor, or

other party in interest has not filed an objection by the Claims Objection Bar Date; (b) a Claim or Equity Interest that either is not Disputed or has been allowed by a Final Order; (c) a Claim or Equity Interest that is allowed: (i) in any stipulation of amount and nature of Claim executed prior to the entry of the Confirmation Order and approved by the Bankruptcy Court; (ii) in any stipulation with Creditor Trust of amount and nature of Claim or Equity Interest executed on or after the entry of the Confirmation Order; or (iii) in or pursuant to any contract, instrument, indenture or other agreement entered into or assumed in connection herewith; (d) a Claim or Equity Interest that is allowed pursuant to the terms hereof; or (e) a Disputed Claim as to which a proof of claim has been timely filed and as to which no objection has been filed by the Claims Objection Bar Date.

6. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought on behalf of the Debtor or its estate under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies under sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code.
7. “*Bankruptcy Code*” means Title I of the Bankruptcy Reform Act of 1978, as amended from time to time, as set forth in sections 101 *et seq.* of title 11 of the United States Code, and applicable portions of titles 18 and 28 of the United States Code.
8. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Ohio.
9. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, promulgated under 28 U.S.C. § 2075, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Ohio, and general orders and chambers procedures of the Bankruptcy Court, each as applicable to the Chapter 11 Case and as amended from time to time.
10. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as that term is defined in Fed. R. Bankr. P. 9006(a)).
11. “*Cash*” means legal tender of the United States of America or the equivalent thereof, including bank deposits, checks, and readily marketable securities or instruments issued by an Entity, including, without limitation, readily marketable direct obligations of, or obligations guaranteed by, the United States of America, commercial paper of domestic corporations carrying a Moody’s rating of “A” or better, or equivalent rating of any other nationally recognized rating service, or interest bearing certificates of deposit or other similar obligations of domestic banks or other financial institutions having a shareholders’ equity or capital of not less than one hundred million dollars (\$100,000,000) having maturities of not

more than one (1) year, at the then best generally available rates of interest for like amounts and like periods.

12. “*Causes of Action*” means all claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims (including, but not limited to, all claims and any avoidance, recovery, subordination or other actions against insiders and/or any other entities under the Bankruptcy Code, including Avoidance Actions) of the Debtor, the Debtor-in-Possession, and/or the Estate that are or may be pending on the Effective Date based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.
13. “*Chapter 11 Case*” means the case commenced when the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on the Petition Date, styled Kiebler Slippery Rock, LLC, Case No. 09-19087.
14. “*Claim*” means a “claim” (as that term is defined in section 101(5) of the Bankruptcy Code) against the Debtor.
15. “*Claims Objection Bar Date*” means the bar date for objecting to proofs of claim, which shall be one year after the Effective Date.
16. “*Class*” means a category of holders of Claims or Equity Interests as set forth in Article III pursuant to section 1122(a) of the Bankruptcy Code.
17. “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.
18. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
19. “*Committee*” means the official committee of unsecured creditors in the Kiebler Slippery Rock, LLC Chapter 11 Case appointed by the United States Trustee for the Northern District of Ohio, pursuant to section 1102 of the Bankruptcy Code, on October 9, 2009. [Docket No. 45.]
20. “*Creditors’ Trust*” means the segregated fund established pursuant to Section IV.A of the Plan.
21. “*Debtor*” or “*Debtor-in-Possession*” means Kiebler Slippery Rock, LLC

