Form 5500-SF

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

Short Form Annual Return/Report of Small Employee Benefit Plan

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA), and sections 6057(b) and 6058(a) of the Internal Revenue Code (the Code).

▶ **Complete all entries in accordance with the instructions to the Form 5500-SF.**

OMB Nos. 1210-0110
1210-0089

2018

This Form is Open to Public Inspection

Part I Annual Report Identification Information

For calendar plan year 2018 or fiscal plan year beginning 01/01/2018 and ending 11/30/2018

A This return/report is for:
- [X] a single-employer plan
- [ ] a multiple-employer plan (not multiemployer) (Filers checking this box must attach a list of participating employer information in accordance with the form instructions.)
- [ ] a one-participant plan
- [ ] a foreign plan

B This return/report is
- [ ] the first return/report
- [X] the final return/report
- [ ] an amended return/report
- [X] a short plan year return/report (less than 12 months)

C Check box if filing under:
- [X] Form 5558
- [ ] automatic extension
- [ ] DFVC program
- [ ] special extension (enter description)

Part II Basic Plan Information—enter all requested information

1a Name of plan
INDUSTRIAL PIPING, INC. 401(K) PROFIT SHARING PLAN

1b Three-digit plan number (PN) ▶ 003

1c Effective date of plan 01/01/1999

2a Plan sponsor's name (employer, if for a single-employer plan)
Mailing address (include room, apt., suite no. and street, or P.O. Box)
City or town, state or province, country, and ZIP or foreign postal code (if foreign, see instructions)
INDUSTRIAL PIPING, INC.

212 S.TRYON STREET
SUITE 1050
CHARLOTTE, NC 28202

2b Employer Identification Number (EIN) 56-0578325

2c Sponsor's telephone number 330-877-5106

2d Business code (see instructions) 621210

3a Plan administrator's name and address [X] Same as Plan Sponsor.

3b Administrator's EIN

3c Administrator's telephone number

4 If the name and/or EIN of the plan sponsor or the plan name has changed since the last return/report filed for this plan, enter the plan sponsor's name, EIN, the plan name and the plan number from the last return/report.
a Sponsor's name
c Plan Name

4b EIN

4d PN

5a Total number of participants at the beginning of the plan year	**5a**	61
b Total number of participants at the end of the plan year	**5b**	0
c Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item)	**5c**	0
d(1) Total number of active participants at the beginning of the plan year	**5d(1)**	0
d(2) Total number of active participants at the end of the plan year	**5d(2)**	0
e Number of participants who terminated employment during the plan year with accrued benefits that were less than 100% vested	**5e**	0

Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including, if applicable, a Schedule SB or Schedule MB completed and signed by an enrolled actuary, as well as the electronic version of this return/report, and to the best of my knowledge and belief, it is true, correct, and complete.

SIGN HERE	Filed with authorized/valid electronic signature.	09/19/2019	STEVEN MCCAULEY
	Signature of plan administrator	Date	Enter name of individual signing as plan administrator
SIGN HERE			
	Signature of employer/plan sponsor	Date	Enter name of individual signing as employer or plan sponsor

6a Were all of the plan's assets during the plan year invested in eligible assets? (See instructions.) [X] Yes [ ] No

b Are you claiming a waiver of the annual examination and report of an independent qualified public accountant (IQPA) under 29 CFR 2520.104-46? (See instructions on waiver eligibility and conditions.) [X] Yes [ ] No

If you answered "No" to either line 6a or line 6b, the plan cannot use Form 5500-SF and must instead use Form 5500.

c If the plan is a defined benefit plan, is it covered under the PBGC insurance program (see ERISA section 4021)? [ ] Yes [ ] No [ ] Not determined

If "Yes" is checked, enter the My PAA confirmation number from the PBGC premium filing for this plan year_____. (See instructions.)

