

Whatever Happened to Prepacks/Structured Dismissals?; You Can Check In Any Time You Like, but Can You Ever Leave? In & Out Quick; Staying Out of Bankruptcy Court: How to Negotiate a Workout Agreement; Pros and Cons of ABCs

Mark J. Wolfson, Moderator

Foley & Lardner LLP; Tampa, Fla.

Leyza F. Blanco

GrayRobinson, P.A.; Miami

Paul A. Giordano

Roetzel & Andress, LPA; Fort Myers, Fla.

Philip J. von Kahle

Michael Moecker & Associates, Inc.; Hollywood, Fla.

ABI PASKAY BANKRUPTCY SEMINAR

“What Ever Happened to Pre-Packs? Structured Dismissals? Chapter 11: You Can Check In Any Time You Like But Can You Ever Leave? Staying Out of Bankruptcy Court: Don’t Foreclose. Can we Negotiate a Workout? Using Secured Creditor Remedies; What about an ABC: Pros and Cons of ABC’s”

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Mark J. Wolfson, Esquire
Foley & Lardner LLP
Tampa, FL
Moderator

Leyza F. Blanco, Esquire
Gray Robinson, P.A.
Miami, FL

Paul A. Giordano, Esquire
Roetzel & Andress
Ft. Myers, FL

Phil von Kahle, Executive Vice President
Michael Moecker & Associates, Inc.
Hollywood, FL

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Hypothetical Fact Pattern

“WHAT DO YOU DO WHEN THE SWEET SCENT TURNS SOUR?”

On August 5, 2013, the Bank of Paskay (“Bank”) entered into a Loan evidenced by a Promissory Note, Loan Agreement and Security Agreement among other documents (the “Loan”) with Clearwater Perfume Stores, LLC (“CPS”), pursuant to which the Bank agreed to loan CPS up to \$14,500,000 to purchase equipment, fund a new product, pay for leasehold improvements for a Georgia warehouse, and fund the operations of CPS’s perfume business located in Jacksonville, Florida. CPS added a new warehouse center just over the state border in Georgia, pursuant to a market lease. The Bank forgot to get a landlord lien waiver from the Georgia landlord. CPS’s Note to the Bank had with a maturity date of August 5, 2015. CPS executed a Security Agreement granting the Bank a first priority security interest on all of CPS’s assets. The Bank advanced CPS \$8,000,000. The remaining available loan proceeds were \$6,500,000. The Bank overtime funded requested advances totaling \$4,500,000. The CPS principal provided a limited guaranty of the debt.

CPS generally made timely payments on the Loan. However, due to market conditions and trouble with a new product, CPS missed its quarterly financial covenants, and the Bank declined to fund the entire last draw request needed to make payroll, pay all vendors, and pay rent to the Georgia landlord. The Bank requested CPS’s equity to infuse capital, but the owner was illiquid. CPS failed to make the rent payment on the Georgia lease due March 1, 2015, and was sued for eviction. In addition, CPS was one payroll behind and its 60 employees, 50 of which were in the Florida production facility, threatened to quit working if the payroll was not caught up. Upon learning of the pending eviction proceeding and view of unpaid payroll and covenant defaults, the Bank declared itself insecure and called the loan which had an outstanding balance of about \$8,000,000.

In May 2015, the Bank filed a complaint in Florida state court (the “Florida State Litigation”) to foreclose the security interest and sue on the promissory note. CPS defended on the basis that the default was called improperly because the Bank had ignored the prior quarter’s financial covenant breach and the failure to fund the last draw request caused CPS’ defaults with the landlord and inability to make payroll. Through discovery, the Bank learned that CPS had been doing business with a company owned by the siblings of CPS’s principals and that the affiliate had received a \$500,000 payment to cover unpaid invoices for goods provided to CPS, and also that non-insider vendors received some payments on old invoices.

CPS and the Bank were ordered to an early mediation by the presiding judge in the Florida State Litigation. As a result of the mediation, the parties entered into a Forbearance Agreement, in which, among other things, they each agreed that the Florida State Litigation would be dismissed without prejudice. As a condition of the Forbearance Agreement, CPS was to bring the payroll current and resolve the eviction proceeding and executing releases to the Bank and confirming the validity, extent and priority of the Bank’s security interest. In exchange, the Bank agreed to forbear on the existing defaults through December 31, 2015. CPS’s principals agreed to a tolling agreement regarding the preferential payment through that same date.

During the forbearance period, CPS once again fell behind on its rent and payroll. Its counsel suggested that they consider a court supervised insolvency proceeding in state court and interview an Assignee for and Assignment for the Benefit of Creditors ("ABC"). CPS sought the approval of the Bank because it needed funding to effectuate an orderly liquidation. After an analysis of the value of the inventory and the timing given the upcoming holiday season, the Bank agreed to provide limited funding for up to 90 days if CPS agreed to one of three assignees on its approved list, reduce payroll and reduce insider compensation, and cooperate with the Assignee in execution of his duties. The plan was to operate the business for a short period of time to maximize holiday sales and subsequently liquidate any remaining inventory in bulk or sell the business or its intellectual property. The parties agreed on Mr. ABC as the Assignee, an experienced assignee who also had CRO experience. The Bank agreed to fund the Assignee's expenses along with operational expenses under an agreed budget, as a future advance under the Loan. The form of Assignment provided for in Chapter in Chapter 727 was executed and accepted by Mr. ABC. Immediately prior to his acceptance of the Assignment, CPS's management terminated all the employees. However, they were told that Mr. Assignee would immediately require a large number of the employees as independent contractors.

After approval of his appointment by order of the Duval County Circuit Court, Mr. ABC found out that CPS was also behind on payments to Swifty Taylor, the manufacturer of the most popular perfume on the market due to the perfume's namesake singer who had recently won 10 Grammy Awards and was scheduled to highlight as the halftime star on Super Bowl Sunday just after the holidays. Without the Swifty Taylor essence on its shelves, CPS could not maintain its sales revenue during the upcoming holiday season. As a result, CPS's management had recently made a catch up payment of several past due invoices due to Swifty Taylor in exchange for a new shipment of the hot new essence. Notwithstanding the recent payment, Swifty Taylor was still due over \$100,000 in past due amounts. Perry Katie, another manufacturer of a well selling perfume, was also owed money from CPS on some past due invoices.

Upon receipt of the Notice of Assignment Proceeding, Swifty Taylor and Perry Katie's management conferred and being the leaders in their industry, they reached out to Nadonna, a manufacturer of a one-time well known perfume who had been on the decline since the 1990's but was still the favorite of certain "40-somethings" who kept it alive in the perfume industry. Swifty Taylor and Perry Katie learned that Nadonna was owed approximately \$1000 by CPS for a shipment made over 120 days prior which also remained unpaid. CPS rejected the perfume shipment as the perfume shipment originated from China rather than the U.S. Manufacturing plant and appeared not to be authentic Nadonna perfume. CPS disputed the claim. They also learned of the payment made earlier to the CPS principal's sibling's company. With the assistance of a well-known bankruptcy firm, Do, WeEndIt, P.A., Swifty Taylor, Perry Katie and Nadonna (the "Petitioning Creditors") joined in a Chapter 7 involuntary filing against CPS.

CPS opposed the Involuntary Petition on the basis of insufficient qualifying creditors and the potential preference claim against the owner's sibling's company did not require a bankruptcy case because the tolling agreement was still effective. A motion to abstain and to allow Mr. ABC to remain as a custodian under 11 U.S.C. Section 543 was filed by the Bank's counsel, NeverLose LLP. In an effort to resolve an expensive contest over the Involuntary Petition, CPS and the Petitioning Creditors agreed to the entry of an Order for Relief under Chapter 11. The Bank agreed to authorize use of cash collateral and Section 363 financing and a

budget based upon the ABC budget, with some revisions, subject to the Court allowing Mr. ABC to remain in control as a custodian and to act as CRO for the Debtor. Mr. ABC would not be a corporate officer or director of CPS. The parties agreed to the payment of critical vendors, namely, Swifty Taylor and Perry Katie without whose products, the holiday sales would greatly affect. The United States Trustee Office filed objections. The Bankruptcy Court granted the motions on an interim basis for 90 days and ordered the Debtor to file a plan of reorganization within 90 days.

The sales during the holiday season produced revenue sufficient to repay the super-priority loan and was forecast to increase in revenue to and through Valentine's Day with the latest news that Swifty and Perry would be collaborating for the Super Bowl halftime show and on an upcoming single. With this turn in the market, the Georgia lease having been terminated by agreement after the goods there had been sold off, CPS having a smaller core of employees, and projected cash flow showing a modest positive trend, the Bank, petitioning creditors, and CPS's principals met to discuss how to proceed. They were motivated in part by a recent inquiry from Kenya East, the husband of a well-known reality show celebrity, expressed an interest in buying CPS's business as a way to expand his growing line of trendy sportswear and accessories. The interim relief authority was set to expire and the plan deadline was less than 30 days away. Mr. ABC was there to provide information and his views on the possible measures.

Issues and Questions Raised By CPS Fact Pattern

- A. When Does the Bank Pull the Trigger? Let's do a Workout First!*
1. What considerations by the Bank justify first agreeing to a forbearance agreement with CPS?
 2. What are the negatives of the Bank first agreeing to forbearance?
 3. Does it matter who the lender is? Bank vs distress debt buyer
 4. If workout approach is undertaken, what are some of the key terms of a good workout?
 5. See sample Forbearance Agreement.
 - a. Lender wants: waivers and releases, CRO or change in management, collateral audit, limitation on insider comp/distributions, confirming debt and liens, benchmarks, lockbox, additional collateral, pre-petition stay waiver, forbearance fee.
 - b. Borrower Asks for: waiver or abatement of covenants, waiver or deferral of default interest, reduce interest rate, more time, discounted payoff option; release of guaranty or limitation (upfront or performance-based).
- B. What Strategies Can the Borrower/Lender Employ if the Work Out Doesn't Workout*
1. What about a pre-packaged chapter 11 plan approach? Why and Why not?
 2. Consensual UCC Article 9 Sale (public or private) with full or partial release under 9-608
 3. Surrender of Collateral in Exchange for full or partial release under 9-620
 4. Judicial Foreclosure-by consent or litigated with possible receiver
 5. Out of Court wind-down with agreed upon fiduciary
 6. Judicial Dissolution-Corporation (Ch. 607.1430-.1433); LLC (Ch. 605.702-.705)
 - a. Confirm state of incorporation similar procedures if not a Florida entity.
 7. Assignment for the Benefit of Creditors-Chapter 727, Florida Statutes.
 - a. How is this process different than bankruptcy. See *Moecker v. Antoine*, 845 So.2d 904 (Fla. 1st DCA 2003) (extensive discussion of ABC process and how it differs from bankruptcy) How different from a foreclosure with a receiver or judicial dissolution? Why would an ABC be preferred or not?