22. “*Disputed*” means, with respect to any Claim or Equity Interest, any Claim or Equity Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless a proof of Claim has been timely filed; (b) as to which a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules has been filed; or (c) as otherwise disputed in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order.
23. “*Effective Date*” means the first Business Day after all conditions to the Effective Date in Section VIII.A have been met or waived in accordance with Section VIII.B.
24. “*Entity*” means an “entity” (as that term is defined in section 101(15) of the Bankruptcy Code).
25. “*Equity Interest*” means any equity interest in the Debtor that existed immediately prior to the Petition Date, including, but not limited to: (a) any common equity interest in the Debtor that existed immediately prior to the Petition Date, including, but not limited to, all issued, unissued, authorized or outstanding shares of common stock, together with any warrants, options or legal, contractual or equitable rights to purchase or acquire such interests at any time; and (b) any preferred equity interest in the Debtor that existed immediately prior to the Petition Date, including, but not limited to, all issued, unissued, authorized or outstanding shares of preferred stock, together with any warrants, options or legal, contractual or equitable rights to purchase or acquire such interests.
26. “*Estate*” means the estate of the Debtor created on the Petition Date by section 541 of the Bankruptcy Code.
27. “*Final Cash Collateral Order*” means the Final Order Under Authorizing Use of Cash Collateral and Granting Adequate Protection [Docket No. 110], entered by the Bankruptcy Court on November 20, 2009 as the same has been amended and may be amended after the filing of the Plan.
28. “*Final Order*” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or has otherwise been dismissed with prejudice.

29. “*General Unsecured Claims*” means Claims against the Debtor that have not been filed, scheduled or incurred as Administrative Claims, Priority Tax Claims, Other Priority Claims, or Secured Claims of Lender or other Secured Claims.
30. “*Impaired*” means, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests, “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.
31. “*Liquidation Analysis*” means that certain liquidation analysis which is set forth in the Disclosure Statement.
32. “*Creditor Trust Assets*” means: (i) a sum of \$200,000 that has been carved out from the proceeds of the Sale for distribution to allowed Unsecured Claims.
33. “*Lender*” means Huntington National Bank.
34. “*Kiebler*” means Paul Kiebler, owner of the Debtor and an insider of the Debtor pursuant to the Section 101(31) of the Bankruptcy Code.
35. “*Other Priority Claims*” means any and all Claims (or portions thereof), if any, against the Debtor entitled to priority under section 507(a) of the Bankruptcy Code other than Administrative Claims or Priority Tax Claims.
36. “*Petition Date*” means September 25, 2009.
37. “*Plan*” means this plan of liquidation under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules or herewith, as the case may be.
38. “*Priority Tax Claims*” means Claims of governmental units of the kind specified in section 507(a)(8) of the Bankruptcy Code.
39. “*Representatives*” means, with regard to an Entity, advisors, attorneys, accountants, professionals, investment bankers, consultants and agents.
40. “*Retained Professional*” means an Entity: (a) employed in the Chapter 11 Case pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code; or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.
41. “*Sale*” means the going concern sale of substantially all of the assets of the Debtor to OCG-Slippery Rock, L.P. under section 363 of the Bankruptcy Code,

which was approved by the Bankruptcy Court on June 17, 2010 [Docket No.220] and subsequently closed.

- 42. “*Sale Order*” means the order entered June 17, 2010 Authorizing and Approving the Sale of Certain of the Debtors’ Assets Free and Clear of all Liens, Claims, Encumbrances and Interests and Assignment of Student Tenant Leases.
- 43. “*Secured Claims of Lender*” mean those claims described in Article III.B.2 of this Plan.
- 44. “*Schedules*” mean the schedules of assets and liabilities, schedules of executory contracts and statements of financial affairs filed and amended by the Debtor pursuant to section 521 of the Bankruptcy Code.
- 45. “*Secured Claims*” means: (a) Claims that are secured by a lien on property in which the Estate has an interest, which liens are valid, perfected and enforceable under applicable law or by reason of a Final Order, or that are subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; and (b) Claims which are Allowed under the Plan as a Secured Claim.
- 46. “*Transaction Documents*” means any and all documents necessary to consummate the transactions provided for in this Plan.
- 47. “*Unimpaired*” means, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests, not “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

ARTICLE II. ADMINISTRATIVE AND PRIORITY CLAIMS

A. *Administrative Claims*

Subject to the provisions of sections 328, 330(a) and 331 of the Bankruptcy Code, each holder of an Allowed Administrative Claim against the Debtor will be paid, by Debtor, the full unpaid amount of such Allowed Administrative Claim in Cash:

(a) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (b) if such Claim is Allowed after the Effective Date, on the date such Claim is Allowed or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due); or (c) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided, however*, that Administrative Claims do not include Claims filed after the applicable deadline set forth in

the Confirmation Order (except as otherwise provided by a separate order of the Bankruptcy Court).

