

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

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In re	:	Case No. 09-19087
	:	
KIEBLER SLIPPERY ROCK, LLC	:	Chapter 11
	:	
Debtor.	:	Judge Randolph Baxter
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**DEBTOR'S PLAN OF REORGANIZATION**

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Dated: January 22, 2010

# **DEBTOR'S PLAN OF REORGANIZATION**

## **ARTICLE I.**

### **INTRODUCTION**

Kiebler Slippery Rock, LLC (the "Debtor") proposes the following Plan of Reorganization (the "Plan") pursuant to section 1121 of title 11 of the United States Code (the "Bankruptcy Code"). All holders of Claims (defined herein) are encouraged to read this Plan and the accompanying Disclosure Statement in their entirety before voting to accept or reject this Plan.

## **ARTICLE II.**

### **DEFINITIONS AND RULES OF INTERPRETATION**

#### **1. Scope of Definitions.**

Unless the context otherwise requires, the capitalized terms that follow shall have the following meanings. Any term used in the Plan that is not defined herein, but is otherwise defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules. Whenever the context requires, terms shall include the plural as well as the singular in number, and the masculine shall include the feminine and the feminine shall include the masculine in gender. The term "including" shall mean "including, without limitation."

#### **2. Definitions.**

2.1. "**Administrative Expense Claim**" shall mean an Allowed Claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority payment pursuant to section 507(a)(2) of the Bankruptcy Code, including (a) the actual, necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the Debtor's business, (b) compensation for legal and other services and reimbursement of expenses approved, awarded or allowed under sections 330(a) or 331 of the Bankruptcy Code (hereafter, "Professional Fees"), and (c) Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Court.

2.2. "**Allowed Claim**" or "**Allowed**" (when used with respect to a Claim) shall mean a Claim against the Debtor to the extent that such Claim (a) has been allowed by a Final Order of the Court; (b) is (i) listed in the Debtor's Schedules, other than a Claim that is Scheduled at zero, unknown or as disputed, contingent, or unliquidated, or (ii) evidenced by a proof of claim that

has been filed with the Court on or before the Bar Date or deemed filed pursuant to any Final Order of the Court or under applicable law, and as to which (A) no objection to its allowance has been timely filed; or (B) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order, or (C) is allowed pursuant to the terms of this Plan. Notwithstanding any other provision of the Plan, the term “Allowed Claim” shall not include any Claim held by a creditor against which the Debtor or the Reorganized Debtor has asserted a claim or objection that has the effect of precluding a Distribution with respect to such Claim.

2.3. **“Bankruptcy Code”** shall mean 11 U.S.C. § 101 et seq., as in effect with respect to the Chapter 11 Case on the date of the filing of this Plan. All code references herein are to the Bankruptcy Code, unless otherwise stated.

2.4. **“Bankruptcy Rules”** shall mean: (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, (b) the Federal Rules of Civil Procedure, and (c) the Local Rules of the Court, all as amended from time to time and as applicable to this Chapter 11 Case or proceedings therein.

2.5. **“Bar Date”** shall mean January 7, 2010, the deadline set by the Court by which parties who have, assert, or may have or assert, any Claim against or Interest in the Debtor must file their proof of Claim or Interest with the clerk of the Court.

2.6. **“Business Day”** shall mean any day, excluding Saturdays, Sunday, and legal holidays, on which commercial banks are open for business in Cleveland, Ohio.

2.7. **“Cash”** shall mean legal tender of the United States of America.

2.8. **“Causes of Action”** shall mean any actions, claims, demands, suits, or rights, (a) held by the Debtor under applicable law, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured, and whether asserted or assertable directly or derivatively, in law, equity or otherwise, or (b) created or arising in favor of the Debtor, its Estate under the Bankruptcy Code, including, without limitation, all claims, rights and causes of action arising under section 510 or under any of sections 542 through 553 of the Bankruptcy Code, in each case regardless of whether such actions, causes of action, claims, demands, suits or rights are commenced prior to or after the Effective Date.

2.9. **“Chapter 11 Case”** shall mean the above-captioned chapter 11 case, Case No. 09-19087, pending in the Court.

2.10. **“Claim”** shall mean a claim, as defined in section 101(5) of the Bankruptcy Code, against the Debtor.

2.11. **“Class”** shall mean any class into which Claims or Interests are classified pursuant to this Plan.

2.12. **“Committee”** shall mean the Official Committee of Unsecured Creditors appointed in the Debtor’s Chapter 11 case, as it may be constituted from time to time.

2.13. **“Confirmation Date”** shall mean the date on which the Confirmation Order is entered on the docket of the Court.

2.14. **“Confirmation Order”** shall mean the Order entered by the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

2.15. **“Consummation Date”** shall mean the date on which the Reorganized Debtor makes the final Distribution in accordance with the Plan.

2.16. **“Court” or “Bankruptcy Court”** shall mean the United States Bankruptcy Court for the Northern District of Ohio, Chapter 11 Case No. 09-19087, or, in the event such Bankruptcy Court ceases to exercise jurisdiction over this Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over this Chapter 11 Case in lieu of the Bankruptcy Court.

2.17. **“Creditor”** shall mean a holder of any Claim against the Debtor.

2.18. **“Designated Notice”** means notice and an opportunity for a hearing as defined in section 102(a) of the Bankruptcy Code, with notice limited to the Debtor or the Reorganized Debtor as the case may be, the Committee, and the United States Trustee and their respective counsel, as well as all other parties in interest who, after entry of the Confirmation Order, file a request for such notice with the clerk of the Court and serve a copy of such notice on counsel to the Reorganized Debtor.

2.19. **“Disallowed,”** when used with respect to a Claim, shall mean (a) a Claim, or any portion thereof, that has been Disallowed by a Final Order of the Court; (b) a Claim that has been listed in the Schedules at zero, unknown or as contingent, disputed, or unliquidated and as to which no proof of claim has been timely filed or deemed timely filed with the Court pursuant to the Bankruptcy Code, any Final Order of the Court or other applicable law; or (c) a Claim that has not been listed in the Schedules and as to which no proof of claim has been timely filed or deemed timely filed with the Court pursuant to the Bankruptcy Code, any Final Order of the Court, or other applicable law.

2.20. **“Disclosure Statement”** shall mean the Debtor’s Disclosure Statement, filed with the Court on January 22, 2010, as it may be amended or modified by the Debtor from time to

time, together with all exhibits, schedules and other attachments thereto, as the same may be amended or modified by the Debtor from time to time.

2.21. **“Distribution”** shall mean a distribution or payment under the Plan.

2.22. **“Effective Date”** shall mean the first Business Day, calculated in accordance with Bankruptcy Rule 9006(a), occurring after fourteen days after the Confirmation Date, provided that all of the conditions set forth in Article IX of the Plan have been satisfied, or such later date on which all such conditions have been satisfied.