Part III Financial Information

7 Plan Assets and Liabilities		(a) Beginning of Year	(b) End of Year
a Total plan assets	7a	1352741	0
b Total plan liabilities	7b		
c Net plan assets (subtract line 7b from line 7a)	7c	1352741	0
8 Income, Expenses, and Transfers for this Plan Year		**(a) Amount**	**(b) Total**
a Contributions received or receivable from: (1) Employers	8a(1)		
(2) Participants	8a(2)		
(3) Others (including rollovers)	8a(3)		
b Other income (loss)	8b	-6545	
c Total income (add lines 8a(1), 8a(2), 8a(3), and 8b)	8c		-6545
d Benefits paid (including direct rollovers and insurance premiums to provide benefits)	8d	1341579	
e Certain deemed and/or corrective distributions (see instructions)	8e	1052	
f Administrative service providers (salaries, fees, commissions)	8f	3565	
g Other expenses	8g		
h Total expenses (add lines 8d, 8e, 8f, and 8g)	8h		1346196
i Net income (loss) (subtract line 8h from line 8c)	8i		-1352741
j Transfers to (from) the plan (see instructions)	8j		

Part IV Plan Characteristics

9a If the plan provides pension benefits, enter the applicable pension feature codes from the List of Plan Characteristic Codes in the instructions:
2E 2F 2G 2J 2T 3D

b If the plan provides welfare benefits, enter the applicable welfare feature codes from the List of Plan Characteristic Codes in the instructions:

Part V Compliance Questions

10 During the plan year:		Yes	No	Amount
a Was there a failure to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102? (See instructions and DOL's Voluntary Fiduciary Correction Program)	10a		X	
b Were there any nonexempt transactions with any party-in-interest? (Do not include transactions reported on line 10a.)	10b		X	
c Was the plan covered by a fidelity bond?	10c	X		136000
d Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond, that was caused by fraud or dishonesty?	10d		X	
e Were any fees or commissions paid to any brokers, agents, or other persons by an insurance carrier, insurance service, or other organization that provides some or all of the benefits under the plan? (See instructions.)	10e		X	
f Has the plan failed to provide any benefit when due under the plan?	10f		X	
g Did the plan have any participant loans? (If "Yes," enter amount as of year-end.)	10g	X		0
h If this is an individual account plan, was there a blackout period? (See instructions and 29 CFR 2520.101-3.)	10h		X	
i If 10h was answered "Yes," check the box if you either provided the required notice or one of the exceptions to providing the notice applied under 29 CFR 2520.101-3	10i			

Part VI Pension Funding Compliance

11	Is this a defined benefit plan subject to minimum funding requirements? (If "Yes," see instructions and complete Schedule SB (Form 5500) and line 11a below)	☐ Yes ☐ No
11a	Enter the unpaid minimum required contributions for all years from Schedule SB (Form 5500) line 40	**11a**
12	Is this a defined contribution plan subject to the minimum funding requirements of section 412 of the Code or section 302 of ERISA? (If "Yes," complete line 12a or lines 12b, 12c, 12d, and 12e below, as applicable.)	☐ Yes ☒ No
a	If a waiver of the minimum funding standard for a prior year is being amortized in this plan year, see instructions, and enter the date of the letter ruling granting the waiver. Month _____ Day _____ Year _____	

If you completed line 12a, complete lines 3, 9, and 10 of Schedule MB (Form 5500), and skip to line 13.

b	Enter the minimum required contribution for this plan year	**12b**	
c	Enter the amount contributed by the employer to the plan for this plan year	**12c**	
d	Subtract the amount in line 12c from the amount in line 12b. Enter the result (enter a minus sign to the left of a negative amount)	**12d**	
e	Will the minimum funding amount reported on line 12d be met by the funding deadline?		☐ Yes ☐ No ☐ N/A

Part VII Plan Terminations and Transfers of Assets

13a	Has a resolution to terminate the plan been adopted in any plan year?		☒ Yes ☐ No
	If "Yes," enter the amount of any plan assets that reverted to the employer this year	**13a**	0
b	Were all the plan assets distributed to participants or beneficiaries, transferred to another plan, or brought under the control of the PBGC?		☒ Yes ☐ No

c If, during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)

13c(1) Name of plan(s):	**13c(2)** EIN(s)	**13c(3)** PN(s)

RE: Industrial Piping, Inc. 401K Plan # 470776, having tax ID# 56-0578325

The company closed terminating all employees on or about August 31, 2016 and a receiver was appointed on September 8, 2016 (attached). On November 27, 2017 an order was entered allowing ADP, the Plan record keeper to cause the termination and distribution of the funds to the employees.