B. *Priority Tax Claims*

Each holder of an Allowed Priority Tax Claim has been paid in full by the Debtor.

In accordance with section 1124 of the Bankruptcy Code, and notwithstanding any other provision of the Plan to the contrary, the Plan shall not alter or otherwise impair the legal, equitable, and contractual rights of any holder of a Priority Tax Claim that is not otherwise due and payable on or prior to the Effective Date.

C. *Other Priority Claims*

Each holder of an Allowed Other Priority Claim has been paid in full by the Debtor.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF
CLAIMS AND EQUITY INTERESTS**

A. *Summary*

1. The following table classifies Claims and Equity Interests for all purposes, including voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

2. *Summary of Classification and Treatment of Classified Claims and Equity Interests.*

Class	Description	Classification	Voting
Class 1	Other Priority Claims	Unimpaired	Deemed to Accept
Class 2	Lender (Huntington) Claims	Impaired	Entitled to Vote
Class 3	General Unsecured Claims	Impaired	Entitled to Vote
Class 4	Equity Interests	Impaired	Deemed to Reject

B. *Classification and Treatment of Claims and Equity Interests*

1. *Class 1 – Other Priority Claims*

(a) *Classification:* Class 1 consists of all Other Priority Claims.

(b) *Treatment*: The Debtor has paid Class 1 Claims in full.

(c) *Voting*: Class 1 is Unimpaired, and holders of Allowed Class 1 Claims are deemed to accept the Plan.

2. *Class 2 – Secured Claims of Lender*

(a) *Classification*: Class 2 consists of all Secured Claims of the Lender.

(b) *Treatment*: The holder of the Class 2 Claims has received the net proceeds of the Sale and other proceeds of its Collateral (as defined in the Final Cash Collateral Order). The holder of the Class 2 Claims will receive no additional distribution pursuant to the Plan; *provided, however*, that to the extent that their remains Cash Collateral after the payment of Administrative Fees and Professional Fees allowed after confirmation, such funds shall be remitted to the Lender. The Class 2 Claim and all other Claims of the Lender (including its superpriority Claim under the Final Cash Collateral Order) shall be deemed Allowed Claims for all purposes, whether or not such claims are referred to herein as “Allowed.”

Lender shall not be deemed to have waived its unsecured Claim against the Debtor (including its superpriority Claim under the Final Cash Collateral Order) on account of any deficiency balance remaining after application of the proceeds of the Lender’s Collateral, but, Lender has assigned its unsecured claim and its interest in the \$200,000 from the sale proceeds to Class 3 Claimants.

(c) *Voting*: Class 2 Claims are Impaired and the holder of the Class 2 Claims is entitled to vote on the Plan.

3. *Class 3 – General Unsecured Claims*

(a) *Classification*: Class 3 consists of General Unsecured Claims.

(b) *Treatment*: Each holder of an Allowed General Unsecured Claim shall receive in full and final satisfaction of such Claim, its pro rata share, up to 50% of its claim, of the funds held in the Creditor Trust, based on the principal amount of each holders’ Allowed Claim.

The Class 3 Claims shall be subject to allowance under the provisions of the Plan, including, but not limited to, Article VII.

(c) *Voting*: Class 3 is Impaired, and holders of Allowed Class 3 Claims are entitled to vote on the Plan.