2.23. **“Estate”** shall mean the bankruptcy estate created by the commencement of the Chapter 11 Case.

2.24. **“Final Order”** shall mean an order or judgment, the operation or effect of which has not been stayed, reversed, modified, or amended and as to which the time to appeal, petition for certiorari, or seek re-argument, review or rehearing has expired and as to which no notice of appeal, petition for certiorari, or motion for re-argument, review or rehearing was timely filed or, if timely filed, has been affirmed by the highest court to which the order or judgment was appealed or from which the re-argument or rehearing was sought, or certiorari has been denied, and the time to file any further appeal or to petition for certiorari or to seek further re-argument or rehearing has expired.

2.25. **“Interest”** shall mean any equity interest in the Debtor.

2.26. **“Interest or “Interest Rate”** shall mean simple interest calculated on a per annum basis at a rate equivalent to the rate used to calculate the interest due on money judgments in civil cases in federal district courts. Any Interest due under this Plan will be calculated based on the weekly average 1-year constant maturity Treasury yield for the calendar week preceding the Effective Date.

2.27. **“Order”** shall mean an order of the Court.

2.28. **“Petition Date”** shall mean September 25, 2009.

2.29. **“Plan”** shall mean this Plan of Reorganization, as it may be amended or modified by the Debtor from time to time, together with all exhibits, schedules and other attachments hereto, as the same may be amended or modified by the Debtor from time to time, all of which are incorporated herein by reference.

2.30. **“Priority Claim”** shall mean an Allowed Unsecured Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code.

2.31. **“Pro Rata”** shall mean with respect to any Allowed Claim in any Class, that proportion that the amount of such Allowed Claim bears to the aggregate amount of all Allowed Claims in such Class.

2.32. **“Real Property”** shall mean that certain improved real estate located at 426-446 Kiester Road, Slippery Rock, Pennsylvania.

2.33. **“Reorganized Debtor”** shall mean the Debtor as of the Effective Date of the Plan.

2.34. **“Scheduled”** shall mean, with respect to any Claim or Interest, the status and amount, if any, of such Claim or Interest, as set forth in the Debtor’s Schedules.

2.35. **“Schedules”** shall mean the Debtor’s Schedules of Assets and Liabilities and Statements of Financial Affairs filed on October 30, 2009, in each case as amended from time to time.

2.36. **“Secured Claim”** shall mean an Allowed Claim secured by a perfected lien on property of the Estate to the extent of the value, as of the Petition Date, of such lien as determined by a Final Order of the Court pursuant to section 506 of the Bankruptcy Code, or as otherwise agreed upon by the Debtor and the holder of such Allowed Claim.

2.37. **“Unsecured Claim”** shall mean a Claim which arose before the Petition Date and which is not secured by any interest in any asset in the Debtor’s Estate. Unsecured Claim shall include a Claim which arises from the rejection of an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code.

### **3. Rules of Interpretation.**

For purposes of the Plan: (a) any reference in the Plan to an existing document or exhibit filed, or to be filed, means such document or exhibit as it may have been or may be amended, modified, or supplemented; (b) unless otherwise specified, all references in the Plan to Articles or Sections are references to such Articles or Sections of, or to, this Plan; (c) the words “herein” and “hereto” refer to this Plan in its entirety, rather than to a particular portion of the Plan; (d) the captions and headings to Articles and Sections are inserted for purposes of convenience and organization only, and are not intended to be a part of, or to affect the interpretation of, the Plan; and (e) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply herein.

## ARTICLE III.

### CLASSIFICATION OF CLAIMS AND INTERESTS

#### 1. Introduction.

All Claims and Interests in the Chapter 11 Case are classified in the Classes below. A Claim in a particular Class is entitled to receive Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class, and only to the extent such Claim has not been previously paid, released, or otherwise satisfied.

#### 2. Classification.

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are designated as unclassified under the Plan. Other Claims and Interests are classified under Classes 1 through 13 as follows:

Administrative Expense Claims (Unclassified)

Priority Tax Claims (Unclassified)

Class 1—Secured Claim of The Huntington National Bank

Class 2—Secured Claim of The Huntington Real Estate Investment Company

Class 3—Secured Lease Claim of The Huntington National Bank

Class 4—Mechanics' Lien Claim of Thomas Construction

Class 5—Mechanics' Lien Claim of Eisler Landscapes

Class 6—Mechanics' Lien Claim of Matuszak Brothers

Class 7—Mechanics' Lien Claim of Momentum

Class 8—Butler County Tax Claim

Class 9—PNC Claim

Class 10—Claim of Martik Brothers, Inc.

Class 11—Allowed Remaining Priority Claims

Class 12(a)—Unsecured Claims

Class 12(b)—Insider Unsecured Claims

Class 13—Interests

#### ARTICLE IV.

### **DESCRIPTION, TREATMENT AND IMPAIRMENT OF CLAIMS AND INTERESTS**

In full and complete satisfaction of the Allowed Claims and Interests herein, the holders of Allowed Claims shall receive the treatment set forth below.

**(a) Administrative Expense Claims (Unclassified)**

- (1) Description: Administrative Claims are generally any Claims that arise after the Petition Date in conjunction with the administration of the Chapter 11 Case and allowed under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(2) of the Bankruptcy Code. Administrative Claims include, for example, quarterly fees to the U.S. Trustee payable under section 1930 of Title 28 of the United States Code, Claims for the payment of Professional Fees, and actual and necessary costs and expenses incurred in the ordinary course of the Debtor's business or of preserving the Debtor's Estate.
- (2) Treatment: Unless a holder(s) of an Allowed Administrative Expense Claim(s) agrees to a different treatment, the Reorganized Debtor will pay all Allowed Administrative Claims in Cash in full on the Effective Date or as soon thereafter as is reasonably practicable. Except with respect to Professional Fees, trade debt incurred in the ordinary course of business, and U.S. Trustee fees payable under section 1930 of Title 28 of the United States Code, all requests for payment of administrative costs and expenses incurred before the Effective Date under sections 507(a)(2) and 503(b) of the Bankruptcy Code shall be filed with the Court and served upon the Debtor no later than thirty days after the Effective Date (the "Administrative Expense Claim Bar Date"). Any claim not filed on or before the Administrative Expense Claim Bar Date shall be forever barred and any holder of such a barred claim shall be forever barred from asserting such claim against the Debtor, the Estate, the Reorganized Debtor, or any of their respective property. Any professional fees or expenses incurred subsequent to the Effective Date by the Reorganized Debtor or the Committee may be paid by the Reorganized Debtor without application to the Bankruptcy Court, provided,



however, that the Court retains jurisdiction to decide any dispute regarding payment of post-Effective Date professional fees or expenses.