- b. When does it make sense? Who has to agree, who picks assignee, how are the terms negotiated, who funds, who oversees, what is role of assignor and its managers/principals after assignment?
- c. What can Assignee do in terms of operations? Can he abandon? Can he sell assets? Can he sell “free and clear”? Do unsecured ever get any distribution?
- d. What Key Issues Might the Assignee Face with CPS’s ABC? Landlord/Employees/Equipment Leases/ Litigation Claims?
- e. What does Assignee do when things don’t go as planned in ABC and cash is limited? Can Assignee file a voluntary bankruptcy petition? *In re Nica Holdings, In re Nica Holdings, In re Nica Holdings*, 810 F. 3d 781 (11th Cir. 2015).

C. *Bankruptcy Case Issues*

- 1. What happens to the ABC when a bankruptcy is filed? What if an involuntary?
- 2. Who would file and why? Are there non-insider preferences?
- 3. Do non-petitioning creditors of the alleged debtor have standing to respond to an involuntary petition? *See In re QDN, LLC*, 363 F. App’x 873, 876 (3d Cir. 2010).
- 4. How might CPS and Bank respond to an involuntary filing? Dismiss/Abstain?
- 5. What does Assignee do when Involuntary Petition is filed? Is 11 U.S.C. Section 543 relief available? Who seeks requests and pays for it?
- 6. Chapter 11 considerations (costs are extensive, need for bridge funding to operate through holiday season)
- 7. Why a traditional reorganization plan process may not work? Advisor and attorney’s fees? How long will a reorganization take?
- 8. What about a Section 363 Sale and “Pot Plan” with Liquidation Trust or Plan Administrator?
- 9. What happens when the secured creditor creditors cut a deal to exit bankruptcy? With or without unsecured creditors or Office of United States Trustee consent?
- 10. I heard about a “structured dismissal.” What is that?

11. One description-Eschewing the pursuit of a typical 363 sale with a liquidating plan or a conversion to a Chapter 7 case that will deal with post-sale issues, the key players negotiate a settlement that resolves most of the disputed issues and seeks to dismiss the chapter 11 case. The order blesses the settlement that implements that consensual resolution, while at the same time dismissing the case.
12. Section 349(b) states that “unless the court, for cause, orders otherwise,” a dismissal reinstates avoided transfers, vacates turnover orders and sections 550 or 553 judgments and reverts property of the estate in the entity or person that owned it immediately before the entry of the order for relief. The legislative history says that Congress intended section 349 to “undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case.” This legislative history and the statutory language also provide that the court can modify that outcome “for cause.” But, what does that mean? Can the court approve and leave unaffected an agreement negotiated, documented and executed with a dismissal in mind, only days before the hearing on the motion to dismiss, as opposed to the court deciding that, for example, a long-ago concluded settlement of a preference or fraudulent transfer claim would not be unwound by a later dismissal or that a sale of an asset which occurred in the early days of the case would not be set aside a year later when one of the enumerated reasons under Section 1112 was satisfied?
13. A recent stretching of the “structured dismissal” strategy. *In re Jevic Holding Corp.*, 787 F.3d 173 (3rd Cir. 2015).

Facts: A trucking company’s equity was acquired by a well-known equity group in an LBO buy-out transaction financed by a non-bank secured lender. After the LBO, the company had financial trouble and entered into a forbearance agreement under which the buyer provided guarantees to the lender. In 2008, the debtor filed a Chapter 11 petition ceasing all business and terminating its employees. The unsecured creditors’ committee filed a fraudulent transfer action against the buyer and lender. Also, a group of the debtor’s truck drivers filed a suit under the state and federal Worker Adjustment and Retraining Notification (“WARN”) Act. While these actions were being litigated, substantially all of the debtor’s assets were liquidated with the proceeds substantially paying down the secured claims. In March 2012, all that remained was \$1.7 million in cash secured by the owner’s liens and avoidance claims.

Settlement: Eventually, the affected players negotiated a settlement of the fraudulent transfer claim. The settlement required a \$2 million payment by the secured lender for the debtor’s and committee’s fees and costs and other administrative expenses. The buyer assigned its lien to a trust that would pay some administrative costs and return a 4% payment to unsecured creditors. The WARN Act claimants who asserted a \$12+ million claim (more than \$8 million was a priority claim under Sec. 507(a)(4)), received zilch. The settlement terms were incorporated into a “structured dismissal” approved by the bankruptcy court, which dismissed the case but left the compromise intact.

Arguments: The WARN Act creditors and USTO raised two attacks to the structured dismissal. First, the USTO challenged the authority of the court to authorize a structured dismissal under the Code. The truck drivers challenged the substance of the settlement. They argued that the payment to the general unsecured creditors violated the Code’s priority structure because it bypassed the WARN Act superior status. Also, the employees challenged the settlement as a breach of fiduciary

duty by the unsecured creditor's committee, which was pursuing the fraudulent transfers for the entire estate, rather than an agent of the general unsecured creditors.

Rulings: The lower courts rejected those arguments. A split panel of the Third Circuit also rejected the challenges, but the majority noted it was a close call. The court acknowledged the importance of Code priorities, which should be honored in a liquidating plan. However, the court found that because neither course of action offered a viable alternative to the structured dismissal, the bankruptcy court's reluctant condoning of the settlement was appropriate.

14. Should it matter if all the economically interested parties have signed off on the deal and only the USTO is objecting? *See In re Buffet Partners, L.P.*, 59 ankr. Ct. Dec. (CRR) 232, 2014 WL 3735804 (Bankr. N.D. Tex. 2014) (allowing a structured dismissal in that situation).
15. *See generally Structured Dismissals: Smooth Off-Ramp or Artful Dodge?*, Frost, Christopher W., 35 No. 10 Bankruptcy Law Letter (Oct. 2015).
16. Does it matter that Florida has a robust ABC process? Will our bankruptcy courts allow case dismissal with the settlement terms as priority, extent and validity of lien, releases and waivers, but using a prior existing or new ABC to liquidate the assets? What might have to be in it? Unsecureds get carve out and assignee prosecutes insider preference claims and D&O claims for benefit of creditors, secured and unsecured on a sharing arrangement? Admins paid?
17. What if the settlement calls for a dismissal and consent foreclosure or private UCC sale to the liquidation process, but keeps with the other attributes?

D. *QUESTIONS & MY NOTES:*

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (" Forbearance Agreement") is effective as of the ____ day of _____, (the "Effective Date") among _____, located at _____; _____, are hereinafter together referred to as "Guarantors") **jointly and severally**, (collectively referred to as "**Borrowers**"),

AND

_____ ("**Bank**").

The Borrowers and Bank may be referred to as "Party" respectively and/or the "Parties" collectively.

RECITALS

A. On or about _____, the Parties entered into a Forbearance Agreement effective as of _____ (the "Forbearance Agreement") with regard to Loan _____.

B. Borrowers acknowledge that they are indebted to the Bank pursuant to and evidenced by the following promissory notes, as the same may have been previously renewed, modified and/or extended, with the following: (i) principal amounts; (ii) interest; (iii) per diem interest; calculated as of _____, which shall collectively be referred to as the "Notes." The indebtedness evidenced in the Notes is hereinafter referred to as the "Loans" and all documents associated therewith, including the Forbearance Agreement are referred to as the "Loan Documents";

Loan:

Principal:

Interest:

Unpaid Late Charges:

Total Due:

Per diem: _____ at default rate of interest

(collectively, the "Company Indebtedness").

C. As of the Effective Date, Borrowers are in default under the terms of the Loan Documents, for, including but not limited to, failing to make the payments in the amount of \$ _____ due _____ together with scheduled principal reductions plus late charges due thereon totaling \$ _____. More specifically, Borrowers failed to make scheduled _____ principal _____ reductions _____ in the amount of _____, pursuant to the terms of the Forbearance Agreement.

D. Borrowers have requested that Bank forbear the exercise of its remedies pursuant to the Notes, Loan Documents, the Forbearance Agreement and Company Indebtedness, conditioned upon the agreements of the Borrowers provided for herein. Bank is willing to forbear from exercising its rights and remedies under the Notes and the Loan Documents for a period of time as specified in this subject to the terms and conditions set forth herein, from _____.

NOW, THEREFORE, in consideration of the mutual covenants herein, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrowers and the Bank agree as follows:

1. Recitals. The foregoing recitals are confirmed by the Parties as true and correct and are incorporated herein by reference. The recitals are a substantive, contractual part of this Forbearance Agreement.

2. Consideration. The Borrowers hereby acknowledge that adequate consideration has been furnished by the Bank in exchange for the payment provided to the Bank under the terms of the Loan Documents and this Forbearance Agreement. The Borrowers hereby waive any claims or defenses by Borrowers on the basis of lack of adequate consideration with respect to this Forbearance Agreement or the Loan Documents.

3. Acknowledgment of Default, Amounts Due, and Maturity Date.

(a) The Bank and Borrowers acknowledge that, prior to giving effect to the payment or payments specified in this Forbearance Agreement, the aggregate outstanding unpaid balance of the Loans (including outstanding principal and accrued, unpaid interest) is as set forth in Paragraph A of the Recitals above herein. Except as otherwise provided in this Forbearance Agreement, the Borrowers waive any and all rights to other notice of payment default or any other default, protest and notice of protest, dishonor, diligence in collecting and the bringing of suit or arbitration proceedings against any Party, notice of intention to accelerate, notice of acceleration, demand for payment and any other notices whatsoever regarding the Notes, and further waive any claims that any notices previously given are insufficient for any reason.

