

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

IN RE:)	Case No.: 17-20390-TPA
)	
ZALER POP OF WILKINSBURG, LLC)	Chapter 11
)	
Debtor.)	

AMENDED PLAN OF REORGANIZATION

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Dated: April 16, 2018

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AMENDED
PLAN OF REORGANIZATION DATED APRIL 16, 2018

Zaler Pop of Wilkinsburg, LLC, the “Debtor”, hereby proposes the following Amended Plan of Reorganization (“Amended Plan”) pursuant to §1121(a) of Chapter 11, Title 11 of the United States Code. The Debtor’s Amended Disclosure Statement (the “Amended Disclosure Statement”) contains a discussion of the Debtor’s history, business and financial information, a summary of the Amended Plan and certain related matters. The Debtor is the proponent of the Amended Plan within the meaning of §1129 of the Bankruptcy Code, 11 U.S.C. §1129. All holders of Claims are encouraged to read the Amended Plan and the Amended Disclosure Statement in their entirety before voting to accept or reject the Amended Plan.

Subject to the provisions set forth in §1127 of the Bankruptcy Code, 11 U.S.C. §1127, Debtor may exercise his right to alter, amend or modify the Amended Plan, one or more times, before its substantial consummation.

ARTICLE I
DEFINED TERMS

A. Defined Terms

As used in the Amended Plan, the initially capitalized terms below shall have the following meanings. Any term used in the Amended Plan that is not defined herein, but that is defined in the Bankruptcy Code or Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or Bankruptcy Rules.

1. “Administrative Claim” means a Claim for costs and expenses of administration of the Case allowed under §503(b) or §507 of the Bankruptcy Code, including, without limitation, the following: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and payments for supplies and materials and necessary living expenses; (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under §330(a) or §331 of the Bankruptcy Code; and (c) all fees and charges assessed against the Estate pursuant to Chapter 123, Title 28, United States Code, 28 U.S.C. §§1911-1930.

2. “Allowed Claim” means a Claim or that portion of a Claim that is liquidated in amount and

- a. has been listed by Debtor in the Schedules as other than contingent, unliquidated or disputed and as to which no Proof of Claim has been timely filed and as to which no objection by Debtor or any other party in interest has been filed and is pending or if such an objection has been filed, the subject Claim has been allowed by Final Order. To the extent that some claims appear on Debtor's Schedules but not in the Disclosure Statement, these matters have been resolved and shall not be Allowed Claims under the Amended Plan of Reorganization; or
- b. a Proof of Claim has been timely filed with the Clerk of the Bankruptcy Court and either no objection by Debtor or any other party in interest has been filed and is pending, or if such an objection had been filed, the subject Claim has been allowed by a Final Order.

Unless otherwise provided for in this Amended Plan, "Allowed Claim" shall not include interest, costs, fees, expenses or other charges on the principal amount of such claim from and after the Petition Date.

3. "Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §101 et seq., as amended, modified or supplemented from time to time, to the extent applicable in this Case.

4. "Bankruptcy Court" means the United States Bankruptcy Court for the Western District of Pennsylvania or if such Court ceases to exercise jurisdiction over the case, such Court or adjunct thereof that exercises jurisdiction with respect to the case in lieu of the United States Bankruptcy Court for the Western District of Pennsylvania.

5. "Bankruptcy Rules" mean, collectively, the Bankruptcy Rules and local Bankruptcy Rules for the United States Bankruptcy Court for the Western District of Pennsylvania, now in effect or hereafter amended, modified or supplemented from time to time.

6. "Bar Date" means August 17, 2017, the date fixed pursuant to the Bankruptcy Rule 3003(c) within which a Claimant must timely file a Proof of Claim.

7. "Claim" means (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) a right to have an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

8. "Claimant" means a holder of a Claim.

9. "Class" means a group of Claims which are substantially similar to each other, as classified pursuant to Article II of the Amended Plan.

10. "Confirmation" means the signing of the Confirmation Order by the Bankruptcy Court.

11. “Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

12. “Confirmation Order” means the Order or Orders of the Bankruptcy Court confirming the Amended Plan pursuant to §1129 of the Bankruptcy Code.

13. “Creditor” means a person or entity that has an Allowed Claim against Debtors.