**(b) Priority Tax Claims (Unclassified)**

- (1) Description: These are Claims for taxes of a governmental entity entitled to priority under section 507(a)(8) of the Bankruptcy Code.
- (2) Treatment: The Reorganized Debtor will make Pro-Rata Distributions to holders of Allowed Priority Tax Claims in deferred Cash payments bearing Interest on account of such Claims over a period not exceeding five years after the date of assessment of such Claim of a value, as of the Effective Date, equal to the allowed amount of such Claim. Notwithstanding the foregoing, the Reorganized Debtor may in its discretion, pay or prepay all or any part of the amounts owed to the holders of Priority Tax Claims at any time after the Effective Date.

**(c) Class 1 – Secured Claim of The Huntington National Bank (“Huntington”)**

- (1) Description: Class 1 consists of the secured claim of Huntington (the “Huntington Claim”). The Huntington Claim is asserted to be \$26,406,233.33 plus allowable interest and costs as set forth in Huntington's proof of claim, minus post-petition payments on account of the Huntington Claim and/or any other necessary or appropriate reductions or offsets.
- (2) Treatment: The Huntington Claim will be satisfied without bifurcation under section 506(a) of the Bankruptcy Code. The Reorganized Debtor will satisfy the Huntington Claim in full by paying on a monthly basis, beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date the Huntington Claim becomes an Allowed Claim, based on a 360 month amortization in equal consecutive monthly installments at 4.25% simple interest per annum calculated from the Effective Date on the then outstanding balance of the Huntington Claim, with a balloon payment of any unpaid accrued interest and principal due at the end of the 60<sup>th</sup> month after the Effective Date (or the date the Huntington Claim becomes an Allowed Claim). Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Huntington Claim at any time after the Effective Date. Huntington shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Huntington Claim, until such time as the Huntington Claim is satisfied in full, at which point the Lien in favor of Huntington shall be deemed released and discharged.

- (3) Impairment: Class 1 is impaired by the Plan.
- (d) **Class 2 – Secured Claim of The Huntington Real Estate Investment Company (“Huntington Real Estate”)**
- (1) Description: Class 2 consists of the secured claim of Huntington Real Estate (the “Huntington Real Estate Claim”). The Huntington Real Estate Claim is asserted to be \$2,136,009.04 plus allowable interest and costs as set forth in Huntington Real Estate's proof of claim, minus post-petition payments on account of the Huntington Real Estate Claim and/or any other necessary or appropriate reductions or offsets.
- (2) Treatment: The Huntington Real Estate Claim will be satisfied without bifurcation under section 506(a) of the Bankruptcy Code. The Reorganized Debtor will satisfy the Huntington Real Estate Claim in full by paying on a monthly basis, beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date the Huntington Real Estate Claim becomes an Allowed Claim, based on a 360 month amortization in equal consecutive monthly installments at 5.25% simple interest per annum calculated from the Effective Date on the then outstanding balance of the Huntington Real Estate Claim, with a balloon payment of any unpaid accrued interest and principal due at the end of the 60<sup>th</sup> month after the Effective Date (or the date the Huntington Real Estate Claim becomes an Allowed Claim). Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Huntington Real Estate Claim at any time after the Effective Date. Huntington Real Estate shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Huntington Real Estate Claim, until such time as the Huntington Real Estate Claim is satisfied in full, at which point the Lien in favor of Huntington Real Estate shall be deemed released and discharged.
- (3) Impairment: Class 2 is impaired by the Plan.
- (e) **Class 3 – Secured Lease Claim of Huntington**
- (1) Description: Class 3 consists of the secured claim of Huntington pursuant to a certain equipment lease with Huntington, as successor in interest to Sky Bank. (the “Huntington Lease Claim”). The Huntington Lease Claim is asserted to be \$544,557.38 plus allowable interest and costs as set forth in Huntington Real Estate's proof of claim, minus post-petition payments on account of the

Huntington Lease Claim and/or any other necessary or appropriate reductions or offsets.

(2) Treatment: The Reorganized Debtor will satisfy the Huntington Lease Claim by resuming monthly payments according to the terms of the relevant contract, beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date the Huntington Lease Claim becomes an Allowed Claim, with the final payment under the contract expected to occur on or around December 2012. Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Huntington Lease Claim at any time after the Effective Date. Huntington shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Huntington Lease Claim, until such time as the final monthly payment is made in December 2012, at which point the Lien in favor of Huntington shall be deemed released and discharged.

(3) Impairment: Class 3 is impaired by the Plan.

**(f) Class 4 – Mechanics’ Lien Claim of Thomas Construction**

(1) Description: Class 4 consists of the avoidable mechanics’ lien claim of Thomas Construction, Inc. (the “Thomas Claim”). The Thomas Claim is asserted to be \$373,797.00, plus allowable interest and costs as set forth in Thomas's proof of claim, minus necessary or appropriate reductions or offsets.

(2) Treatment: The Reorganized Debtor will satisfy the Thomas Claim in full by paying Interest only payments on a monthly basis beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date the Thomas Claim becomes an Allowed Claim, with Interest on the then outstanding balance of the Thomas Claim calculated from the Effective Date, with a balloon payment of any unpaid accrued Interest and principal due at the end of the twenty-fourth month after the Effective Date (or the date the Thomas Claim becomes an Allowed Claim). Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Thomas Claim at any time after the Effective Date. Subject to the Estate's avoidance rights, Thomas shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Thomas Claim, until such time as the Thomas Claim is satisfied in full, at which point the Lien in favor of Thomas shall be deemed released and discharged.

- (3) Impairment: Class 4 is impaired by the Plan.
- (g) **Class 5 – Mechanics’ Lien Claim of Eisler Landscapes**
- (1) Description: Class 5 consists of the mechanics’ lien claim of Eisler Landscapes, Inc. (the “Eisler Claim”). The Eisler Claim shall be fixed at \$145,028.31.
- (2) Treatment: Unless the holder of the Eisler Claim agrees to a different treatment, the Reorganized Debtor will satisfy the Eisler Claim in full by paying on a monthly basis, beginning on the 10<sup>th</sup> day of the month after the Effective Date of the Plan, based on a five-year straight line amortization in equal consecutive monthly installments with Interest on the then outstanding balance of the Eisler Claim calculated from the Effective Date, with a balloon payment of any unpaid accrued Interest and principal due at the end of the twenty-fourth month after the Effective Date. Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Eisler Claim at any time after the Effective Date. Eisler shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Eisler Claim, until such time as the Eisler Claim is satisfied in full, at which point the Lien in favor of Eisler shall be deemed released and discharged.
- (3) Impairment: Class 5 is impaired by the Plan.
- (h) **Class 6 – Mechanics’ Lien Claim of Matuszak Brothers**
- (1) Description: Class 6 consists of the avoidable mechanics’ lien claim of Matuszak Brothers Electrical Contractors, Inc. (the “Matuszak Claim”). The Matuszak Claim is asserted to be \$336,861.23, plus allowable interest and costs as set forth in Matuszak's proof of claim, minus necessary or appropriate reductions or offsets.
- (2) Treatment: The Reorganized Debtor will satisfy the Matuszak Claim in full by paying Interest only payments on a monthly basis, beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date the Matuszak Claim becomes an Allowed Claim, with Interest on the then outstanding balance of the Matuszak Claim calculated from the Effective Date, with a balloon payment of any unpaid accrued Interest and principal due at the end of the twenty-fourth month after the Effective Date (or the date the Matuszak Claim becomes an Allowed Claim). Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Matuszak Claim at any time after the Effective Date. Subject to the Estate's avoidance rights, Matuszak shall

retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Matuszak Claim, until such time as the Matuszak Claim is satisfied in full, at which point the Lien in favor of Matuszak shall be deemed released and discharged.