(b) The Bank and Borrowers acknowledge that, as of the Effective Date and prior to giving effect to the payment or payments specified in this Forbearance Agreement, the Borrowers defaulted under the Loans, including but not limited to, as follows:

- i) Borrowers failed to make the scheduled payments due under the Loans
- ii) Borrowers failed to fully comply with reporting requirements under the Loan Documents.

4. No Waiver of Default. The execution, delivery and performance of this Forbearance Agreement by the Bank and the acceptance by the Bank of performance of the Borrowers (a) shall not constitute a waiver or release by the Bank of any default that exists as of

the Effective Date or may hereafter exist under the Forbearance Agreement, this Forbearance Agreement, the Notes or the Loan Documents; (b) shall not constitute a novation of the Notes as it is the intent of the Parties to modify the Notes as expressly set forth herein, and (c) except as expressly provided herein, this Forbearance Agreement shall be without prejudice to and is not a waiver or release of the Bank's rights at any time in the future to exercise any and all rights conferred upon the Bank by the Forbearance Agreement, this Forbearance Agreement, the Notes, the Loan Documents or otherwise at law or in equity, including but not limited to the right to institute collection proceedings against Borrowers and/or to exercise any right against any other person or entity not a party to this Forbearance Agreement.

5. Effective Period and Termination. Borrowers and Bank agree that this Forbearance Agreement is effective from the Effective Date to and through _____, on which date the Loans shall be due and payable in full ("Termination Date"). The period of time from the Effective Date through the Termination Date shall be referred to as the "Effective Period." So long as this Forbearance Agreement is not terminated earlier as provided herein, the Bank agrees not to foreclose or attempt to foreclose any collateral securing the Notes or exercise any other remedies available to it under the Notes or under applicable law during the Effective Period unless otherwise extended by agreement of the Parties, as further set forth herein.

(a) During the Effective Period, there shall occur no new Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default under any of the Loans or this Forbearance Agreement. Borrowers hereby waive any notice periods provided under the Loan Documents. In the interest of clarity, upon the occurrence of any event of default whether a default hereunder or under the Loan Documents borrower waives notice and any grace period for cure of such default.

(b) The Borrowers each acknowledge that the Bank's obligations under this Forbearance Agreement are conditional, such that the Bank has made no agreement or commitment to modify or extend the Loans beyond the Effective Period, except as otherwise provided herein, and upon the termination of the Effective Period, the Bank shall have the immediate and unconditional right to exercise its rights and remedies under the Loans.

6. Terms and Conditions.

(a) Interest. Interest shall accrue on the Company Indebtedness at the contract rate of interest provided in the Loan Documents, from the Effective Date of this Forbearance Agreement to the Termination Date, based on an aggregate adjusted principal balance of _____ assuming a payoff date of _____ (the "Conditional Settlement Balance,") unless there is an event of default.

(b) The Conditional Settlement Balance is conditioned on the execution of this Forbearance Agreement on or before _____ and:

- (i) payment of \$_____ on account of the Company Indebtedness simultaneously with the execution of this Forbearance Agreement;
AND
- (ii) Bank's receipt of full payment of the Company Indebtedness on or before _____.

In the event the Company Indebtedness is not paid in full on or before _____, the company agrees to _____.

(c) As a condition to the closing of this Forbearance Agreement, Borrowers shall provide Bank for the Bank's review and approval, a copy of the fully executed Purchase and Sale Agreement for _____ assets containing the entire agreement between the Borrowers and Purchaser and stating it cannot be modified unless in writing and approved by the Bank. The Purchase and Sale Agreement shall also provide that all proceeds resulting from such sale are to be wired directly to the Bank by the closing agent of any such sale. In addition, any receivable resulting from such sale shall be assigned to the Bank immediately upon the closing of the sale of the assets.

(d) Commencing on _____, the payments under the Notes, Loan Documents and Consolidated, Amended and Restated Credit and Loan Agreement shall be _____ and shall be due on _____. Notwithstanding anything herein to the contrary, Borrowers shall pay Bank the sum of _____ contemporaneously with the execution of this Forbearance Agreement. Thereafter, the next regular payment due under the Loan shall be due on _____.

The payments shall be applied first to outstanding accrued and unpaid interest, principal and late charges.

(e) In addition to the regular monthly payments required under the Notes and Loan Documents, Borrowers shall make additional payments toward principal reductions on the outstanding amounts due to the Bank under this Forbearance Agreement, the Notes, and Loan Documents, as follows:

Failure to make the Pay-Downs shall constitute a default under this Forbearance Agreement, the Notes and the Loan Documents. Bank shall apply the Pay-Downs to the principal outstanding balance due under the Notes.

(g) Contemporaneously herewith, Guarantors shall individually each make a payment on account of the Company Indebtedness in the amount of _____.

(k) All funds deposited into the Lockbox Account at the Bank subject of the Forbearance Agreement shall be swept to Borrowers' operating account with Bank, and shall no longer be swept to Borrowers' Line of Credit.

(m) Borrowers' accounts for any of the Borrowers including but not limited to _____, shall be closed by Borrowers on or before _____, and the balances thereof and all future deposits for said entities shall be made to accounts with Bank. Failure to do so is a default under this Forbearance Agreement and the Loan Documents. Only merchant accounts titled in the name of _____ and _____ may be maintained at financial institutions other than Bank provided said companies provide weekly cash deposit and payment reconciliations to Bank.

(n) The net sale proceeds obtained by Borrowers, from the sale of assets of _____, shall be applied to the Company Indebtedness.

(o) The Revolving Loan is hereby modified to remove the revolving credit feature as of the Effective Date of this Forbearance Agreement. Accordingly, no further advances shall be made under the Revolving Loan.

(p) _____ shall contemporaneously herewith execute all documents necessary to join in the Loan Documents as a co-borrower and pledge its assets to secure the Company Indebtedness. Failure to execute the documents shall be a default under this Forbearance Agreement and the Loan Documents.

7. Reporting.

a) In addition to the reporting required under the Loan Documents and Forbearance Agreement, the following reports are due each month due and through the maturity date under the Loan Documents on or before the _____ of the month beginning on _____.

- i. Accounts Receivable Report
- ii. Accounts Payable Aging Report
- iii. Inventory Stock Report
- iv. Inventory Detail Report
- v. Monthly Financial Statement
- vi. Cash budget – in the form previously agreed upon between Bank and Borrowers.

b) Contemporaneously with the execution of this Forbearance Agreement, Borrowers shall provide a reconciliation of all "Due From" related accounts and any such "Due From" accounts identified therein shall be assigned to the Bank.

c) Borrowers and Guarantors shall provide a monthly updated list of all parties contacted for potential refinance transactions on behalf of Borrowers due on the ____ of each month.

d) Contemporaneously with the execution of this Forbearance Agreement, Borrowers shall provide all financial reporting due to and through the date of execution.

e) Borrowers shall comply with all reporting required under the Loan Documents and as set forth herein except that Borrowers may provide CPA compilations, supported by agreed upon procedures and accounts receivable and inventory audits in lieu of year-end audited financial statements.

8. Representations and Warranties. In order to induce the Bank to execute, deliver, and perform this Forbearance Agreement, the Borrowers and Guarantors warrant and represent to the Bank as follows:

(a) There are no material defaults other than the existing Defaults as defined above and all representations and warranties made in the Loan Documents are true and correct as of the date of execution hereof.

(b) This Forbearance Agreement is not being made or entered into with the actual intent to hinder, delay, or defraud any entity or person, and no express or implied consent to any further extensions or modifications involving any of the matters set forth in this Forbearance Agreement or otherwise shall be inferred or implied by the Bank's execution of this Forbearance Agreement or any other action of the Bank.

(c) Borrowers represent and warrant that, except as previously disclosed to, and acknowledged by Bank, there has been no material adverse change in the business, properties or condition (financial or otherwise) of the Borrower since the date of the most recent financial statements dated as of _____, and that no event or circumstance exists and is continuing which would prevent Borrowers from making the payments set forth herein, or which would require adjustment of the waterfall payment allocation outlined above. Moreover, no event or circumstance exists and is continuing, which constitutes a material Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

(d) Guarantors each represent and warrant that they have fully disclosed to Bank prior to this Forbearance Agreement's execution, all assets owned by them, and further warrant that the personal financial statements provided to the Bank in connection herewith are true and correct. In the event Bank discovers any assets previously undisclosed by Guarantors, within twenty-four (24) months of payoff and settlement of the Company Indebtedness, any concession by Bank, with regard to the Company Indebtedness shall be reversed and the Conditional Settlement Balance shall be increased by the amount and/or value of the undisclosed assets up to the full amount of the Company Indebtedness which shall be immediately due and payable. Guarantors each further agree that any such undisclosed assets shall be immediately liquidated and all proceeds from such liquidation shall be paid to the Bank on account of the increased outstanding amounts due to Bank.

(e) In the event of a default on any future default (monetary or non-monetary) under this Forbearance Agreement, the Notes or the Loan Documents, any previously forgiven principal or other concession by Bank, with regard to the Company Indebtedness, the Borrowers have agreed to an Orderly Liquidation of all of their assets in a formal, court supervised proceeding with the appointment of a fiduciary to oversee such liquidation or as otherwise agreed to by the Bank in writing, to collectively repay the Bank the full amount due on or before _____.

(f) This Forbearance Agreement is not intended by the Parties to be a novation of the Notes and, except as expressly modified herein, all terms, conditions, rights and obligations as set out in the Notes and Loan Documents are hereby affirmed and shall otherwise remain in full force and effect as written and agreed.

No action or proceeding, including, without limitation, a voluntary or involuntary petition for Bankruptcy under any chapter of the Federal Bankruptcy Code, has been instituted or threatened by or against Borrowers or Guarantors.

(g) The execution of this Forbearance Agreement by the Borrowers and Guarantors and the performance by Borrowers and Guarantors of their obligations hereunder will not violate or result in a breach or constitute a default under any agreements to which any of them is a Party.