4. *Class 4 – Equity Interests*

- (a) *Classification:* Class 4 consists of all Equity Interests in the Debtor.
- (b) *Treatment:* The Holder of Class 4 Equity Interests shall not be entitled to distributions of any kind on account of such Equity Interests.
- (c) *Voting:* Class 4 is Impaired, and holders of Allowed Class 4 Interests are deemed to reject the Plan.

C. *Subordination*

The treatment of Claims and Equity Interests conforms to contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

D. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtor's rights with respect to any Unimpaired Claim, including, but not limited to, all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claim.

E. *Cramdown*

The Proponents are seeking confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. In connection therewith, the Proponents shall be allowed to modify the proposed treatment of the Allowed Claims in any Class that votes to reject the Plan consistent with section 1129(b)(2) of the Bankruptcy Code.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. *Creditor Trust*

1. A Creditor Trust has been established with the \$200,000 carved out from the proceeds of the Sale.

2. The Creditor Trust, through counsel for the Committee shall distribute the Creditor Trust Assets on the Effective Date, as set forth in the Plan.

3. The Creditor Trust shall terminate automatically, without further order of the Bankruptcy Court, once the distributions have been completed and the funds accepted by Claimants in compliance with the terms of this Plan.

B. *Dissolution of the Committee*

Except as otherwise provided in this Article IV, concurrent with the termination of the Creditor Trust, the Committee shall be dissolved, and its members shall be deemed released of all of their duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention or employment of the Committee's attorneys, financial advisors, and other agents shall terminate.

**ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS, AND UNEXPIRED LEASES**

A. *Assumption and Rejection of Executory Contracts and Unexpired Leases*

Pursuant to the Sale Order, any executory contracts not assumed through the Sale were deemed rejected by the Debtor as of or immediately prior to the Petition Date. However, to the extent there are any contracts or unexpired leases not assumed or rejected by the Sale, the same shall be deemed rejected by the Debtor as of immediately prior to the Petition Date, and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of any such rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

B. *Claims Based on Rejection of Executory Contracts or Unexpired Leases*

There shall be no additional distribution for Claims arising from the rejection of an executory contract or unexpired lease.

**ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. *Distributions for Claims Allowed as of the Effective Date*

Except as otherwise provided herein or as may be ordered by the Bankruptcy Court, Counsel for the Committee shall make distributions on the Effective Date or as soon as reasonably practicable thereafter on account of all Allowed Claims that are entitled to receive distributions under the Plan.

B. *Delivery of Distributions*

1. *Delivery of Distributions*

Distributions to holders of Allowed Claims, shall be made by Counsel for the Committee on the Effective Date; *provided, however*, that the manner of such distributions shall be determined at the reasonable discretion of counsel, without further order of the Bankruptcy Court.

2. *Address of Record*

The address of the holder of a Claim shall be, for purposes of distributions made pursuant to the Plan, the address set forth in any proof of Claim filed by such holder, or, in the absence of such a proof of Claim, the address set forth in the Debtor's books and records.

3. *Undeliverable Distributions*

In the event that the distribution to any holder of an Allowed Claim is returned as undeliverable, the funds shall be applied first to the unpaid portion of Allowed Administrative Claim of Counsel for the Committee, thereafter, any remaining funds shall be remitted to the Lender as part of their allowed secured claim.

4. *Compliance with Tax Requirements/Allocations*

The purpose of the Plan is to provide for the distribution of funds allocated to secured claims under the Sale Order and assigned to unsecured claims pursuant to Order of this Court. The Committee shall not be responsible for any tax withholding or reporting requirements imposed on the Debtor by any governmental unit.

C. *Timing of Distributions*

Distributions shall be on the Effective Date of the Plan.

**ARTICLE VII.
PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT
AND UNLIQUIDATED CLAIMS OR EQUITY INTERESTS**

A. *Resolution of Disputed Claims*

1. *Prosecution of Claims Objections*

The distribution spreadsheet incorporated into this Plan represents payment based upon the resolution of Claims subject to objection. There will be no further prosecution of claims.