(3) Impairment: Class 6 is impaired by the Plan.

**(i) Class 7 – Mechanics’ Lien Claim of Momentum**

(1) Description: Class 7 consists of the avoidable mechanics’ lien claim of Momentum, Inc. (the “Momentum Claim”). The Momentum Claim is asserted to be \$79,912.88, plus allowable interest and costs as set forth in Momentum's proof of claim, minus necessary or appropriate reductions or offsets.

(2) Treatment: The Reorganized Debtor will satisfy the Momentum Claim in full by paying Interest only payments on a monthly basis, beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date the Momentum Claim becomes an Allowed Claim, with Interest on the then outstanding balance of the Momentum Claim calculated from the Effective Date, with a balloon payment of any unpaid accrued Interest and principal due at the end of the twenty-fourth month after the Effective Date (or the date the Momentum Claim becomes an Allowed Claim). Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Momentum Claim at any time after the Effective Date. Subject to the Estate's avoidance rights, Momentum shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Momentum Claim, until such time as the Momentum Claim is satisfied in full, at which point the Lien in favor of Momentum shall be deemed released and discharged.

(3) Impairment: Class 7 is impaired by the Plan.

**(j) Class 8 – Butler County Tax Claim**

(1) Description: Class 8 consists of the secured claim of Butler County, Pennsylvania relating to 2008 real estate taxes (the “Butler County Tax Claim”). The Butler County Tax Claim shall be fixed at \$597,798.30.

(2) Treatment: The Reorganized Debtor will satisfy the Butler County Tax Claim in full by paying Interest only payments on a monthly basis, beginning on the 10<sup>th</sup> day of the month after the Effective Date of the Plan with Interest on the then

outstanding balance of the Butler County Tax Claim calculated from the Effective Date, with a balloon payment of any unpaid accrued Interest and principal due at the end of the 60th month after the Effective Date. Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Butler County Tax Claim at any time after the Effective Date. Butler County shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Butler County Tax Claim, until such time as the Butler County Tax Claim is satisfied in full, at which point the Lien in favor of Butler County shall be deemed released and discharged.

(3) Impairment: Class 8 is impaired by the Plan.

**(k) Class 9 – PNC Claim**

(1) Description: Class 9 consists of the claim held by PNC Bank, as successor in interest to National City Bank, secured by an avoidable mortgage interest (the “PNC Claim”). The PNC Claim is asserted to be \$3,500,000, plus allowable interest and costs as set forth in PNC's proof of claim, minus necessary or appropriate reductions or offsets.

(2) Treatment: The Reorganized Debtor will satisfy the PNC Claim in full by paying interest only payments on a monthly basis, beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date the PNC Claim becomes an Allowed Claim, based on a thirty-year amortization at 5% simple interest per annum calculated from the Effective Date on the then outstanding balance of the PNC Claim, with a balloon payment of any unpaid accrued interest and principal due on the then outstanding balance of the PNC Claim at the end of the sixtieth month after the Effective Date (or the date the PNC Claim becomes an Allowed Claim). Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the PNC Claim at any time after the Effective Date. Subject to the Estate's avoidance rights, PNC shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the PNC Claim, until such time as the PNC Claim is satisfied in full, at which point the Lien in favor of PNC shall be deemed released and discharged.

- (3) Impairment: Class 9 is impaired by the Plan.
- (l) **Class 10 – Claim of Martik Brothers, Inc. (“Martik”)**
- (1) Description: Class 10 consists of the claim of Martik arising out of litigation in the United States District Court for the Western District of Pennsylvania in Case No. 08-1756 and secured by an avoidable judgment lien (the “Martik Claim”). The Martik Claim is asserted to be \$3,089,898.85, plus allowable interest and costs as set forth in Martik's proof of claim, minus necessary or appropriate reductions or offsets.
- (2) Treatment: The Reorganized Debtor will satisfy the Martik Claim in full by paying Interest only payments on a monthly basis, beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date the Martik Claim becomes an Allowed Claim, with Interest on the then outstanding balance of the Martik Claim calculated from the Effective Date, with a balloon payment of any unpaid accrued Interest and principal due at the end of the sixtieth month after the Effective Date (or the date the Martik Claim becomes an Allowed Claim). Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, pay or prepay all or any part of the Martik Claim at any time after the Effective Date. Subject to the Estate's avoidance rights, Martik shall retain its Lien upon that property of the Estate in which it had a lien prior to the Petition Date, up to the unsatisfied amount of the Martik Claim, until such time as the Martik Claim is satisfied in full, at which point the Lien in favor of Martik shall be deemed released and discharged.
- (3) Impairment: Class 10 is impaired by the Plan.
- (m) **Class 11 – Allowed Remaining Priority Claims**
- (1) Description: Class 11 consists of all other Claims not otherwise classified herein, which are entitled to priority under section 507(a) of the Bankruptcy Code. The Debtor believes there are no Allowed Remaining Priority Claims.
- (2) Treatment: Unless a holder(s) of an Allowed Remaining Priority Claim(s) agrees to a different treatment, the Reorganized Debtor will pay all Allowed Remaining Priority Claims in Cash in full on the Effective Date or as soon thereafter as is reasonably practicable.
- (3) Impairment: Class 11 is impaired by the Plan.

**(n) Class 12(a) – Unsecured Claims**

- (1) Description: Class 12(a) consists of all Allowed Unsecured Claims, excluding Unsecured Claims classified elsewhere in this Plan. The Debtor believes the total of allowable Unsecured Claims equals approximately \$165,000.
- (2) Treatment: Unless a holder(s) of an Allowed Unsecured Claim(s) agrees to a different treatment, the Reorganized Debtor will make Distributions to holders of Allowed Unsecured Claims, consisting of all excess cash flow remaining after debt service in Pro Rata Cash payments on a monthly basis. Such payments shall commence beginning on the 10<sup>th</sup> day of the month after the later of the Effective Date of the Plan or the date an Unsecured Claim becomes an Allowed Unsecured Claim, based on a five-year straight line amortization bearing Interest on account of each such Claim, and they shall continue until such time as all holders of Allowed Unsecured Claims are paid in full with Interest (the “Payment Date”) over a period not exceeding sixty months in an amount equal to the amount of such Claim as of the latter of the Effective Date or the date such Claim is allowed.
- (3) Impairment: Class 12(a) is impaired by the Plan.