(h) All information provided by Borrowers and Guarantors to the Bank prior to the date hereof and/or in connection with this Forbearance Agreement, including, without limitation, all reports, disclosures, financial statements, budgets, balance sheets, and cash flow statements, were at the date of delivery, and are as of the date hereof, true and correct in all material respects. The Borrowers and Guarantors recognize and acknowledge that the Bank is entering into this Forbearance Agreement based in part on the financial information, reports, disclosures, financial statements, budgets, balance sheets, and cash flow statements provided to the Bank by each of them and that the truth and correctness of that financial information is a material inducement to the Bank in entering into this Forbearance Agreement. During the Effective Period, the Borrowers and Guarantors agree to advise the Bank promptly in writing of any and all new information, facts, or occurrences which would in any way materially supplement, contradict, or affect any reports, disclosures, financial statements, balance sheets, cash flow statements, or similar items furnished to the Bank.

(i) This Forbearance Agreement is not intended by the Parties to be a novation of the Notes and, except as expressly modified herein, all terms, conditions, rights and obligations as set out in the Notes and Loan Documents are hereby affirmed and shall otherwise remain in full force and effect as written and agreed.

(j) This Forbearance Agreement, the Notes and the Loan Documents constitute the entire agreement between the Bank and Borrowers with respect to this matter.

9. Termination of this Agreement. This Forbearance Agreement will terminate upon the expiration of the Effective Period unless terminated earlier by the Bank, at the Bank's sole option, without written notice to Borrower or Guarantors of the occurrence of any of the following:

(a) Any of the Borrowers or Guarantors files a petition for Bankruptcy under any chapter of the Federal Bankruptcy Code or takes advantage of any other debtor relief law, or an involuntary petition for Bankruptcy under any chapter of the Federal Bankruptcy Code is filed against any of the Borrowers or any other judicial action is taken with respect to any of the Borrowers by any creditor;

(b) The Bank discovers that any representation or warranty made herein by the Borrowers or Guarantors was or is untrue, incorrect or misleading in any material respect;

(c) An event of default occurs under this Forbearance Agreement and/or the Loan Documents, other than the defaults known by the Bank to exist as of this date;

(d) The Borrowers or Guarantors breach or default in performance of any covenant or agreement contained in this Forbearance Agreement; or

(e) Any of the Borrowers or Guarantors initiate any judicial, administrative or arbitration proceeding against the Bank or makes any assignment for the benefit of creditors.

10. Pre-Petition Stay Relief Waiver. In the event any of the Borrowers or Guarantors files a petition under the Bankruptcy Code or under any other similar federal or state law, they unconditionally and irrevocably consents to relief of the automatic stay so as to allow the Bank to exercise rights and remedies under this Forbearance Agreement, the Notes and/or the Loan Documents with respect to any and all of its collateral, including taking possession of the collateral, foreclosing its mortgage liens or its security interest in the Borrowers' or Guarantors' real or personal property or otherwise exercising its rights and remedies with respect to the collateral. In such event, the Borrower hereby agrees it shall not, in any manner, oppose or otherwise delay any motion filed by the Bank for relief from the automatic stay. The Bank's enforcement of the right granted herein for relief from the automatic stay is subject to the approval of the Bankruptcy court in which the case is then pending. Borrowers acknowledge that in consideration of the pre-petition stay relief waiver contained herein, Borrowers have received a significant benefit and the Bank has deferred exercising its rights upon default under the Notes and the Loan Documents in reliance of and in exchange for the pre-petition stay relief waiver by the Borrowers.

11. Release of Bank. In consideration of the agreements of the Bank set forth in this Forbearance Agreement, the Borrowers, respective heirs, personal representatives, predecessors, successors and assigns (individually and collectively, the "Releasers"), hereby fully release, remise, and forever discharge the Bank and all other affiliates and predecessors of the Bank, and

all past and present officers, directors, agents, employees, servants, partners, shareholders, attorneys and managers of the Bank and all other affiliates, and predecessors of the Bank and all of their respective heirs, personal representatives, predecessors, successors and assigns ("Bank-Related Parties"), including any affiliate involved in the servicing, management, or administration of any obligation described or evidenced by this Forbearance Agreement, for, from, and against any and all claims, liens, demands, causes of action, controversies, offsets, obligations, losses, damages and liabilities of every kind and character whatsoever, including, without limitation, any usury claims or any action, omission, misrepresentation of other basis of liability founded either in tort, contract or equity and the duties arising thereunder (collectively "Claims"), that the Releasors, or any of them has had in the past, or now has, whether known or unknown, whether asserted or unasserted, by reason of any matter, cause or thing set forth in, relating to or arising out of, or in any way connected with or resulting from this Forbearance Agreement, the Notes and/or the Loan Documents or any real or personal property now or at any time securing each. It is the express intent of the Bank and Releasors that the release and discharge set forth in this paragraph be construed as broadly as possible in favor of Bank-Related Parties so as to foreclose forever the assertion by any of Releasors of any claims, as defined above, against Bank-Related Parties or any of them.

12. Waiver of Jury Trial.

THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM OR CONTROVERSY BETWEEN THE PARTIES, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE, INCLUDING BUT NOT LIMITED TO CONTROVERSIES OR CLAIMS THAT ARISE OUT OF OR RELATE TO THIS FORBEARANCE AGREEMENT INCLUDING ANY RENEWALS, EXTENSIONS OR MODIFICATIONS OR ANY DOCUMENT RELATED TO THIS FORBEARANCE AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS FORBEARANCE AGREEMENT.

13. All of the terms and conditions in this Forbearance Agreement have been freely bargained for and are all supported by reasonable and adequate consideration and the provisions herein are material inducements for the Bank entering into this Forbearance Agreement.

14. This Forbearance Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) Forbearance Agreement; but in making proof of this Forbearance Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party to be charged.

15. The warranties and representations of the Parties in this Forbearance Agreement shall survive the termination of this Forbearance Agreement.

16. The terms and conditions set forth in this Forbearance Agreement are the product of joint draftsmanship by all Parties, each being represented by counsel, and any ambiguities in this Forbearance Agreement or any documentation prepared pursuant to or in connection with this Forbearance Agreement shall not be construed against any of the Parties because of draftsmanship.

17. Any future waiver, alteration, amendment or modification of any of the provisions of the Notes, Loan Documents or this Forbearance Agreement shall not be valid or enforceable unless in writing and signed by all Parties, it being expressly agreed that neither the Notes, Loan Documents, nor this Forbearance Agreement can be modified orally, by course of dealing or by implied agreement. Any delay by the Bank in enforcing its rights after an event of default shall not be a release or waiver of the event of default and shall not be relied upon by the Borrowers or Guarantors as a release or waiver of the default.

18. This Forbearance Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors, legal representatives, and assigns.

19. The headings of paragraphs in this Forbearance Agreement are for convenience of reference only and shall not in any way affect the interpretation or construction of this Agreement.

20. THIS FORBEARANCE AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA AND FEDERAL LAW, AS APPLICABLE.

21. For purposes of this Forbearance Agreement, the Notes and Loan Documents, the contact information and addresses for notice to the Borrowers and the Bank are as follows:

BORROWERS: _____

BANK: _____
Title: _____

Telephone: _____

AND

Notice shall be in writing, and shall be deemed to have been given (i) 72 hours after being sent by certified or registered mail or by nationally recognized courier service, return

receipt requested, postage prepaid and addressed as set forth above; or (ii) if by facsimile or personal delivery (a) to the Borrowers upon transmission of such facsimile or when personally delivered to the Borrowers or any other officer, partner, agent or employee of such Borrowers at its respective address set forth above, or (b) if to the Bank, upon facsimile transmission or when personally delivered to an officer of the Special Assets Department of Bank at the address set forth above and its counsel. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been received shall also constitute service of notice. The Borrowers and the Bank may change such address by sending written notice to the other in accordance with the foregoing; however, no written notice of change of address shall be effective until the date of receipt thereof.

22. Except as modified hereby, all other terms and conditions of the Loan Documents, Forbearance Agreement, this Forbearance Agreement and all amendments thereto are hereby ratified, affirmed and approved in all respects, and shall remain in full force and effect, and all representations and warranties are hereby reaffirmed as of the date hereof.

23. Strict Performance. Time is of the essence as to all matters provided for in this Forbearance Agreement, the Notes and in the Loan Documents. Notwithstanding the foregoing, the Bank's failure, at any time hereafter, to require strict performance by the Borrowers of any provision of this Forbearance Agreement, the Notes or of the Loan Documents shall not waive, affect or diminish any right of any Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver by the Bank of an Event of Default or a default under this Forbearance Agreement or the Notes or Loan Documents shall not suspend, waive, or affect any other Event of Default or default under this Forbearance Agreement, the Notes or Loan Documents, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character.

24. FINAL AGREEMENT. THIS FORBEARANCE AGREEMENT, THE NOTES AND THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR ORAL OR WRITTEN, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS AMONG THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

EXECUTED as of the Effective Date of _____:

Signature Blocks to be inserted for Borrower(s), Guarantor(s) and Bank.

FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT, dated as of _____, 2016 (the "Effective Date"), by and between **ONE, LLC, TWO, LLC, THREE, LLC, and FOUR, INC.** (collectively, "Borrowers" and "Smith Entities"), **JOHN SMITH, ROSE SMITH and SMITH, INC.** ("Guarantors") and **PASKAY BANK, NATIONAL ASSOCIATION**, a national banking association ("Bank").