14. “Amended Disclosure Statement” means the Amended Disclosure Statement (and all exhibits and schedules annexed thereto or referenced therein) that relates to the Amended Plan and is approved by the Bankruptcy Court pursuant to §1125 of the Bankruptcy Code, as such Disclosure Statement is now in effect or may hereafter be amended, modified or supplemented from time to time.

15. “Disputed Claim” shall mean any Claim which has been scheduled pursuant to the Bankruptcy Code as disputed, contingent or unliquidated, or to which an objection to the allowance thereof has been timely filed, and as to which Claim a Final Order has not been entered determining such Claim to be an Allowed Claim.

16. “Effective Date” means the date on which the Confirmation Order becomes final.

17. “Estate” means the estate created for Debtors pursuant to §541 of the Bankruptcy Code.

18. “Final Order” means an Order, judgment, ruling or other decree issued and entered by the Bankruptcy Court or any other Court of competent jurisdiction as entered on the docket in the Case which has not been reversed, stayed, modified or amended and no appeal or petition for review, rehearing or certiorari is pending or with respect to which any appeal has been finally decided and no further appeal or petition for certiorari can be taken or granted.

19. “Petition Date” means February 3, 2017, the date the bankruptcy was filed.

20. “Priority Claim” means any Allowed Claim, other than Administrative Tax Claim, to the extent entitled to priority in payment under §507(a) of the Bankruptcy Code.

21. “Professionals” means McCann, Garland, Ridall & Burke.

22. “Schedules” means the Schedules filed by Debtor with the Clerk of the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as such Schedules are now in effect and may hereafter be amended, modified or supplemented.

23. “Tax Claim” means a Claim of any person or entity for the payment of taxes accorded a priority pursuant to §507(a)(8) of the Bankruptcy Code.

24. “Unsecured Claim” means a Claim that is not an Administrative Claim, Priority Claim, Tax Claim or a Secured Claim.

B. Governing Law

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, and subject to the provisions of any contract, instrument, release or other agreement or document entered into in connection with the Amended Plan, the rights and obligations arising under the Amended Plan shall be governed by, and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflict of laws thereof.

ARTICLE II

CLASSES OF CLAIMS

The following is a designation of Classes of Claims and Interests. A Claim is classified in a particular Class only to the extent that the Claim qualified within the description of that Class and is classified in other classes to the extent that any remainder of the Claim qualifies within the description of such other Class. A Claim will receive a distribution under the Amended Plan only if it is an Allowed Claim and has not been paid, released or otherwise satisfied prior to the Effective Date. Except for the distributions to be received and treatment to be afforded under the Amended Plan on account of such Claims, all Claims against Debtor arising prior to the entry of the Confirmation Order will be discharged by the Amended Plan on the Effective Date.

1. "Class 1 - Secured Claim". Class 1 shall consist of the Allowed Secured Claim of Bridgeway Capital, LLC ("Bridgeway"). Bridgeway holds the mortgage on Debtor's commercial real estate.

2. "Class 2 – Secured/Priority Claim". Class 2 shall consist of the Allowed Secured Claim of the Pennsylvania Department of Revenue.

3. "Class 3 - Priority Claim". Class 3 shall consist of the claim of the Internal Revenue Service ("IRS").

4. "Class 4 - Secured /Priority Claim". Class 4 shall consist of the Allowed Secured Claim of the Pennsylvania Department of Labor & Industry.

5. "Class 5 - Secured/Priority Claim". Class 5 shall consist of the Allowed Secured Claim of Wilkinsburg School District.

6. "Class 6 - Secured/Priority Claim". Class 6 shall consist of the Allowed Secured Claim of Wilkinsburg Borough.

7. "Class 7 - Secured/Priority Claim". Class 7 shall consist of the Allowed Secured Claim of Allegheny County.

8. "Class 8 - Unsecured Claim". Class 8 shall consist of the Allowed General Unsecured Claims of the general unsecured creditors as well as claims arising from the rejection of any executory contracts.

9. "Class 9 - Interest Holder". Class 9 shall consist of the interests of Ronald A. Johnson in the Debtor.