**(o) Class 12(b) – Insider Unsecured Claims**

- (1) Description: Class 12(b) consists of all Allowed Unsecured Claims held by “Insiders” of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code. The Debtor believes the total of allowable Insider Unsecured Claims equals approximately \$20,537.19.
- (2) Treatment: The Reorganized Debtor will make payments to holders of Insider Unsecured Claims on such terms and in such amounts that the Debtor, in its discretion, may choose; provided, however, that no payments will be made on account of Insider Unsecured Claims until such time as all Allowed Claims in Classes 1 through 12(a) have been satisfied in full.
- (3) Impairment: Class 12(b) is impaired by the Plan.

**(p) Class 13 – Interests**

- (1) Description and Treatment: Class 13 consists of all capital and economic Interests in the Debtor, namely, the following: the 100% capital interest of Kiebler Properties, LLC; the 34% economic interest of Kiebler Properties, LLC; and the 66% economic interest of Kleman Investments Ltd.



- (2) Treatment: All holders of Interests in the Debtor shall retain their Interests.
- (3) Impairment: Class 13 is unimpaired by the Plan.

## ARTICLE V.

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **1. Vesting of the Debtor's Assets.**

Pursuant to the Plan, all property of the Estate, including, without limitation, the Real Property and any tangible or intangible personal property, shall vest automatically in the Reorganized Debtor on the Effective Date free and clear of all Liens, Claims and Interests, except as otherwise specifically provided in this Plan or the Confirmation Order.

#### **2. Operation of the Reorganized Debtor.**

The Reorganized Debtor may use, sell, acquire, lease or otherwise dispose of its property only in accordance with the Plan and the Confirmation Order, but shall otherwise be free of any restrictions imposed by the Court, the Bankruptcy Code, or the Bankruptcy Rules. The Reorganized Debtor will use net available income derived from the operation of its business in the ordinary course for the purpose of carrying out the terms of this Plan and funding the payments contemplated by the Plan.

#### **3. Administration of Claims.**

Within 120 days after the Effective Date, or such later date as may be fixed by the Court, the Reorganized Debtor shall complete its review of the Claims and shall initiate and file any and all actions as it deems necessary or appropriate to dispute, disallow, object to, estimate or otherwise quantify the Claims against the Estate, whether scheduled by the Debtor and/or submitted by creditors. The Reorganized Debtor shall take actions regarding the administration, reconciliation and settlement of Claims, and shall object to Claims and prosecute Claims actions with the Court, until such time as the Court determines whether a Claim is an Allowed Claim, or until the Debtor determines that further pursuit of litigation or actions objecting to Claims is no longer cost efficient, or will be of no further benefit. **THE FAILURE TO OBJECT TO ANY CLAIM, OR TO SEEK THE ESTIMATION OF ANY CLAIM, PRIOR TO THE COMMENCEMENT OF THE HEARING ON CONFIRMATION OF THE PLAN SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO OBJECT THEREAFTER TO SUCH CLAIM IN WHOLE OR IN PART AND WHETHER THE CLAIM HAS BEEN SCHEDULED OR NOT, OR TO THEREAFTER SEEK ESTIMATION OF SUCH CLAIM FOR THE PURPOSE OF DISTRIBUTION.**

**4. Distribution.**

No Distribution shall be made with respect to any Claim to which an objection is pending (hereafter, a “Disputed Claim”) unless and until a Final Order allowing the Disputed Claim as an Allowed Claim has been entered.

**5. Distribution After Allowance.**

As soon as practicable after a Disputed Claim becomes an Allowed Claim, the holder of such Allowed Claim shall receive a distribution in an amount equal to the distribution that such holder would have received had such Disputed Claim been an Allowed Claim on the Effective Date. Distributions to each holder of a Disputed Claim, to the extent that such Claim becomes an Allowed Claim, shall be made in accordance with the Class of Claims to which such Claim belongs.

**6. Subordinated Claims.**

Under this Plan, the Claim of any Creditor may be subordinated pursuant to section 510 of the Bankruptcy Code to Claims of other Creditors. The Reorganized Debtor shall have the right to seek subordination of Claims after the Effective Date. The Court shall have the authority to enter any Order consistent with the Plan establishing the extent, priority and validity of such Subordinated Claims.

**7. Pursuit and Preservation of Causes of Action.**

The Debtor has filed, or it intends to file, adversary complaints to pursue causes of actions against Creditors and other third parties. On the Effective Date, the Reorganized Debtor shall automatically succeed to all of the Debtor’s right, title and interest in and to such claims, with standing to pursue any such claim, and the Causes of Action shall automatically and fully vest in, and they shall be retained and enforced by, the Reorganized Debtor pursuant to Bankruptcy Code section 1123(b)(3)(B). Under this Plan, the Reorganized Debtor is intended to retain and enforce, and it shall be deemed approved to retain and enforce, any and all such claims and Causes of Action as contemplated by Bankruptcy Code sections 1123(b)(3)(A) and (3)(B). The Reorganized Debtor shall have full, exclusive and complete authority to pursue and prosecute any or all such Causes of Action, or to refrain from pursuing any or all Causes of Action, including, without limitation, those Causes of Action listed on Exhibit A hereto. The Reorganized Debtor shall have the authority to compromise, settle and resolve any Cause of Action upon such terms and conditions as the Reorganized Debtor deems appropriate. **ALL CAUSES OF ACTION SHALL SURVIVE CONFIRMATION, AND THE ASSERTION OF CAUSES OF ACTION SHALL NOT BE BARRED OR LIMITED BY ANY ESTOPPEL, WHETHER JUDICIAL, EQUITABLE OR OTHERWISE.**

In addition, claims for avoidance of preferences and fraudulent transfers are hereby preserved for the benefit of the Debtor, the Estate and the Reorganized Debtor, but the Debtor and the Reorganized Debtor retain the right, in their respective sole discretion, to abandon any or all such claims.

All proceedings relating to the allowance, disallowance, subordination or estimation of Claims will be investigated, filed, enforced, exercised, abandoned, adjusted, settled or compromised by the Reorganized Debtor at its sole cost and expense.

**8. Injunctions and Stays.**

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date, shall remain in full force and effect until the Consummation Date.

**9. Dissolution of Creditors' Committee.**

Upon the Payment Date, the Committee shall be dissolved, employment of the Committee's counsel shall terminate, and the members of the Committee shall be released of all duties, responsibilities, and obligations related to or arising from or in connection with this Chapter 11 Case.

**10. Effectuating Documents; Further Transactions.**

The Debtor and the Reorganized Debtor shall be authorized to execute, deliver, file, and/or record such contracts, instruments, releases, and other agreements or documents, and to take such other actions, as may be necessary, desirable or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**11. U.S. Trustee Fees and Reports.**

Notwithstanding any other provisions of this Plan, the Reorganized Debtor shall pay any and all fees of the Office of the United States Trustee as and when such fees become due, and shall file with the Office of the United States Trustee all reports which are required pursuant to the relevant guidelines of the Office of the United States Trustee.