2. *Payments and Distributions on Disputed Claims*

Notwithstanding any provision herein to the contrary no partial payments and no partial distributions will be made with respect to a Disputed Claim.

B. *Claims Allowance*

Except as expressly provided herein or in any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed unless and until such Claim is deemed Allowed (i) under the Plan or (ii) under the Bankruptcy Code or the Bankruptcy Court has entered a Final Order (including the Confirmation Order) in the Chapter 11 Case allowing such Claim. Except as expressly provided in the Plan or any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), the Debtor shall retain after the Effective Date any and all rights and defenses that it had with respect to any Claim as of the Petition Date. All Claims of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed disallowed as of the Effective Date unless and until such Entity pays in full the amount that it owes the Debtor.

ARTICLE VIII.

CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE

A. *Conditions Precedent to Confirmation and Effective Date*

The following are conditions precedent to the Effective Date that must be satisfied or occur simultaneously with the Effective Date:

1. The Confirmation Order shall have been signed by the Court and duly entered by the Clerk of the Court in a form and substance reasonably acceptable to the Committee; and

2. Either the Confirmation Order shall have become a Final Order or there shall not be any stay in effect with respect to the Confirmation Order and the Confirmation Order shall not have been vacated, reversed, modified or amended in any material respects without the prior written consent of the Committee.

B. *Non-Occurrence of Conditions*

If the conditions set forth in Section VIII.A do not occur within thirty (30) days following the entry of the Confirmation Order, or such other later date as the Proponents may determine upon notice to the Bankruptcy Court, the Plan shall be null and void in all respects, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Cause of Action or Claim; (2) constitute an admission, acknowledgment, offer or undertaking in any respect by any party, including the Proponents; or (3) otherwise prejudice in any manner the rights of any party, including the Proponents.

ARTICLE IX.
RELEASE, INJUNCTIVE AND RELATED PROVISIONS

A. *Compromise and Settlement*

Pursuant to section 363 of the Bankruptcy Code and Fed. R. Bankr. P. 9019, and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims and Equity Interests. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all Claims and Equity Interests, as well as a finding by the Bankruptcy Court that such compromise or settlement is fair, equitable, reasonable, and in the best interests of the Debtor, Estate, and holders of Claims and Equity Interests.

B. *Discharge of Claims and Termination of Interests*

1. *Complete Satisfaction, Discharge and Release*

Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims and termination of all Interests arising on or before the Effective Date, including any interest accrued on Claims from and after the Petition Date. Except as provided in the Plan or in the Confirmation Order, Confirmation will, as of the Effective Date: (i) discharge the Debtor from all Claims or other debts that arose on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (A) a proof of Claim based on such debt is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (B) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (C) the holder of a Claim based on such debt has accepted the Plan; and (ii) terminate all Interests and other rights of holders of Interests in the Debtor.

2. *Discharge and Termination*

In accordance with the foregoing, except as provided in the Plan, the Confirmation Order will be a judicial determination, as of the Effective Date, of a discharge of all Claims and other debts and liabilities against the Debtor and a termination of all Interests and other rights of the holders of Interests in the Debtor, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge will void any judgment obtained against the Debtor at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest.

C. *Injunction*

1. From and after the Effective Date, all Entities are permanently enjoined from commencing or continuing in any manner against the Committee, their respective successors and assigns, and their assets and properties, as the case may be, any suit, action or other proceeding, on account of or respecting any Claim, demand, liability, obligation,

debt, right, Cause of Action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order.

2. Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, from and after the Effective Date, all Entities shall be precluded from asserting against the Debtor, Debtor-in-Possession, Committee, Estate, their successors and assigns, and their assets and properties, any other Claims or Equity Interests based upon any documents, instruments, or any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

3. The rights afforded in the Plan and the treatment of all Claims and Equity Interests in the Plan shall be in exchange for and in complete satisfaction of Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, against the Debtor, or any of their assets or properties. On the Effective Date, all such Claims against, and Equity Interests in, the Debtor shall be satisfied and released in full.

4. Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Parties and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Equity Interest satisfied and released hereby, from:

- (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor the Committee, their respective successors and assigns, and their assets and properties;
- (b) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtor, the Committee, their successors and assigns, and their assets and properties;
- (c) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor, the Committee, or the property or estate of the Debtor;
- (d) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtor or against the property or estate of any the Debtor except to the extent a right to setoff, recoupment or subrogation is asserted with respect to a timely filed proof of claim; or
- (e) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Equity Interest or Cause of Action released or settled hereunder.

D. *Exculpation*

Neither the Committee, nor any of its respective officers, directors, professionals, attorneys, accountants, agents, shareholders, partners, members, or employees have or will incur

any liability to any holder of a Claim or Equity Interest, or any other party in interest, or any of their respective members or former members, agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their predecessors, successors, or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the Sale, the negotiation and pursuit of confirmation of this Plan, the consummation of this Plan, or the administration of this Plan and in all respects are entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan or in the context of the Chapter 11 Case. Nothing in this Exculpation section is intended to waive any obligations of any party under this Plan.

ARTICLE X. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Debtor and the Plan as is legally permissible, including, but not limited to, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;
2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;
3. resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired lease to which the Debtor is party or with respect to which the Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;
4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Liquidation Trustee after the Effective Date;
6. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan, the Transaction Documents and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with the Plan or the Disclosure Statement;

7. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
8. issue injunctions, enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan;
9. enforce Article IX of this Plan;
10. enforce the Injunction set forth in Article IX.C;
11. resolve any cases, controversies, suits or disputes with respect to the releases, injunction and other provisions contained in Article IX, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
12. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
13. resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document adopted in connection with the Plan or the Disclosure Statement; and
14. enter an order and/or the decree contemplated in Fed. R. Bankr. P. 3022 concluding the Chapter 11 Case.

ARTICLE XI. MISCELLANEOUS PROVISIONS

A. *Bar Dates*

Retained Professionals' Fees and Final Fee Applications

The deadline for submission by Retained Professionals of applications for Bankruptcy Court approval of Accrued Professional Compensation incurred prior to the entry of the Confirmation Order shall be thirty (30) days after the Effective Date.

B. *Payment of Statutory Fees*

All fees payable pursuant to section 1930 of title 28 of the United States Code after the Effective Date, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid prior to the closing of the Chapter 11 Case on the earlier of when due or the Effective Date, or as soon thereafter as practicable.

C. *Modification of Plan*

Subject to the limitations contained in the Plan: (1) the Proponent reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (2) after the entry of the Confirmation Order and upon order of the Bankruptcy Court, the Proponent may amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

D. *Successors and Assigns*

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

E. *Governing Law*

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Ohio, without giving effect to the principles of conflict of laws thereof.

F. *Reservation of Rights*

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by any Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights prior to the Effective Date.

G. *Section 1125(e) Good Faith Compliance*

The Proponent, and their Representatives, shall be deemed to have acted in “good faith” under section 1125(e) of the Bankruptcy Code.

H. *Further Assurances*

All holders of Claims receiving distributions hereunder and all other parties-in-interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

I. *Service of Documents*

Any pleading, notice or other document required by the Plan to be served on or delivered to the Debtor or Liquidation Trustee, as applicable, shall be sent by first class U.S. mail, postage prepaid to:

Jessica E. Price, Esq.
BROUSE McDOWELL
600 Superior Ave., Suite 1600
Cleveland, Ohio 44114

J. *Further Documents*

On or before the Effective Date, the Committee may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

K. *No Stay of Confirmation Order*

The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Fed. R. Bankr. P. 3020(e) and 7062.

Respectfully submitted,

/s/ Jessica E. Price

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