The distribution to the remaining employees was facilitated by American Century Investments on November 13, 2018.

Due to the demise of the company, many of the records are not locatable although ADP retained day to day security of the employee funds until distribution.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16-CVS- 16166

MIDMARKET CAPITAL PARTNERS, LLC, as successor Administrative Agent for Lender (identified herein),

Plaintiff,

v.

INDUSTRIAL PIPING, INC.; IPI ACQUISITION, LLC; and IPI SUPPLY, INC.,

Defendants.

AGREED ORDER APPOINTING THE FINLEY GROUP AS RECEIVER

MECKLENBURG COUNTY
FILED #64
SEP 08 2016
AT _____ O'CLOCK ___ M
BY _____
CLERK OF SUPERIOR COURT

This matter is before the Court on Plaintiff's Motion for Entry of an Agreed Order Appointing The Finley Group as Receiver ("Motion"), the Complaint filed by the Plaintiff on September 7, 2016, and the various exhibits supporting the Complaint and Motion. After reviewing those materials and reviewing and considering other evidence, the Court hereby **FINDS** that:

1. The Court has subject-matter jurisdiction over all claims in this case and personal jurisdiction over Defendant Industrial Piping, Inc. ("IPI"), Defendant IPI Acquisition, LLC ("Acquisition"), and Defendant IPI Supply, Inc. ("Supply"). IPI, Acquisition, and Supply shall collectively be referred to in this Agreed Order as the "Defendants."

2. On or about December 13, 2013, IPI entered into a Credit Agreement in the maximum amount of Five Million and no/100 dollars ($5,000,000.00) with the Agent and the Lender ("Credit Agreement").[1]

[1] The Credit Agreement, Guarantee and Security Agreement, and the Forbearance

3. Pursuant to the Credit Agreement, the Lender agreed to lend to IPI on the Closing Date, as defined in the Credit Agreement, one or more loans in an aggregate amount not to exceed the maximum indebtedness stated in the Credit Agreement (collectively, the "Loans").

4. The Loans were to be repaid as set forth in the Credit Agreement and all such Loans would mature and be due and payable on December 13, 2018.

5. Also on December 13, 2013, IPI, Acquisition, and Supply jointly and severally executed a Guarantee and Security Agreement in favor of the Agent for the Lender under the Credit Agreement.

6. Pursuant to the Guarantee and Security Agreement, Acquisition and Supply jointly and severally, unconditionally, and irrevocably guaranteed payment of all amounts owed pursuant to the Credit Agreement to the Agent for the benefit of the Lender.

7. Pursuant to the Guarantee and Security Agreement, IPI, Acquisition, and Supply also granted a security interest to the Agent for the benefit of the Lender on all the following categories of property, whether now or hereafter owned, including but not limited to, all (i) accounts, (ii) chattel paper, (iii) contracts, (iv) receivables, (v) deposit accounts, (vi) securities accounts, (vii) documents (excluding titles to vehicles), (viii) commercial tort claims, (ix) equipment, (x) general intangibles, (xi) instruments, (xii) intellectual property, (xiii) inventory, (xiv) investment property, (xv) letter-of-credit rights; (xvi) goods and other property not described above, (xvii) all books and records pertaining to the foregoing, and (xviii) all proceeds and products of the foregoing, all Supporting Obligations of any of the foregoing and all

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Agreement (as each is defined in the Complaint) will be referred to collectively in this Agreed Order (as they are in the Complaint) as the "Loan Documents." Capitalized terms not otherwise defined shall have the meaning given to them in the Complaint or the Loan Documents.

collateral security and guarantees given by any Person with respect to the following (collectively, "Collateral").