ARTICLE III

TREATMENT OF ADMINISTRATIVE CLAIMS

ADMINISTRATIVE CLAIMS

Allowed Administrative Claims of Professionals will be paid subsequent to the entry of a Court Order approving applications for compensation of Professionals in accordance with §§329, 330 and 331 of the Bankruptcy Code.

Allowed Administrative Claims of Professionals shall be paid in accordance with an agreement between the parties. Debtor may not have sufficient cash to pay Claims of Professionals in full on the Effective Date. In the event that the Claims of the Professionals are not approved by the Effective Date, the Claims will be paid after approval and Final Order of Court as the parties may otherwise agree.

Payment of any amounts due to the Office of the U.S. Trustee or the Clerk of the Bankruptcy Court will be paid on the Effective Date. Quarterly fees will continue to accrue until a Final Decree is issued and said fees shall be paid as they become due.

In accordance with the Orders entered, Duquesne Light Company and Peoples Natural Gas Company, LLC have been granted an administrative claim for post-petition services. To the extent Debtor has cash available from rental income, these claims will be paid on the Effective Date, otherwise within the first four (4) months of the term of the Amended Plan.

ARTICLE IV

TREATMENT OF ALLOWED TAX CLAIMS

Unsecured priority tax claims of the IRS and the Pennsylvania Department of Revenue will be paid in full. Pursuant to 11 USC §1129(a)(9)(C), unless otherwise agreed, priority tax claims are to be paid in periodic payments over a period ending no later than five years after the date that the petition was filed.

The Wilkesburg School District and Wilkesburg Borough also have priority real estate tax claims for 2016 real estate taxes. The Pennsylvania Department of Labor and Industry, Pennsylvania Department of Revenue and Allegheny County have secured claims which, but for the secured status, would be treated as priority claims and paid within the five (5) year period set forth in 11 USC §1129(a)(9)(C).

The rental income received by Debtor is not sufficient to pay the priority tax claims and secured tax claims to be paid as priority claims within the remaining forty-five (45) months subsequent to the Petition Date.

Debtor has therefore designated a Class for each allowed tax claimant and proposes to pay all tax claims in full over a period of 93 months. The length of the Amended Plan is governed by the monthly income available to fund the Amended Plan and pay these claims in full.

Since all tax claimants have claims which are classified as either priority or secured to be paid as priority, Debtor has combined the amounts for payment treatment.

The Bridgeway claim will be paid in full after 68 months. Thus, Debtor proposes to increase payments to tax claimants from \$1,500.00 per month to \$4,000.00 per month for a period of 27 months. This is the length of time required to pay the balance remaining on the priority claims and secured claims after the 68-month period in addition to the general secured tax claims.

ARTICLE V

TREATMENT OF CLASSES OF CLAIMS

CLASS 1. The holder of the Class 1 Claim shall consist of the Secured Claim of Bridgeway Capital, LLC and shall be paid the total amount of its Allowed Claim. Debtor shall begin making monthly payments of \$2,500.00 for a period of 68 months subsequent to the Effective Date.

CLASS 2. The Class 2 Claim shall consist of the Allowed Secured Claim of the PA Department of Revenue and its priority tax claim which total \$70,080.00. The Class 2 Claim shall be paid as follows: 68 months at \$720.00 per month for a subtotal of \$48,960.00, then 27 months at \$800.00 per month for a subtotal of \$21,600.00 which equals \$70,560.00. The PA Department of Revenue will retain pre-petition liens.

CLASS 3. The Class 3 Claim shall consist of the Priority Tax Claim of the IRS in the amount of \$7,444.00 which is being paid on a pro rata basis with all priority and secured claims to be paid as priority. The IRS will be paid \$75.00 per month for 68 months followed by \$100.00 per month for 27 months for a total of \$7,900.00.

CLASS 4. The Class 4 Claim shall consist of the Allowed Secured Claim of the Pennsylvania Labor and Industry ("L&I") to be paid as priority. The L&I has filed a Proof of Claim for the Secured Claim in the amount of \$35,835.95. The L&I will be paid \$375.00 per month for 68 months followed by \$360.00 for 27 months for a total of \$36,220.00 over the term of the Amended Plan. L&I will retain any pre-petition liens.