**12. Discharge of Duties**

On the Consummation Date, after making the final Distribution under the Plan, the Reorganized Debtor shall be discharged from its duties under the Plan.

**ARTICLE VI.**  
**ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE**  
**OR MORE CLASSES OF CLAIMS OR INTERESTS**

**1. Classes Entitled to Vote.**

Each impaired Class shall be entitled to vote to accept or reject the Plan. Any unimpaired Class shall be deemed to have accepted the Plan, and shall not be entitled to vote to accept or reject the Plan.

**2. Class Acceptance Requirement.**

Under section 1126(c) of the Bankruptcy Code, an impaired Class of Claims has accepted the Plan if the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class who have voted on the Plan have voted to accept the Plan. **ANY IMPAIRED CLASS OF CLAIMS IN WHICH NO HOLDER VOTES TO ACCEPT OR REJECT THE PLAN WILL BE DEEMED TO HAVE ACCEPTED THE PLAN.**

**ARTICLE VII.**

**PROVISIONS REGARDING DISTRIBUTIONS**

**1. Distributions.**

On the Effective Date or as soon thereafter as is reasonably practicable, the Reorganized Debtor shall make Distributions with respect to Allowed Administrative Expense Claims. Subsequent to the Effective Date, the Reorganized Debtor shall make Distributions with respect to all other Allowed Claims as contemplated by and to the extent set forth in the Plan. The Reorganized Debtor will continue to make Distributions up to and including the Consummation Date, on which date it will make the final Distribution under this Plan.

**2. Interest/Fees on Claims.**

Except as set forth in a Final Order of the Court entered in the Chapter 11 Case or as otherwise set forth herein, no holder of any Claim shall be entitled to interest or fees of any nature whatsoever accruing on or after the Petition Date on such Claim.

**3. Means of Payment.**

All payments made pursuant to this Plan shall be in Cash and by any means reasonably selected by the Reorganized Debtor, including check or wire transfer, and may include any endorsement or limitation as may be approved by the Reorganized Debtor.

**4. Duties of Reorganized Debtor.**

The Reorganized Debtor will have responsibility for determining Distributions as necessary and for sending such Distributions to the appropriate holders of Claims. The duties of the Reorganized Debtor are limited to the functions set forth specifically in this Plan. The Reorganized Debtor and its officers, directors, attorneys and other agents shall incur no liability for their respective actions (or failures to act) or conduct pursuant to this Plan except to the extent attributable to their willful misconduct or gross negligence. Notwithstanding any other provision of this Plan to the contrary, Distributions may be deferred or delayed in the discretion of the Reorganized Debtor for a reasonable time in the event that additional time is needed to make a proper Distribution, or in the event that the receipt of additional funds is necessary to make meaningful payments.

**5. Rounding.**

Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole dollar.

**6. Unclaimed Property.**

Any property to be distributed on account of a Claim against or Interest in the Debtor shall be distributed by mail to the latest mailing address filed of record for the party entitled thereto, or if no such mailing address has been so filed, the mailing address reflected in the Debtor's Schedules. Any property so distributed that is unclaimed for longer than ninety days after the distribution thereof by mail shall become property of the Reorganized Debtor and such persons to whom such unclaimed assets are distributed shall be eliminated from all future mailings of the Reorganized Debtor, no subsequent Distributions shall be made on account of such Claim, and such Claim shall be treated as being Disallowed, waived, and satisfied. These provisions shall apply without regard to any applicable nonbankruptcy laws with respect to unclaimed property.

**7. Taxes.**

The Reorganized Debtor shall be entitled to deduct any federal or state withholding taxes from any Distributions made with respect to Allowed Claims, as appropriate, and shall otherwise

comply with section 346 of the Bankruptcy Code. The Debtor and the Reorganized Debtor, as the case may be, shall be authorized, to the extent necessary or appropriate, to seek a determination of the Estate's tax liabilities, as contemplated by section 505 of the Bankruptcy Code. Pursuant to section 1146(c) of the Bankruptcy Code, any transfers from the Debtor or the Estate to any third party shall not be subject to any document recording tax, stamp tax, conveyance fee, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment.

## ARTICLE VIII.

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **1. Assumption of Contracts and Leases.**

To the extent that, as of the Confirmation Date, the Debtor has any remaining executory contracts or unexpired leases that have not been previously assumed or rejected, then all such remaining executory contracts or unexpired leases shall be deemed assumed as of the Effective Date.

#### **2. Bar Date for Rejection Damages.**

With respect to any executory contract or unexpired lease that has been rejected pursuant to section 365 of the Bankruptcy Code, which rejection results in a Claim that has not theretofore been evidenced by a timely filed proof of claim or a proof of claim that is deemed to be timely filed under applicable law, then any person seeking to assert such a Claim shall file with the Court, and serve upon the Reorganized Debtor, a proof of claim within 20 days from the Effective Date. Any person seeking to assert such a Claim who fails to file a proof of claim within this 20 day period shall be deemed to have waived said Claim, and it shall be forever barred.

## ARTICLE IX.

### **CONDITIONS PRECEDENT**

Each of the following conditions must occur and be satisfied on or before the Effective Date for the Plan to be effective on the Effective Date (provided that the Debtor may agree to waive any one or more of the following conditions):

(a) 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 Debtor, and

(b) 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 Debtor.

## **ARTICLE X.**

### **MODIFICATIONS AND AMENDMENTS**

The Debtor—and, as of the Effective Date, the Reorganized Debtor—reserves the sole and exclusive right to alter, amend, or modify the Plan as contemplated by section 1127 of the Bankruptcy Code. The Plan may be modified, before or after confirmation, without notice or hearing, or on such notice and hearing as the Court deems appropriate, if the Court finds that the proposed modification does not materially and adversely affect the rights of any parties in interest which have not had notice and an opportunity to be heard with regard to the proposed modification. Without limiting the foregoing, the Plan otherwise may be modified after notice and hearing. In the event of any modification at or before confirmation, any votes in favor of the Plan shall be deemed to be votes in favor of the Plan as modified, unless the Court finds that the proposed modification materially and adversely affects the rights of the parties in interest that cast said votes.

## **ARTICLE XI.**

### **RETENTION OF JURISDICTION**

After the Confirmation Date, and until the Chapter 11 Case is closed, the Court shall retain jurisdiction for the following purposes.

A. To classify, allow or disallow Claims and direct distribution of funds under the Plan and to hear and determine any controversies pertaining thereto.

B. To hear and determine any and all motions, applications, adversary proceedings and other matters arising out of or related to the Plan, to construe and take any action to enforce the execution of this Plan, the Confirmation Order, or any other Order, or to issue such Orders as may be necessary for the implementation, execution, performance or consummation of the Plan and all matters referred to herein or in the Confirmation Order or to resolve any disputes concerning any of the foregoing.