8. The Agent filed UCC-1 statements with the Delaware Secretary of State on or about December 16, 2013 to perfect the liens granted to the Lender in and to the Collateral.

9. Among other events of default under the Credit Agreement, IPI failed to make certain regular payments of loan principal and interest as required under the Credit Agreement. Specifically, IPI failed to make regular payments due on January 31, 2016; February 29, 2016; March 31, 2016; April 30, 2016; May 31, 2016; June 30, 2016; and July 31, 2016, pursuant to section 2.3 of the Credit Agreement.

10. Under section 8.1(a) of the Credit Agreement, an "Event of Default" (as that term is defined in the Credit Agreement) includes a failure by IPI to "pay any principal . . . when due in accordance with the terms hereof; or . . . pay any interest . . . or any other amount payable hereunder or under any other Loan Document or any other Obligation [as those terms are defined in the Credit Agreement], within five (5) days after any such interest or other amount becomes due in accordance with the terms hereof or thereof[.]"

11. Section 8.1 of the Credit Agreement also provides that, following an "Event of Default" based on a failure to make payment when due, the "Agent may . . . by notice to the Borrower, terminate the Commitments, declare the Term Loans hereunder (with accrued interest thereon and Applicable Premium in respect thereof calculated as of the date of acceleration) and all other Obligations owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable."

12. The Credit Agreement named American Money Management Corporation as the Agent. On August 8, 2016, American Money Management Corporation resigned as Agent and

the Lender named Plaintiff MidMarket Capital Partners, LLC ("MidMarket") as the Successor Administrative Agent. As set forth in a notice letter sent to Defendants, MidMarket undertook all rights and obligations of the Agent with respect to the Credit Agreement and Guarantee and Security Agreement (the "Notice Letter"). The Notice Letter was effective as of August 8, 2016 and was delivered to IPI, Acquisition, and Supply, pursuant to the terms of the Credit Agreement.

13. On August 3, 2016, IPI, Acquisition, Supply, and the Agent entered into the Second Forbearance Agreement and Consent Under Credit Agreement (the "Forbearance Agreement"). Pursuant to the Forbearance Agreement, IPI, Acquisition, and Supply agreed and acknowledged, among other things, that Events of Default have occurred and are continuing to occur under the Credit Agreement and the Loan Documents, as that term was defined therein, that the aggregate principal amount owed pursuant to the Loan Documents as of June 30, 2016 was $5,265,178.22, plus all accrued and accruing interest, and all costs, fees, and expenses due and owing to the Agent (the "Debt"), and that the Agent would forbear from enforcement of its rights and collection of the Debt until the expiration of the Forbearance Period, as defined therein.

14. On August 3, 2016, the Forbearance Period expired, and the Agent is again entitled to enforce its rights under the Loan Documents and seek collection of the Debt under the terms of the Loan Documents and applicable law.

15. On August 19, 2016, MidMarket sent a "Notice of Default and Acceleration" letter ("Default Letter") to IPI, Acquisition, and Supply, setting forth that IPI was in default under the Credit Agreement and notifying IPI, Acquisition, and Supply that all of their

obligations under the Credit Agreement had been accelerated (as permitted under the Credit Agreement) and were immediately due and payable.

16. Due to the defaults under the Credit Agreement, interest accrues on the principal balance owed to the Agent at the default rate of sixteen and one-half percent (16.5%) as stated in the Credit Agreement.

17. As of September 7, 2016, IPI, Acquisition, and Supply jointly and severally owe the Agent, on behalf of the Lender, the aggregate principal amount of $3,918,509.82, plus all accrued and accruing interest at the default rate of sixteen and one-half percent (16.5%), and all costs, fees, and expenses due and owing as authorized by the Loan Documents.

18. Pursuant to the terms of the Loan Documents, the Agent is entitled to recover its costs, fees, and expenses, including without limitation attorneys' fees, in this case.

19. The Agent is the party entitled to enforce the Loan Documents.

20. The Loan Documents are in default, as agreed to and acknowledged in the Forbearance Agreement, and IPI, Acquisition, and Supply are jointly and severally liable for all indebtedness owed under the Loan Documents and have failed to pay the balance owed thereunder to the Agent.