RECITALS

A. Bank and Borrowers have entered into certain financing arrangements as evidenced by, *inter alia*, the following:

1. *Loan ONE, LLC*

- a. Promissory Note dated 11/28/2005 in the amount of \$1,092,000.00;
- b. Mortgage and Assignment of Rents and Security Agreement dated 11/28/2005 (Mortgagor: Violet Smith, individually and as Trustee of the Henry Smith Irrevocable Trust for \$1,092,000.00);
- c. Loan Agreement dated 11/28/2005; and
- d. Those certain Unconditional Guaranty Agreements dated 11/28/2005 and executed by FOUR, Inc., John Smith and Rose Smith

2. *Loan to TWO, LLC*

- a. Promissory Note dated 11/29/2005 in the amount of \$1,020,000.00;
- b. Mortgage, Assignment of Rents and Security Agreement dated 11/29/2005;
- c. Loan Agreement dated 11/29/2005; and
- d. Those certain Unconditional Guaranty Agreements dated 11/29/2005 executed by FOUR, Inc., John Smith and Rose Smith

3. *Loan to THREE, LLC*

- a. Consolidated Future Advance Promissory Note dated 6/22/2007 in the amount of \$5,275,000.00;
- b. Amended Promissory Note in the amount of \$1,480,000.00 dated 12/06/2006;
- c. Promissory Note dated 12/08/2005 in the amount of \$1,480,000.00;
- d. Modification of Mortgage and receipt of Future Advance dated 06/22/2007;
- e. Absolute Assignment of Lessor's Interest in Leases and Rents dated 06/22/2007;
- f. Mortgage, Assignment of Rents and Security Agreement dated 12/08/2005;
- g. Assignment of Borrower's Interest in Contract Documents, Plans, and Permits dated 6/22/2007;

- h. Construction Loan Agreement dated 6/22/2007;
- i. Those certain Unconditional Guaranty agreements dated 06/22/2007 and 12/08/2005 executed by FOUR, Inc., John Smith and Rose Smith Subordination, Non-Disturbance and Attornment Agreement
- j. dated 6/26/2007
- k. SWAP Transaction Confirmation

4. *Loan to FOUR, Inc.*

- a. Promissory Note in the amount of \$550,000 dated 06/22/2007;
- b. Security Agreement dated November 30, 2005;
- c. Loan Agreement Dated 11/30/2005; and
- d. Unconditional Guaranty agreement dated 11/30/2005 executed by John Smith and Rose Smith.

The foregoing agreements, documents and instruments, together with any and all documents at any time executed and/or delivered in connection therewith or related thereto, are collectively referred to herein as the “**Loan Documents**”.

B. Borrowers and Guarantors have conveyed existing and/or pending financial difficulties to Bank and Borrowers and Guarantors’ desire that Bank forbear from exercising its rights and remedies under the Loan Documents, subject to certain express conditions set forth on the attached Exhibit A, and that Bank provide other financial accommodations to Borrowers; and

C. Bank is willing to agree to forbear from exercising certain of its rights and remedies for the period and on the terms and conditions specified herein;

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements, warranties and covenants contained herein, the parties hereto agree, covenant and warrant as follows:

SECTION 1. DEFINITIONS

1.1 Interpretation. All capitalized terms used herein (including the recitals hereto) shall have the respective meanings assigned thereto in the Loan Agreement unless otherwise defined herein.

1.2 Additional Definitions. As used herein, the following terms shall have the respective meanings given to them below and the Loan Agreement is hereby amended to include, in addition and not in limitation, each of the following definitions:

(a) “Existing Defaults” shall mean the Defaults that have occurred through the date hereof as more particularly identified on Exhibit A hereto.

(b) “Forbearance Period” shall have the meaning set forth in Section 3.2(a) hereof.

SECTION 2. ACKNOWLEDGMENTS

2.1 Acknowledgment of Obligations. Borrowers and Guarantors hereby acknowledge, confirm and agree that as of the close of business on April 28, 2009, Borrowers are indebted to Bank as follows:

- \$955,394.85 that is due under the loan to ONE, LLC;
- \$891,725.22 that is due under the loan to TWO, LLC;
- \$5,206,185.88 that is due under the loan to THREE, LLC;
- \$470,349.96 that is due under the loan to FOUR, Inc.

Such amounts, together with interest accrued and accruing thereon, and fees, costs, expenses and other charges now or hereafter payable by Borrowers to Bank, are unconditionally owing by Borrowers to Bank, without offset, defense or counterclaim of any kind, nature or description whatsoever.

2.2 Acknowledgment of Security Interests. Borrowers hereby acknowledge, confirm and agree that Bank has and shall continue to have valid, enforceable and perfected first-priority liens upon and security interests in the Collateral heretofore granted to Bank pursuant to the Loan Documents or otherwise granted to or held by Bank.

2.3 Binding Effect of Documents. Borrowers and Guarantors hereby acknowledge, confirm and agree that: (a) each of the Loan Documents to which it is a party has been duly executed and delivered to Bank and each is in full force and effect as of the date hereof, (b) the agreements and obligations of Borrowers and Guarantors contained in such documents and in this Agreement constitute the legal, valid and binding Obligations of Borrowers, enforceable against it in accordance with their respective terms, and Borrowers have no valid defense to the enforcement of such Obligations, and (c) Bank is and shall be entitled to exercise any and all rights, remedies and benefits provided for in the Loan Documents and under applicable law.

SECTION 3. FORBEARANCE IN RESPECT OF CERTAIN EVENTS OF DEFAULT

3.1 Acknowledgment of Defaults. As of the Effective Date hereof, Borrowers and Guarantors are in default under the Loan Documents based on the Existing Defaults set forth in Exhibit A hereto. Bank has not waived, presently does not intend to waive and may never waive any Existing Defaults or prospective defaults, and nothing contained herein or the transactions contemplated hereby shall be deemed to constitute any such waiver. To the extent Bank discovers additional Default(s) existed, but were not disclosed, as of the Effective Date hereof, Borrower hereby acknowledges and agrees that Bank shall have right to declare the Obligations to be immediately due and payable under the terms of the Loan Documents.

3.2 Forbearance.

(a) In reliance upon the representations, warranties and covenants of Borrowers contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection herewith, Bank agrees to forbear from exercising its rights and remedies under the Loan Documents or applicable law in respect of or arising out of the Existing Defaults, subject to the conditions, amendments and modifications contained herein for the period (the "Forbearance Period") commencing on the date hereof and ending on the earlier of: (i) _____, or (ii) the occurrence or existence of any Default.

(b) From the Effective Date through the Termination of the Forbearance Period.

Borrowers shall be required to make all monthly payments due to Bank with respect to interest accruing on each of the loans described herein, more specifically set forth as follows:

- \$ _____ due from ONE, LLC;
- \$ _____ due from TWO, LLC;
- \$ _____ due from THREE, LLC;
- \$ _____ due from FOUR, Inc.

The foregoing interest payments are due and payable on the _____ day of each consecutive calendar month during the Forbearance Period (the "**Interim Payments**"). A failure by any Borrower to timely make any Interim Payment due to Bank during the Forbearance Period shall constitute a Default by all Borrowers of this Agreement.

(c) Upon the termination of the Forbearance Period, the agreement of Bank to forbear shall automatically and without further action terminate and be of no force and effect, it being expressly agreed that the effect of such termination will be to permit Bank to exercise such rights and remedies immediately, including, but not limited to, the acceleration of all of the Obligations; in either case without any further notice, passage of time or forbearance of any kind, and the exercise of any and all rights and remedies available to Bank pursuant to the Loan Documents and Guaranty Agreements.

3.3 No Other Waivers; Reservation of Rights.

(a) Bank has not waived, is not by this Agreement waiving, and has no intention of waiving, any Events of Default which may be continuing on the date hereof or any Events of Default which may occur after the date hereof (whether the same or similar to the Existing Defaults or otherwise), and Bank has not agreed to forbear with respect to any of its rights or remedies concerning any Events of Default (other than, during the Forbearance Period, the Existing Defaults to the extent expressly set forth herein), which may have occurred or are continuing as of the date hereof or which may occur after the date hereof.

(b) Subject to Section 3.2 above (solely with respect to the existing Events of Default), Bank reserves the right, in its discretion, to exercise any or all of its rights and remedies under the Loan Agreement and the other Loan Documents as a result of any Events of Default which may be continuing on the date hereof or any Event of Default which may occur after the date hereof, and Bank has not waived any of such rights or remedies, and nothing in this Agreement, and no delay on its part in exercising any such rights or remedies, should be construed as a waiver of any such rights or remedies.

SECTION 4. AMENDMENTS AND SUPPLEMENTARY PROVISIONS

4.1 Guarantees. As a condition to the effectiveness of this Agreement, Guarantors hereby reaffirm all obligations to Bank pursuant to those certain Unconditional Guaranty Agreements executed in connection with the Loan Documents and the loans subject of this Agreement.

4.2 Business Plan. On or prior to _____, Borrowers shall present to Bank a business plan for the Smith Entities, together with supporting financial projections and other information in support thereof, setting forth a program satisfactory to Bank regarding the Borrowers' future business operations. Borrowers also agree to provide Bank with (1) a financial statement for the fiscal year ended _____; (2) a copy of Borrowers' _____ tax returns; and (3) a pro-forma operating plan for calendar year _____ that sets forth, *inter alia*, Borrowers' projected revenues, operating expenses.

anticipated real estate tax payments, and a principal paydown schedule for the Loans and other Obligations.

4.3 Guarantor's Documents to be Provided to Bank. On or prior to _____, each Guarantor shall provide Bank with (1) an updated personal financial statement, and (2) a copy of Guarantor's _____ tax return.

4.4 Interest Rate Provisions. Without in any way limiting the rights and remedies of Bank set forth in this Agreement or under the other Loan Documents, at any time while any of the Existing Defaults is continuing, or if any other Event of Default occurs (and while the same is continuing) Bank shall charge interest at the Default Rate under all applicable Loan Documents. Bank reserves the right, in its sole discretion and without further notice to Borrower, to charge the Default Rate set forth in the Loan Documents.

4.5 Waiver of Automatic or Supplemental Stay; Covenant Not to Use Cash Collateral. The Borrowers hereby acknowledge and agree that in the event of the filing of any petition in bankruptcy by or against the Borrowers:

(c) Waiver of Automatic Stay. The Borrowers consents to the entry of an order granting the Bank relief from the automatic stay of §362 of the Bankruptcy Code, and shall not assert or request any other party to assert that the automatic stay provided by §362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of the Bank to enforce any rights it has by virtue of this Agreement, or the Loan Documents, or any other rights the Bank has, whether now or hereafter acquired, against the Borrowers or against any property owned by the Borrowers.

(d) Waiver of Supplemental Stay. The Borrowers shall not seek or request any other party to seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to §105 of the Bankruptcy Code or any other provision of the Bankruptcy Code, to stay, interdict, condition, reduce or inhibit the ability of the Bank to enforce any rights it has by virtue of this Agreement, or the Loan Documents, or at law or in equity, or any other rights the Bank has, whether now or hereafter acquired against the Borrower, or against any property owned by the Borrower.