C. To hear and decide avoidance actions under chapter 5 of the Bankruptcy Code and turnover actions under sections 543 and 543.

- D. To decide matters arising under section 1112 of the Bankruptcy Code.
- E. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated.
- F. To adjudicate any disputes concerning payment of pre- or post-Effective date professional fees or expenses or any request for payment of administrative expenses.
- G. To modify the Plan or remedy any defect, omission or inconsistency in the Plan and to enter such orders as are necessary or appropriate to carry out the Plan under section 1127(b) of the Bankruptcy Code.
- H. To issue injunctions or orders as may be necessary or appropriate to restrain interference with this Plan or its execution and to enforce the permanent injunction under section 524 of the Bankruptcy Code.
- I. To hear and determine matters concerning state, local and federal taxes pursuant to sections 346, 505, 525 and 1146 of the Bankruptcy Code.
- J. To hear and determine any other dispute or matter relating to the Chapter 11 Case, including without limitation, the Causes of Action, and any other matter subject to the Court's jurisdiction pursuant to applicable law.

## **ARTICLE XII.**

### **INJUNCTION AND SETTLEMENT**

The rights afforded in this Plan and the treatment of all Liens, Claims and Interests herein shall be in exchange for, and in complete satisfaction, discharge and release of, all Claims and Interests of an kind, including without limitation any interest accrued on such Claims from and after the Petition Date, except as otherwise set forth in this Plan, against the Debtor, the Estate, or the Reorganized Debtor. Except as otherwise provided in the Plan or the Confirmation Order, confirmation of the Plan acts as a discharge effective as of the Effective Date, of any and all debts of the Debtor that arose at any time before the entry of the Confirmation Order, including, but not limited to, all principal or interest, whether accrued before or after the Petition Date. The Debtor's discharge shall be effective as to each Claim, regardless of whether a proof of claim therefor was filed, whether the Claim is an Allowed Claim, or whether the holder thereof votes to accept the Plan. All persons who have held, hold, or may hold Claims against or Interests in the Debtor (including without limitation claims for indemnity and/or contribution) shall be permanently enjoined, on and after the Effective Date, subject to the occurrence of the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any



kind with respect to any such claim or equity interest against the Debtor, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree or order against the Debtor or the Reorganized Debtor on account of any such claim or equity interest, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor or against the property or interests in property of the Debtor or the Reorganized Debtor on account of any such claim or equity interest, and (iv) asserting any rights of setoff, subordination, or recoupment of any kind against any obligation due from or against the Debtor or the Reorganized Debtor or against the property or interest in property of or against the Debtor or the Reorganized Debtor on account of any such claim or equity interest. The foregoing injunction will extend to successors of the Debtor and their respective properties and interests in property. Any act taken in violation of this Article shall be null and void, and any party injured by any violation of such injunction shall be entitled to recover actual damages, including costs and attorneys' fees, from the violator and, if appropriate, punitive damages from the willful violator. On and after the Confirmation Date, the provisions of the Plan shall be binding upon the Debtor, the Estate, the Reorganized Debtor, all holders of Claims, all holders of Interests, and all other parties in interest in the Chapter 11 Case, and their respective successors and assigns, in each case whether or not such persons or entities have filed a claim or are impaired and whether or not such persons or entities have accepted the Plan.

**NOTWITHSTANDING ANY OTHER PROVISION OF THE PLAN, NO HOLDER OF A CLAIM OR AN INTEREST, OR OTHER PARTY IN INTEREST, AND NO SUCCESSORS OR ASSIGNS OF THE FOREGOING, SHALL HAVE ANY CLAIM, CAUSE OF ACTION, OR OTHER LEGAL OR EQUITABLE RIGHT AGAINST THE DEBTOR, MEMBERS OF THE COMMITTEE IN THEIR REPRESENTATIVE CAPACITIES, THE PROFESSIONALS RETAINED IN THE CASE AND/OR ANY OF SUCH PARTIES' RESPECTIVE CURRENT ATTORNEYS, REPRESENTATIVES, FINANCIAL ADVISORS OR AGENTS AND ANY OF SUCH PARTIES' SUCCESSORS AND ASSIGNS, FOR ANY ACT OR OMISSION FROM THE PETITION DATE THROUGH THE EFFECTIVE DATE IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THE CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THE PLAN, EXCEPT FOR THEIR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. PROVIDED THAT THEY ACT IN GOOD FAITH, IN ALL SUCH INSTANCES, THE ABOVE-REFERENCED PARTIES SHALL BE AND HAVE BEEN ENTITLED TO REASONABLY RELY ON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES IN CONNECTION WITH THE CASE AND UNDER THE PLAN.**

## ARTICLE XIII.

### LIMITATION OF LIABILITY

Neither the Debtor, the Reorganized Debtor nor the Committee or any of their respective members, employees, officers, directors, agents, attorneys, or advisors, shall have or incur any liability to any holder of a Claim or Interest or any other party in interest, for any act or omission in connection with, relating to, or arising out of the Chapter 11 Case, the negotiation, formulation and preparation of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration or distribution of property under the Plan, except for their gross negligence or willful misconduct, and in all respects they shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. The entry of the Confirmation Order shall constitute the determination by the Court that the Debtor, the Committee, and each of their respective members, employees, officers, directors, agents, attorneys, and advisors shall have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code pursuant to, among others, sections 1125(e) and 1129(a)(3) of the Bankruptcy Code, with respect to the foregoing. Nothing herein shall be construed, however, to relieve the Debtor or the Reorganized Debtor, or any other party, from performing their respective obligations under the Plan.

## ARTICLE XIV.

### MISCELLANEOUS

#### 1. Binding Effect.

The Plan shall be legally binding upon and inure to the benefit of the Debtor, the Estate, the Committee, the Reorganized Debtor, the holders of Claims, the holders of Interests and all other parties in interest in the Chapter 11 Case, and their respective successors and assigns.

#### 2. Notices.

Any notice required or permitted to be provided to the Debtor or the Reorganized Debtor under the Plan shall be in writing, and served by overnight courier service or by certified mail, return receipt requested, addressed as follows:

**The Debtor  
or the Reorganized Debtor:**

Robert C. Folland, Esq.  
Andrew L. Turscak, Jr., Esq.

Mark A. Weintraub, Esq.  
Thompson Hine LLP  
3900 Key Tower  
127 Public Square  
Cleveland, OH 44114

**3. Revocation.**

The Debtor reserves the right to revoke, and withdraw the Plan prior to confirmation. If the Debtor revokes or withdraws the Plan, then the Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtor, or any other person or entity or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtor.

**4. Plan Controls.**

In the event, and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, or any other agreement or instrument required or contemplated to be executed by the Debtor, the Committee, the Reorganized Debtor, or any other entity pursuant to the Plan, the provisions of the Plan shall control and take precedence. In the event of any inconsistency between any provision of any of the foregoing documents and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence.