21. Upon information and belief, the Collateral is in the possession of or control of IPI, Acquisition, and Supply.

22. Under the Forbearance Agreement, IPI, Acquisition, and Supply each waived their right to a trial by jury and also released any and all claims, counterclaims, setoffs, actions or causes of actions, damages or liabilities of any kind or nature whatsoever whether at law or in equity, in contract or in tort, whether now accrued or hereafter maturing against both the Lender and the Agent.

23. Plaintiff has a valid, perfected, first-priority lien and/or security interest in and to the Collateral.

24. Based on the record, there is sufficient evidence that there is a risk that the Collateral will be impaired and that Plaintiff may be unable to recover the loan balance owed to it to justify the appointment of a receiver for the purpose of preserving and protecting Defendants' assets, property, and business operations for the benefit of creditors.

25. Plaintiff, as a creditor of Defendants, and by virtue of the Loan Documents, has a clear interest in preserving and protecting the aforementioned assets, property, and business operations. Appointment of a receiver is therefore warranted under Chapter 1, Article 38 of the North Carolina General Statutes. In particular, under N.C. Gen. Stat. § 1-502, appointment of a receiver is warranted for the purpose of protecting the Collateral, which is in danger of being lost or materially injured or impaired, and under N.C. Gen. Stat. § 1-507.1, because some or all of the Defendants have become insolvent or have suspended their ordinary business for want of funds, or are otherwise in imminent danger of insolvency.

It is therefore ORDERED, ADJUDGED, and DECREED that:

26. Defendants are in default under the Loan Documents.

27. Plaintiff's Motion for Entry of an Agreed Order Appointing The Finley Group as Receiver is GRANTED in all respects.

28. The Finley Group is hereby appointed Receiver (the "Receiver") in this case. The Receiver, with the prior approval of the Plaintiff, may obtain assistance from other representatives of The Finley Group as the Receiver deems appropriate, with prior notification to the Plaintiff.

29. Upon entry of this Agreed Order, and consistent with N.C. Gen. Stat. § 1-507.2, the Receiver is authorized to assume immediate control over any and all assets, property, and business operations of each Defendant (including without limitation the Collateral) (the "Receivership Property and Business Operations"). The Receiver is likewise authorized to immediately take any and all such actions that the Receiver deems appropriate in order to exercise full control over the Receivership Property and Business Operations, prevent waste, and to preserve, manage, secure, and protect the Receivership Property and Business Operations.

30. Upon entry of this Agreed Order, neither Defendants nor any of their agents, directors, employees, officers, owners, or representatives, shall have possession of, control over, or any right to direct the disposition of or access (as the case may be) any of the Receivership Property or Business Operations, except as the Receiver may specifically authorize for the purpose of carrying out the day-to-day business activities of Defendants, subject to the terms and conditions of this Order.

31. All of the Defendants and all of their agents, directors, employees, officers, owners, and representatives shall cooperate fully with the Receiver in delivering and/or providing immediate access to or ensuring control over (as the case may be) all Receivership Property and Business Operations as well as any and all records or information, whether reduced to writing or not, that may be necessary or useful to the Receiver in the fulfillment of his responsibilities under this Agreed Order, including without limitation providing the Receiver all cash on hand, whether in a bank or otherwise, including security deposits, tax escrow deposits, and other deposits, records, books, checkbooks, ledgers, rent rolls, accounts payable and accounts receivable records, and documents relating to the Receivership Property and Business Operations (including all leases, contracts, bids, licenses, executory contracts, plans,

specifications and drawings, technical manuals for all systems, permits and other land use entitlements, approvals and files, operating procedures, warranties, permits, general intangibles relating to the Receivership Property and Business Operations, records required to be kept under applicable safety, health, and environmental laws, and all other documents related in any way to the Receivership Property and Business Operations); the completed and current Department of the Treasury Internal Revenue Service Form W-9: Request for Taxpayer Identification Number and Certification or state taxpayer identification number associated with the Receivership Property and Business Operations, which the Receiver may use for all lawful purposes, including but not limited to remittance of sales and use taxes and the filing of all tax returns for each of the Defendants; all keys, passwords, and electronic accounts associated with the Receivership Property and Business Operations; copies of all existing insurance policies and certificates relating to the Receivership Property and Business Operations; and any other non-confidential information not specifically described in this Agreed Order but which is reasonably necessary for the Receiver to perform the duties described in this Agreed Order.