(e) No Use of Cash Collateral. The Borrowers shall not seek or request any other party to seek the use of the Bank's "cash collateral" as that term is defined by §363(a) of the Bankruptcy Code.

SECTION 5. REPRESENTATIONS, WARRANTIES AND COVENANTS

Borrowers and Guarantors hereby represent, warrant and covenant with and to Bank as follows:

5.1 Representations in Loan Documents. Each of the representations and warranties made by or on behalf of Borrowers to Bank in any of the Loan Documents was true and correct when made and in all material respects is, except for the representation and warranty set forth in the Loan Agreement relating to the non-existence of an Event of Default, true and correct on and as of the date of this Agreement with the same full force and effect as if each of such representations and warranties had been made by Borrowers on the date hereof and in this Agreement.

5.2 Binding Effect of Documents. This Agreement and the other Loan Documents have been duly executed and delivered to the Bank by Borrowers and Guarantors and are in full force and effect, as modified hereby.

5.3 No Conflict. The execution and delivery and performance of this Agreement by Borrowers and Guarantors will not violate any Requirement of Law or Contractual Obligation of Borrowers or Guarantors and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues.

5.4 Additional Events of Default. The parties hereto acknowledge, confirm and agree that any misrepresentation by Borrower, or any failure of Borrowers or Guarantors to comply with the covenants, conditions and agreements contained in any Loan Document, herein or in any other agreement, document or instrument at any time executed and/or delivered by Borrower or Guarantor with, to or in favor of Bank shall constitute an Event of Default hereunder, under the Loan Agreement and the other Loan Documents. In the event any Person, other than Bank, shall at any time exercise for any reason (including by reason of any Existing Default, any other present or future Event of Default, or otherwise) any of its rights or remedies against Borrower or any obligor providing credit support for Borrower's obligations to such other Person, or against Borrower's or such obligor's properties or assets, such event shall constitute an Event of Default hereunder.

SECTION 6. CONDITIONS TO EFFECTIVENESS OF CERTAIN PROVISIONS OF THIS AGREEMENT.

The effectiveness of the terms and provisions of Section 3.2 of this Agreement shall be subject to the receipt by Bank of each of the following, in form and substance satisfactory to Bank:

- (a) an original of this Agreement, duly authorized, executed and delivered by Borrowers and Guarantors;
- (b) payment of the fees payable pursuant to 7.2;
- (c) a certificate signed by all the duly authorized member(s) of the Borrower certifying, among other things, that attached are true and correct copies of: (i) the Borrower's operating agreement; (ii) resolutions adopted by the members of the Borrower authorizing the execution, delivery and performance of this Agreement and the other documents and certificates to be delivered in connection therewith; and (iii) the names and certified signatures of those persons authorized on behalf of the Borrower to sign this Agreement and the other documents and certificates to be delivered in connection therewith;
- (d) an members' certificate of at least two (2) authorized members of each of the SMITH Entities, certifying, among other things, that attached are true and correct copies of: (i) certificate of the existence of the Borrower, issued by the Secretary of State of the jurisdiction of organization, and each other jurisdiction where said Borrower is required to qualify to transact business, (ii) resolutions adopted by the Borrower authorizing the execution, delivery and performance of this Agreement, and the other documents and certificates to be delivered in connection herewith; and (iii) the names, incumbency and certified signatures of those persons authorized on behalf of the Borrower to sign this Agreement and the other documents and certificates to be delivered in connection herewith.

SECTION 7. PROVISIONS OF GENERAL APPLICATION

7.1 Effect of this Agreement. Except as modified pursuant hereto, no other changes or modifications to the Loan Documents are intended or implied and in all other respects the Loan Documents are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof. To the extent of conflict between the terms of this Agreement and the other Loan Documents, the terms of

this Agreement shall control. The Loan Documents and this Agreement shall be read and construed as one agreement.

7.2 Costs and Expenses. Borrowers and Guarantors absolutely and unconditionally agree to pay to the Bank, on demand by the Bank at any time and as often as the occasion therefor may require, whether or not all or any of the transactions contemplated by this Agreement are consummated: all fees and disbursements of any counsel to Bank in connection with the preparation, negotiation, execution, or delivery of this Agreement and any agreements delivered in connection with the transactions contemplated hereby and expenses which shall at any time be incurred or sustained by the Bank or any participant of Bank or any of their respective directors, officers, employees or agents as a consequence of or in any way in connection with the preparation, negotiation, execution, or delivery of this Agreement and any agreements prepared, negotiated, executed or delivered in connection with the transactions contemplated hereby.

7.3 Further Assurances. The parties hereto shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Agreement.

7.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

7.5 Survival of Representations and Warranties. All representations and warranties made in this Agreement or any other document furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other documents, and no investigation by Bank or any closing shall affect the representations and warranties or the right of Bank to rely upon them.

7.6 Release.

(a) In consideration of the agreements of Bank contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrowers and Guarantors, on behalf of themselves and their successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably release, remise and forever discharge the Bank, and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (the Bank and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which Borrowers or Guarantors or any of their successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Agreement, including, without limitation, for or on account of, or in relation to, or in any way in connection with any of the Loan Documents or transactions thereunder or related thereto.

(b) Borrowers and Guarantors understand, acknowledge and agree that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Borrowers and Guarantors agree that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

7.7 Covenant Not to Sue. Borrowers and Guarantors, on behalf of themselves and their successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenant and agree with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by Borrowers pursuant to Section 7.6 above. If Borrowers or Guarantors or any of their successors, assigns or other legal representations violates the foregoing covenant, Borrowers and Guarantors, for themselves and their successors, assigns and legal representatives, agree to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

7.8 Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement.

7.9 Time of Essence. Time is of the essence with respect to the obligations set forth under this Agreement.

7.10 Reviewed by Attorneys. Borrowers and Guarantors represent and warrant to Bank that they (a) understand fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) have been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and document executed in connection herewith with, such attorneys and other persons as Borrowers may wish, and (c) have entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person. The parties hereto acknowledge and agree that neither this Agreement nor the other documents executed pursuant hereto shall be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

7.11 Governing Law: Consent to Jurisdiction and Venue. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING UNDER THE LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. BORROWERS HEREBY CONSENT AND AGREE THAT THE STATE OR FEDERAL COURTS LOCATED IN ANY COUNTY WHERE THE REAL AND/OR PERSONAL PROPERTY OF THE BORROWER(S) IS SITUATED SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWERS AND BANK PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT BANK AND BORROWERS ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF FLORIDA; AND FURTHER PROVIDED, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE BANK FROM BRINGING SUIT OR TAKING OTHER

LEGAL ACTION IN ANY OTHER JURISDICTION TO COLLECT THE OBLIGATIONS, TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF BANK. BORROWERS EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND BORROWERS HEREBY WAIVE ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENT TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. BORROWERS HEREBY WAIVE PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREE THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN THE LOAN AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF BORROWER'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAELS, PROPER POSTAGE PREPAID.

7.12 Mutual Waiver of Jury Trial; Arbitration. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, TO THE EXTENT ALLOWED BY LAW, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE BETWEEN BANK AND BORROWERS ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED THERETO. THE FOREGOING NOTWITHSTANDING, THE BANK MAY, AT ITS OPTION, DEMAND TO ARBITRATE ANY DISPUTE UNDER THE EXPEDITED PROCEDURES OF THE COMMERCIAL FINANCIAL DISPUTES ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA) AND TITLE 9 OF THE UNITED STATES CODE, AND ALL PARTIES HERETO AGREE TO SUCH ARBITRATION. A SINGLE ARBITRATOR WILL BE APPOINTED BY THE AAA AND WILL BE A RETIRED JUDGE OR ATTORNEY WITH EXPERIENCE OR KNOWLEDGE IN BANKING TRANSACTIONS. A JUDGMENT MAY BE ENTERED UPON THE AWARD BY ANY COURT OF COMPETENT JURISDICTION.

7.13 Counterparts. This Agreement may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement.

7.14 Notices. All notices required to be made under this Agreement or the Loan Documents shall be in writing, signed by the party giving such notice, and shall be delivered personally or sent by recognized overnight courier service (such as Federal Express or UPS Next Day Delivery) or registered or certified mail to each of the other parties hereto at the addresses set forth herein below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith. The refusal of any party to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed the equivalent of receipt.

If to Bank:

PASKAY Bank, National Association
Attn: Cash Banker
Paskay Tower
100 Main Street
Tampa, FL 33602

and

If to Borrowers and
Guarantors:

To the addresses provided in the Loan Documents

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

AMERICAN BANKRUPTCY INSTITUTE

IN WITNESS WHEREOF, this Agreement is executed and delivered as of the day and year first above written.

PASKAY Bank, N.A. By: _____ Title: _____ Date: _____	ONE, LLC By: _____ Title: _____ Date: _____
TWO, LLC By: _____ Title: _____ Date: _____	THREE, LLC By: _____ Title: _____ Date: _____
FOUR, INC. By: _____ Title: _____ Date: _____	
John Smith Date: _____	Rose Smith Date: _____

Exhibit A – Existing Defaults

1. Failure of THREE, LLC to timely make its April _____ payment.
2. Breach of Unconditional Guaranties executed by John Smith, Rose Smith, and FOUR, Inc. for failure to satisfy the obligations of THREE, LLC to Bank.
3. Cross-default of ONE, LLC, TWO, LLC and FOUR, Inc. pursuant to breach of Unconditional Guaranties of John Smith, Rose Smith, and FOUR, Inc.

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ASSIGNMENT

ASSIGNMENT, made on this _____ day of _____, 2015 between _____, with a principal place of business at _____, (hereinafter "ASSIGNOR") and Philip J. Von Kahle of **Michael Moecker & Associates, Inc.**, whose address is 3613 North 29th Avenue, Hollywood, Florida 33020, (hereinafter "ASSIGNEE").

WHEREAS, the ASSIGNOR has been engaged in the business of _____

WHEREAS, the ASSIGNOR is indebted to creditors, as set forth in Schedule A annexed hereto, is unable to pay its debts as they become due, and is desirous of providing for the payment of its debtors, so far as it is possible by an assignment of all of its assets for that purpose.