CLASS 5. The Class 5 Claim shall consist of the Allowed Secured Claim of the Wilkinsburg School District plus the 2016 taxes of \$19,825.00 to be paid as priority. The Wilkinsburg School District has filed a Proof of Claim in the amount of \$37,534.04 which is not priority and will be paid at the beginning of month 69. The updated total for claims appears to be \$40,913.00. The Wilkinsburg School District will be paid \$210.00 per month for 68 months followed by \$1,720.00 for 27 months for a total of \$61,260.00. The Wilkinsburg School District will retain any pre-petition lien.

CLASS 6. The Class 6 Claim shall consist of the Allowed Secured Claim of the Borough of Wilkinsburg plus the 2016 taxes to be paid as priority. The Borough of Wilkinsburg has filed a Proof of Claim in the amount of \$16,249.93 which is not priority and will be paid beginning in month 69. Wilkinsburg Borough will be paid \$90.00 per month for 68 months then \$760.00 per month for 27 months for a total of \$26,640.00. Wilkinsburg Borough will retain any pre-petition lien.

CLASS 7. The Class 7 Claim shall consist of the Allowed Secured Claim of Allegheny County. Allegheny County has filed a Proof of Claim in the amount of \$9,085.83. Of this amount, \$2,250.00 has been allocated to 2016 and paid on the level of priority claims. The balance of the claim will be paid beginning in month 69. Allegheny County will be paid \$30.00 per month for 68 months followed by payments of \$262.00 per month for 27 months for a total of \$9,114.00. Allegheny County will retain any pre-petition lien.

CLASS 8. The Class 8 Claims shall be impaired and consists of the Allowed General Unsecured Claims of trade creditors as well as the unsecured portion of tax claimants. Debtor shall paid 25% of the Allowed General Unsecured Claims over a period of two months after all priority and secured claims are paid.

CLASS 9. The Class 9 Claim shall consist of the membership interest of Ronald A. Johnson in the Debtor. Johnson shall retain his membership interest in Debtor.

ARTICLE VI

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Debtor shall enter into a Lease with Cuddy ALR Realty, LLC to operate the restaurant at 501 Penn Avenue, Wilkinsburg, PA.

ARTICLE VII

MEANS FOR IMPLEMENTATION OF THE AMENDED PLAN

The Amended Plan shall be implemented through Debtor's continued operation of the Property and receipt of rental income.

ARTICLE VIII

TREATMENT OF DISPUTED CLAIMS

Unless another date is established by the Bankruptcy Court, all objections to Claims must be filed and served on the holders of such Claims on or before the Effective Date. If an objection has not been filed to a Proof of Claim that relates to a Disputed Claim on or before the

Effective Date, the Claim to which the Proof of Claim or scheduled Claim (unless previously resolved) relates will be treated as an Allowed Claim if such Claim has not been allowed earlier.

After the Confirmation Date, only Debtor will have the authority to file objections, settle, compromise, withdraw or litigate to judgment objections to Claims.

If any objection is filed with respect to only a portion of such Claim, the uncontested portion of the Claim will be treated as an Allowed Claim and the holder thereof will receive a distribution in accordance with the provisions of this Amended Plan. If a Disputed Claim is resolved by allowance of the Claim in whole or in part, payment shall be made in accordance with the applicable provision of this Amended Plan.

ARTICLE IX

DISTRIBUTION

Debtor will take such action as may be necessary to make distributions after the Effective Date in accordance with the terms of this Amended Plan. Except as otherwise provided herein, distribution to holders of Allowed Claims shall be made (i) at the addresses set forth on the respective Proofs of Claim filed by such holders, (ii) at the addresses set forth in any written notices of address change delivered to Debtor after the date of the filing of any related Proof of Claim or (iii) at the addresses reflected in the Schedules if no Proof of Claim has been filed and Debtor has not received written notice of a change of address.

If any Claimant's distribution is returned to Debtor as undeliverable, no further distribution will be made to such holder unless Debtor is notified in writing of such holder's then current address. Undeliverable distributions will remain in the possession of Debtor until such time as the distribution becomes deliverable.

Any holder of an Allowed Claim who does not assert a right to an undeliverable distribution on or before two years after the Effective Date, will have its Claim related to such undeliverable distribution discharged and will be forever barred from asserting any such Claim against Debtor.