**5. Time.**

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Court, the provisions of Bankruptcy Rule 9006 shall apply.

**6. Section 1125(e) of the Bankruptcy Code.**

As of the Confirmation Date, the Debtor shall be deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code. As of the Confirmation Date, the Debtor, the Committee and their respective officers, directors, agents, financial advisors, attorneys, employees, equity Interest holders, and representatives shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and issuance of the new securities hereunder, and therefore are not, and on account of such offer, issuance and solicitation shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections hereof or other offer and issuance of new securities under the Plan.

**7. Savings Clause.**

Any minor defect or inconsistency in the Plan may be corrected or amended by the Confirmation Order.

**8. Remedy of Defects.**

After the Effective Date, the Reorganized Debtor may, with approval of the Court, and so long as it does not materially and adversely affect the interests of Creditors or of Interest holders, remedy any defect or omission or reconcile any inconsistencies in the Plan or in the Confirmation Order in such manner as may be necessary to carry out the purposes and effect of the Plan and in form and substance satisfactory to the Reorganized Debtor.

**9. Governing Law.**

Unless a rule of law or procedure is supplied by federal law, including the Bankruptcy Code and the Bankruptcy Rules, and except as set forth elsewhere herein, the laws of the State of Ohio shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan.

**10. Reliance on Documents.**

The Debtor and the Reorganized Debtor may rely upon, and shall be protected in acting, or refraining from acting upon, any certificates, opinions, statements, instruments or reports believed by them to be genuine and to have been signed or presented by the proper person or persons.

**11. Designated Notice.**

Notwithstanding any other provision of this Plan, when notice and a hearing is required with regard to any action to be taken by the Debtor or the Reorganized Debtor, Designated Notice shall be adequate.

**12. Severability.**

Should any term or provision in this Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any other term or provision of the Plan.

**ARTICLE XV.**

**PROVISION TO INVOKE CRAMDOWNS PROCEEDINGS IF NECESSARY.**

The Debtor requests confirmation of this Plan pursuant to section 1129(b) of the Bankruptcy Code if any impaired Class does not accept the Plan. In that event, the Debtor may modify the Plan to the extent, if any, that confirmation of the Plan under section 1129(b) requires such modification in a manner that does not require amendment of the Disclosure Statement and resolicitation of acceptances and rejections of the Plan.

**ARTICLE XVI.**

**RECOMMENDATION.**

The Debtor believes that confirmation and consummation to the Plan is preferable to all other alternatives.

**ARTICLE XVII.**

**CONCLUSION**

The Debtor urges Creditors to vote to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received by the deadline established by the Court.

January 22, 2010

Respectfully Submitted,

*/s/ Andrew Turscak*

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*Counsel for Debtor, Kiebler Slippery Rock, LLC*

## EXHIBIT A

### **Preserved Potential Causes of Action**

As set forth in, but not limited by, the Plan and section 1123(b)(3)(B) of the Bankruptcy Code, the Debtor expressly reserves and retains for itself and for the Reorganized Debtor, and the Reorganized Debtor shall be authorized to prepare, file, pursue, prosecute and settle the following Causes of Action without further approval of the Court, whether or not such Causes of Action have been asserted or commenced as of the Effective Date. Final determinations have not yet been made as to which causes of action and recovery actions may or should be pursued. The following list of Causes of Action are provided for disclosure and informational purposes:

- 1) Claims and Causes of Action related to transfers or payments made to third parties within the preference period set forth in Bankruptcy Code section 547.
- 2) Claims and Causes of Action against or with respect to any tax refunds including without limitation all appeal or other recovery rights with any taxing authority for any overpayment or any type of taxes, including claims for recalculation of real estate taxes in cases where the assessed value exceeds the market value of the real property.
- 3) Claims and Causes of Action arising out of any current or former contracts to which the Debtor was or is a party.
- 4) Claims and Causes of Action against or with respect to any insurance policy of the Debtor, including without limitation that certain Performance Bond and that certain Payment Bond, numbered 40BCSEA6973 and issued by Hartford Casualty Insurance Company.
- 5) All claims and Causes of Action, including those arising under Bankruptcy Code sections 105, 502, 510, and 542 through 553, as well as applicable state law, for avoidance and/or recovery of any transfers or payments made to third parties, including without limitation the transfers and payments detailed in the Schedules, and such parties' successors, assigns and subsequent transferees.
- 6) All claims and causes of action against Martik Brothers, Inc., including without limitation all causes of action relating to or arising out of the Construction Contract, the Pennsylvania Garnishment Action, avoidance of purported lien interests, action to set aside the Arbitration Award, recovery of potential payments to subcontractors including costs and attorneys fees related thereto as provided for in the Construction Contract, breach of contract, or related transactions.
- 7) Claims and Causes of Action for avoidance, subordination, recharacterization or recovery against creditors, service providers, professionals or other third parties who have filed a proof of Claim and/or whose claims have been listed on the Schedules.

- 8) All claims and causes of action against Matuszak Brothers Electrical Contractors, Inc., including without limitation all causes of action relating to or arising out of the Construction Contract, avoidance of purported lien interests, breach of contract, and the Matuszak Claim.
- 9) All claims and causes of action against Momentum, Inc., including without limitation all causes of action relating to or arising out of the Construction Contract, avoidance of purported lien interests, breach of contract, and the Momentum Claim.
- 10) All claims and causes of action against Thomas Construction, Inc., including without limitation all causes of action relating to or arising out of the Construction Contract, avoidance of purported lien interests, breach of contract, and the Thomas Claim.
- 11) All claims and causes of action against Huntington National Bank, including without limitation all causes of action relating to or arising out of its prepetition freezing of the Debtor's bank accounts and other lender liability claims.
- 12) All claims and causes of action against The Huntington Real Estate Investment Company, including without limitation all causes of action relating to or arising out of the Huntington Real Estate Investment Co. Claim.
- 13) All claims and causes of action against Huntington National Bank Equipment Finance Division, including without limitation all causes of action relating to or arising out of its lien and the Huntington National Bank Equipment Finance Division Claim.
- 14) All claims and causes of action against Eckert Seamans Cherin & Mellott, LLC, including without limitation all causes of action relating to or arising out of its prepetition and postpetition conduct.
- 15) All claims and causes of action against Goehring, Rutter & Boehm, prepetition litigation counsel, including without limitation all causes of action relating to or arising out of prepetition conduct such as legal malpractice.

Although the Debtor has attempted to be thorough in naming potential causes of action, it cannot be certain that it has discovered or is yet aware of all existing potential Causes of Action. It is possible that additional claims or causes of action exist that are not presently known or discovered. It is the intent of the Debtor to preserve any such as yet unknown or undiscovered causes of action or claims for itself and the Reorganized Debtor and, possibly, to pursue all such causes of action or claims after the Effective Date.