NOW, THEREFORE, the ASSIGNOR, in consideration of the ASSIGNEE'S acceptance of this Assignment, and for other good and valuable consideration, hereby grants, assigns, conveys, transfers, and sets over, unto the ASSIGNEE, his successors and assigns, all of its assets, except such assets as are exempt by law from levy and sale under and execution, including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims and demands belonging to the ASSIGNOR, and all books, records, and electronic data pertaining to all such assets, wherever such assets may be located, hereinafter the "ESTATE," as which assets are, to the best knowledge and belief of the ASSIGNOR, set forth on Schedule B annexed hereto.

The ASSIGNEE shall take possession of, and protect and preserve, all such assets and administer the ESTATE in accordance with the provisions of Chapter 727, Florida Statutes, and shall liquidate the assets of the ESTATE with reasonable dispatch and convert the ESTATE into money, collect all claims and demands hereby assigned as may be collectible, and disbursements in connection with the execution and administration of this Assignment from the proceeds of such liquidation and collections.

The ASSIGNEE shall then pay and discharge in full, to the extent that funds are available in the ESTATE after payment of administrative expenses, costs, and disbursements, all of the debts and liabilities now due from the ASSIGNOR, including interest on such debts and liabilities. If funds of the ESTATE shall not be sufficient to pay from funds of the estate such debts and liabilities, on a pro rata basis and in proportion to their priority as set forth in Section 727.114, Florida Statutes.

If all debt and liabilities are paid in full, any funds of the ESTATE remaining shall be returned to the ASSIGNOR.

To accomplish the purposes of this Assignment, the ASSIGNOR hereby appoints the ASSIGNEE its true and lawful attorney, irrevocable, with full power and authority to do all acts and things which may be necessary to execute the Assignment hereby created; to demand and recover from all persons all assets of the ESTATE; to sue for the recovery of such assets; to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances; and to appoint one or more attorneys under him to assist him in carrying out his duties under the Assignment.

The Assignor hereby authorizes the Assignee to sign the name of the Assignor to any check, draft, promissory note or other instrument in writing which is payable to the order of the Assignor or to sign the name of the Assignor to any instrument in writing whenever it shall be necessary to do so to carry out the purpose of this Assignment.

The Assignee hereby accepts the trust created by the assignment, and agrees with the assignor that the assignee will faithfully and without delay carry out her or his duties under the assignment.

WITNESSES:

By: _____

WITNESSES:

By: Philip J. Von Kahle, Assignee
3613 North 29th Avenue
Hollywood, FL 33020

AMERICAN BANKRUPTCY INSTITUTE

STATE OF FLORIDA)

COUNTY OF _____)

THE FOREGOING Assignment was acknowledged before me on this _____ day of _____, 2015 by _____, the _____ of _____, as ASSIGNOR, who is personally known to me and who did not take an oath for the purpose therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid on this _____ day of _____, 2015.

My commission expires:

STATE OF FLORIDA)

COUNTY OF _____)

THE FOREGOING Assignment for the Benefit of Creditors was acknowledged before me on this _____ day of _____, 2015 by Philip J. Von Kahle, of Michael Moecker & Associates, Inc. as Assignee, who is personally known to me and who did not take an oath for the purpose therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid on this _____ day of _____, 2015.

My commission expires:

VERIFICATION OF ASSIGNMENT TO PHILIP J. VON KAHLE

AND SCHEDULES BY ASSIGNOR

The undersigned, _____ of _____, hereby verifies the assignment of all of its rights, title and interest in and to all of its assets, as indicated on the attached Schedules to that Assignment as filed with this court on _____, 2015 and further verifies each of the facts set forth in the Schedules annexed to the Assignment to the best of my knowledge and belief.

Signature: _____

STATE OF FLORIDA)

COUNTY OF _____)

Sworn to and subscribed on this ____ day of _____, 2015 by _____ of _____, who is personally known to me or who has produced _____ as identification and who did take an oath as to the truth of the facts contained in the foregoing Assignment and Schedules, as amended.

My commission expires:

Signature

Print Name

ACCEPTANCE OF ASSIGNMENT

The undersigned, Philip J. Von Kahle, the Assignee herein, duly acknowledges that the Assignee accepts delivery of the assignment and that he or she will duly perform the duties imposed upon the Assignee pursuant to chapter 727, Florida Statutes.

By: _____
Philip J. Von Kahle, Assignee

STATE OF FLORIDA)
COUNTY OF BROWARD)

Sworn to and subscribed on this ____ day of _____, 2016, by Philip J. Von Kahle, of Michael Moecker & Associates, Inc., who is personally known to me and who did not take an oath as to the Acceptance of the Assignment.

My commission expires:

Signature

Print Name

OATH OF ASSIGNOR

KNOW ALL MEN BY THESE PRESENTS, that _____, a Florida corporation, doing business at _____ has executed an Assignment for the Benefit of Creditors ("Assignment") and that the true intention of the Assignment is to place in the hands of its Assignee all of its property of every description, except such property as is exempt by law from forced sale, to be divided among the creditors in proportion to their respective demands and legal right.

Witnesses:

By:

STATE OF FLORIDA)

COUNTY OF _____)

THE FOREGOING, Oath of Assignor was acknowledged before me on this ____ of _____, 2015, by _____ of _____, as Assignor, who is personally known to me or who has produced _____ as identification and who did take an oath for the purpose therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid on this _____ day of _____, 2015.

My commission expires:

OATH OF ASSIGNEE

COMES NOW, Philip J. Von Kahle, of Michael Moecker & Associates, Inc., the Assignee herein and duly acknowledges that the Assignee accepts delivery of the within Assignment and that they will duly perform the duties imposed upon the Assignee pursuant to Florida Statute Section 727.

By: Philip J. Von Kahle, Assignee

STATE OF FLORIDA)

COUNTY OF BROWARD)

THE FOREGOING Assignment for the Benefit of Creditors was acknowledged before me on this _____ day of _____, 2016, by Philip J. Von Kahle of Michael Moecker & Associates, Inc. as Assignee, who is personally known to me or who has produced _____ for identification and who did not take an oath for the purpose therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid on this _____ day of _____, 2016.

My commission expires:

SCHEDULE A - CREDITOR LIST

I. SECURED CREDITORS:

<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>	<u>COLLATERAL</u>	<u>DISPUTED</u>
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II. WAGES OWED:

<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>	<u>COLLATERAL</u>	<u>DISPUTED</u>
-------------------------	---------------	-------------------	-----------------

III. CONSUMER DEPOSITS:

IV. LIST OF ALL TAXES OWED:

V. UNSECURED CLAIMS OWED:

VI. LEASES:

VII. OWNERS OR SHAREHOLDERS:

<u>NAME AND ADDRESS</u>	<u>PERCENT OF OWNERSHIP</u>
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VIII. LIST ALL PENDING LITIGATION AND OPPOSING COUNSEL OF RECORDS:

<u>STYLE</u>	<u>PARTIES</u>	<u>OPPOSING COUNSEL OF RECORD</u>
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SCHEDULE B - LIST OF ASSETS

List each category of assets and for each give approximate value obtainable for the assets on the date of the Assignment, and address where assets are located.

DESCRIPTION	LIQUIDATION VALUE AT DATE OF ASSIGNMENT
-------------	--

I. NONEXEMPT PROPERTY:

- 1.
2. FURNITURE/FIXTURES:
3. CASH AND BANK ACCOUNTS:
4. INVENTORY:
5. ACCOUNTS RECEIVABLE
6. EQUIPMENT
7. PREPAID EXPENSES, including deposits, insurance, rents, utilities
8. OTHER, including loans to third parties, claims, chooses in action.

II. EXEMPT PROPERTY:

**IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR FLORIDA COUNTY, FLORIDA**

In Re:

BROKE, LLC,

Assignor,

CASE NO.

to

ALAN ASSIGNEE,

Assignee.

**MOTION OF ASSIGNEE FOR ORDER AUTHORIZING AND
APPROVING SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL
LIENS AND ENCUMBRANCES**

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

TO CREDITORS AND OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE that, pursuant to §727.111(4), Florida Statutes, the Assignee may sell assets of the Estate, and the Court may consider these actions without further notice of hearing unless a party in interest files an objection within twenty-one (21) days from the date of this paper is served. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at 3315 South Street East, Suite 100, Any Town Florida 34100, and serve a copy on the Assignee's attorney, Larry Lawyer, Esq., LARRY LAWYER, PA, 2000 First Street, Suite 1000, Any Town, FL 33900, and any other appropriate person.

If you file and serve an objection within the time permitted, the Court shall schedule a hearing and notify you of the scheduled hearing. If a hearing is already scheduled, list the date, time, and location of the hearing: (date, time, and location)

ASSIGNEE: Alan Assignee

COMES NOW PHIL Alan Assignee ("Assignee"), through his undersigned attorney, moves for the entry of an Order Approving the Sale of Certain Assets Free and Clear of all Liens and Encumbrances (the "Sale Motion") and as grounds therefor and in support of the Sale Motion, states:

1. On June 10, 2014, Assignee filed a Petition for Assignment for the Benefit of Creditors herein, pursuant to §727.104(2)(b), Florida Statutes thereby initiating the above captioned Assignment for the Benefit of Creditors.

2. On May 30, 2014, the Assignee accepted an Assignment for the Benefit of Creditors from BROKE, LLC. (the "Assignor" or "BROKE"). BROKE had assets in Texas, Virginia and Michigan consisting of various biomedical testing devices and accessories, furniture, materials used in biomedical testing, and supplies.

3. BROKE provided _____ services and was in the business of performing _____. BROKE owned _____ equipment that it maintained in each of its three locations.

4. There are numerous assets located in the Garden City, Michigan location as listed in the inventory attached hereto as **Exhibit "A"**. (The "Assets").

5. Assignee has received an offer ("Inventory Bid") for the purchase of certain assets located in Garden City, Michigan from ABC Corporation ("ABC") for \$50,000.00. A copy of the Inventory Bid is attached hereto as **Exhibit "B"**.