ARTICLE X

DISCHARGE

Except as otherwise provided in the Amended Plan or in the Confirmation Order, pursuant to 11 USC §1141(d)(5), Debtor shall receive a discharge upon confirmation of the Amended Plan. Entry of a discharge shall discharge all debts and Claims against and all liens in the Debtor's assets or properties that arose at any time before the entry of the Confirmation Order, including, but not limited to, all principal and all interest accrued thereon, pursuant to Code Section 1141(d)(1). In addition, the entry of the discharge shall act as a discharge of any direct or indirect right or Claim that arose at any time before entry of the Confirmation Order effective as of the Effective Date, which any entity whose Claim is not otherwise assumed by the Amended Plan had or may have had against Debtor. The discharge of the Debtor 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 Amended Plan. Subsequent to the Confirmation Date, as to every discharged Claim, any holder of such Claim shall be precluded from asserting against the Debtors formerly obligated with respect to such Claim, or against Debtor's assets or properties, or any other or further Claim based upon any document, instrument or act, omission, transaction or other activity of any kind or nature that occurred before the Confirmation Date.

As of the Effective Date, all liens and mortgages against any property of Debtor securing any Claims not assumed pursuant to the Amended Plan shall be satisfied and marked satisfied of record and all collateral for such liens and mortgages shall be returned. Any consensual lien or mortgage shall continue to encumber property of Debtor until the Distribution to the holder provided by this Amended Plan has actually been made.

ARTICLE XI

RETENTION OF JURISDICTION

Upon the performance of Debtor of all matters required to be performed under the Amended Plan, the Bankruptcy Court shall enter an Order closing the Case for all purposes. The Bankruptcy Court shall retain jurisdiction of the Case after the Confirmation Date for the purposes of and determinations of (a) the validity and allowability of Claims, (b) authorization of the amount of the payments to Claimants hereunder, (c) rendering the final judgment on all applications, motions, contested matters or adversary proceedings filed in this Case, whether or not such applications, motions, contested matters or adversary proceedings have been filed or heard prior to the Confirmation Date, (d) rendering the final decision on all applications by Professionals for fees and expenses in connection with all pre-confirmation services rendered and expenses incurred in connection with the consummation of this Amended Plan, (e) to enforce the provisions of this Amended Plan, and (f) such other matters as may be set forth in the Confirmation Order.

ARTICLE XII

CRAMDOWN

The Amended Plan does not unfairly discriminate against any impaired class and is fair and equitable. In the event an impaired Class rejects the Amended Plan, the Debtor will seek Confirmation of the Amended Plan pursuant to 11 USC §1129(b) of the Bankruptcy Code.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Subject to the restrictions on modification set forth in §1127 of the Bankruptcy Code, Debtor reserves the right to alter, amend or modify the Amended Plan at any time prior to the entry of the Confirmation Order, provided that the Amended Plan, as modified, and the

Disclosure Statement meet the applicable requirements of the Bankruptcy Code. After entry of the Confirmation Order, Debtor may modify the Amended Plan to remedy any defect or omission or reconcile any inconsistencies in the Amended Plan or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and effects of the Amended Plan, provided that Debtor obtains approval of the Bankruptcy Court, after notice and a hearing, for such modification and such modification does not materially or adversely affect the interests, rights, treatment or distributions of any Class of Allowed Claims.

Debtor reserves the right to revoke or withdraw the Amended Plan at any time prior to the Confirmation Date, or if Debtor is, for any reason, unable to consummate the Amended Plan after the Confirmation Date, at any time up to the Effective Date.

Should the Bankruptcy Court determine, prior to the Confirmation Date, that any provision of the Amended Plan is either illegal on its face or illegal as applied to any Claim or Interest, such provision will be unenforceable as to the holder of such Claim or Interest as to which the provision is illegal, respectively. Such a determination will in no way limit or affect the enforceability and operative effect of any other provision of the Amended Plan.

ZALER POP OF WILKINSBURG, LLC

Date: April 16, 2018

By: /s/ Ronald Johnson
Ronald Johnson
Managing Member

Date: April 16, 2018

McCANN, GARLAND, RIDALL & BURKE

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