6. Assignee wishes to sell the Garden City Assets for cash, with no guarantees, representations or warranties of any kind, as-is, where-is, to ABC and at such price the Assignee determines in his business judgment. It is anticipated that other bidders may make offers once the

Assignee notifies all interested parties of the proposed sale. The Assignee would expect to sell the Garden City Assets to ABC or the highest and best bidder immediately after obtaining an order granting this Motion.

7. The Landlord for the Assignor in Garden City, Michigan is an entity by the name of LOUD LANDLORD, PC ("Landlord"). The Landlord obtained a Judgment against the Assignor in the principal amount of \$17,694.00, which Landlord asserts is secured by the Assets (the "Landlord's Lien/Judgment"). Landlord's Lien/Judgment continues to accrue interest. Landlord asserts it may also exercise its right to seek additional lost rents from the Michigan court at the rate of \$2,000 per month (the monthly rental rate breached by Assignor in connection with its abandonment of the lease) until the Assets are removed and the premises are re-let. There is a bona fide dispute between the Assignee and the Landlord as to the validity and extent of the Landlord's lien and the rightful possession of the Assets. A copy of the Landlord's Judgment is attached hereto as **Exhibit "C"**.

8. Based upon a preliminary review of Michigan law and discussions with the Landlord's counsel, the Landlord has the immediate right to allow the sheriff to immediately and forthwith enter the Garden City premises and dispose of all property and the Assets located on the Landlord's premises formerly occupied by BROKE. This action would cause the estate a loss in asset and would be detrimental to the estate and creditors.

9. The Assignee disputes the extent and validity of the Landlord's Lien but does not dispute that Landlord would be entitled to an administrative claim for rent because the Assets have been secured on the Landlord's premises. In consideration for Landlord agreeing: (a) not to permit the Sheriff to immediately and forthwith enter the Landlord's premises formerly occupied by Assignor and discard all of the Assets; (b) to permit Assignee and/or its designee or

the purchaser of the Assets to retrieve the Assets in connection with the sale; (c) to waive any further claim for unpaid rents of \$2,000 per month from June 2014 through the balance of the Assignor's original lease term (December, 2014); the Assignee and Landlord agree that the Landlord shall be entitled to receive \$17,694.00 to resolve the dispute regarding the Landlord's Lien/Judgment and \$4,000.00 as administrative rent for a total of \$21,694.00, upon the sale of the Assets in order to resolve the bona fide dispute and avoid the waste of the Assets. Liquidation of the Assets will not only satisfy the claims of the Landlord; it would also and provide cash for distribution to unsecured creditors.

10. Upon approval of the Motion, the Assets will be immediately sold and will be removed by the purchaser forthwith upon the sale and payment to the Landlord in the amount referenced above in paragraph 9, above; the Landlord has agreed to cooperate with the removal of the Assets by permitting access to the premises by the purchaser of the Assets, for the consideration that it shall receive \$21,649.00 upon receipt of the sale proceeds. The Landlord will cause the Lien/Judgment to be satisfied and released upon receipt of the aforementioned funds and the Landlord's claims shall be resolved. The Assignee believes, in his best business judgment, that compromising the Landlord's claims as part of the sale transaction is in the best interest of the estate and creditors.

WHEREFORE, Assignee, ALAN ASSIGNEE, respectfully requests the entry of an order authorizing him to sell the Garden City Assets as set forth above, and that he have such other and further relief as is just, equitable and proper.

Dated: September _____ 2014.

Larry Lawyer
Attorneys for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Motion of Assignee to Employ Attorney** has been sent, by Email or regular U.S. Mail, this _____ day of _____ to: ALAN ASSIGNEE, c/o Awesome Assignees, Inc., 100 Main Street, Any Town, Florida 33333, for duplication and mailing to the parties in interest in the above styled action.

By: _____
Larry Lawyer

**IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR FLORIDA COUNTY, FLORIDA**

In Re:

BROKE, LLC,

Assignor,

CASE NO.

to

ALAN ASSIGNEE,

Assignee.

**ORDER GRANTING MOTIONS OF ASSIGNEE FOR ORDERS
AUTHORIZING AND APPROVING SALE OF CERTAIN ASSETS FREE
AND CLEAR OF ALL LIENS AND ENCUMBRANCES
AND LIMITED OBJECTION OF OBJECTOR & COMPANY, LLC**

THIS CAUSE came for consideration at Emergency Hearing on October 22, 2014 at 11:00 a.m., upon the Motion of ALAN ASSIGNEE ("Assignee"), Motion for Order Authorizing and Approving the Sale of Certain Assets Free and Clear of all Liens and Encumbrances filed on September 15, 2014, seeking to sell certain assets (the "Michigan Assets") located in Garden City, Michigan (the "First Sale Motion"), the Second Motion of Assignee for Order Authorizing and Approving the Sale of Certain Assets Free and Clear of all Liens and Encumbrances filed on October 1, 2014 (the "Second Sale Motion") seeking to sell certain assets previously located in Virginia (the "Virginia Assets") and Creditor, Objector & Company, LLC's Limited Objection filed on October 6, 2014, and the Request for Emergency Hearing attached hereto as Exhibit "A." The Court finds that notice to all creditors and parties in interest of the First Sale Motion and Second Sale Motion was appropriate. The Court finds that the Michigan Landlord (as

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defined herein) was notified via email of the Emergency Hearing by Assignee's counsel. The only written objection was the Limited Objection of Creditor, Objecter & Company, LLC, which did not object to the sale of the Michigan Assets and Virginia Assets but served to assert its claimed senior security interest to the proceeds of the Michigan Assets and the Virginia Assets. The Court having considered the First Sale Motion, the Second Sale Motion and the Limited Objection of Objecter & Company, LLC, and being fully advised of the record finds that the First Sale Motion and Second Sale Motion are well taken. Accordingly, it is;

ORDERED and ADJUDGED that:

1. The First Sale Motion of Assignee for Order Authorizing and Approving Sale of Certain Assets Free and Clear of all Liens and Encumbrances relating to the Michigan Assets located in Michigan (the "First Sale Motion"), is GRANTED.
2. The Second Sale Motion of Assignee for Order Authorizing and Approving Sale of Certain Assets Free and Clear of all Liens and Encumbrances relating to the Virginia Assets (the "Second Sale Motion"), is GRANTED.
3. The Assignee is hereby authorized to take such actions as are necessary to complete the sale of the Michigan Assets, as listed in the First Sale Motion, pursuant to the terms of the First Sale Motion to the Purchaser, Rankin Biomedical Corporation ("Buyer") pursuant to Exhibit "B" to the First Sale Motion.
4. The Buyer's offer of \$50,000.00 is the highest and best offer and the Assignee is authorized to sell the Michigan Assets more specifically described in the First Sale Motion as listed in Exhibit "B" to the First Sale Motion.
5. The closing of the sale transaction (the "First Sale") shall take place within five (5) days from this Order or as soon as practicable.

6. As set forth in the First Sale Motion, the sale is “as is, where is” and no representations or warranties have been given. Only the Michigan Assets listed on Exhibit “B” to the First Sale Motion shall be sold. Assignee will deliver a Bill of Sale at Closing of the First Sale.

7. The Court hereby orders and directs LOUD LANDLORD, PC (the “Michigan Landlord”), pursuant to §§ 727.109(8)(a) and 727.106, Florida Statutes, to turn over the Michigan Assets located in and at the Michigan Landlord’s premises to the Assignee, the Assignee’s agent, or the Buyer directly without delay. Should the Michigan Landlord refuse to turn over the Michigan Assets and litigation be necessary to enforce the Assignment, or the terms of this Order, Objector & Company, LLC is authorized by this Court to prosecute any such action against the Michigan Landlord to allow the First Sale to be consummated and closed.

8. The Assignee is further authorized to pay or prorate such reasonable and customary amounts in expenses as necessary, at the Closing of the First Sale and without further order of this Court, to permit the transfer of the assets to Buyer. Those expenses are a 10% Commission (\$5,000.00) to Barry Broker from the proceeds of the sale of the Michigan Assets and moving expenses from the proceeds of the sale of the Virginia Assets in the amount of \$5,450.00.

9. The Michigan Landlord shall have twenty (20) days from the date of service of this Order to file an administrative claim for rent, or in the alternative, the Assignee, with the consent of Objector & Company, LLC, is authorized to settle the administrative rent claim of the Michigan Landlord and release funds to settle such claim.

10. In regards to the Second Sale Motion, since competing bids have been received since the filing and service of the Second Sale Motion, the Assignee is authorized to conduct a telephonic auction (“Second Sale Auction”) of the Virginia Assets which are the subject of the

Second Sale Motion and the competing bids. Said Second Sale Auction shall be conducted by the Assignee or his agent(s) within twenty (20) days of the date of this Order.

11. As set forth in the Second Sale Motion, the sale is "as is, where is" and no representations or warranties have been given. Assignee will deliver a Bill of Sale at Closing of the Second Sale Auction.

12. Inasmuch as only one limited objection has been filed by Objector & Company, LLC., which did not object to the sale of the Michigan Assets and Virginia Assets, but asserted its claimed senior security interest to the proceeds from both the Michigan Assets and Virginia Assets; all claims of any kind against the Assignor shall only be paid pursuant to the provisions of Chapter 727 of the Florida Statutes. Accordingly, except as more specifically provided herein, Buyers in the First Sale and Second Sale Auction, shall acquire the Michigan Assets and the Virginia Assets free and clear of any liens, claims, and encumbrances, if any, instead attaching to the proceeds from the sale.

13. There shall be no distribution of sale proceeds of the Michigan Assets or the Virginia Assets without the further order of this Court, with the exception of the settlement with the Michigan Landlord as described in Paragraph 7 and the expenses as described in Paragraph 8 of this Order.

14. The Assignee will account for all receipts and expenditures pursuant to Chapter 727, Florida Statutes.

15. The Court retains jurisdiction of any disputes or of the necessity for any further relief arising from the sale of the Michigan Assets and the Virginia Assets or under this Order.

DONE and ORDERED in Chambers at Florida County, Florida, this _____ day of October 2014.

MARY JUDGE
Circuit Court Judge

Copies to:

Larry Lawyer, Esq. (larry@larrylawyer.com)

Attorney Lawyer to provide a copy to Alan Assignee for duplication and mailing to the parties in interest.