32. Any brokerage institution, financial institution, bank, savings and loan, mutual fund, or any other person, partnership, limited liability company, or corporation maintaining or having custody or control of any brokerage or deposit account or other assets of any of the Defendants, and that receives actual notice of this Agreed Order, shall within three (3) business days of receipt of that notice deliver to the Receiver a certified statement setting forth, with respect to each such account or other assets, the balance in the account or a description of the assets as of the close of business on the date of receipt of the notice.

33. This Agreed Order is intended to bestow on the Receiver the maximum powers available to him under the law of North Carolina, in particular Chapter 1, Article 38 of the North

Carolina General Statutes, and including without limitation the ability to (a) bring and defend actions in his own name as Receiver; (b) adjust, compromise, or settle any claim or asset of any of the Defendants, provided that the Receiver shall not adjust, compromise, or settle any claim involving the Collateral, or sell or otherwise dispose of any of the Collateral, without the express written consent of Plaintiff and the approval of this Court; (c) subject to the approval of this Court and with the consent of the Plaintiff, enter into contracts on behalf of any or all of the Defendants; (d) collect all income of Defendants and deposit that income in one or more segregated accounts maintained by the Receiver; (e) with the prior consent of the Plaintiff, pay, to the extent possible, any or all expenses incurred in the normal operation of each Defendant, including without limitation expenses necessary to avoid loss or damage to or interruption in (as the case may be) any of the Receivership Property and Business Operations; (f) maintain insurance in any form and in any amount in connection with any of the Receivership Property and Business Operations; (g) subject to the limitations set forth in this Agreed Order and with the prior written consent of the Plaintiff, pay all taxes applicable to the Receivership Property and Business Operations; (h) hire or terminate employees or officers of any of the Defendants; (i) subject to further approval of this Court and the consent of the Plaintiff, borrow money as necessary for the Receivership Property and Business Operations; and (j) subject to the consent of the Plaintiff and the approval of this Court, sell part or all of the Receivership Property and Business Operations, including without limitation the Collateral. In the event that the Receiver deems it appropriate to seek a sale of part or all of the Collateral, the Receiver shall (1) obtain the written consent of Plaintiff to seek authority from the Court for such a sale; (2) obtain this Court's authority for such a sale; (3) cooperate fully with Plaintiff in arranging for and carrying out any such sale; and (4) pay all proceeds from said sale(s) to the Plaintiff in accordance with

the terms of the Loan Documents. However, the Receiver shall not be required to seek authority from the Court for the sale of any asset with a *de minimis* value of $25,000 or less if such sale has been approved by the Plaintiff and the proceeds from said sales(s) are to be paid to the Plaintiff at the closing.

34. In the event of a sale of the Receivership Property and Business Operations (excluding the sale of *de minimis* assets as noted above), the Receiver shall (a) give notice to all known creditors of the Receiver's appointment; (b) afford reasonable opportunity for creditors to present and prove their claims, and, if deemed appropriate by the Receiver or this Court, publish in a newspaper of general circulation within Mecklenburg County a deadline or bar date for submitting claims; (c) cause the Receivership Property and Business Operations to be preserved, inventoried, and where appropriate, appraised; (d) determine the validity and priority of creditors' claims; (e) subject to the written consent of Plaintiff, take such other appropriate steps as may be timely, reasonable, and necessary to reduce the Receivership Property and Business Operations to cash on terms that maximize recovery for the benefit of creditors, including selling property free and clear of all liens, provided the liens attach to the proceeds of sale; and (f) distribute all proceeds from the sale to the Plaintiff, up to the amount due and owing under the Credit Agreement, and after the indefeasible payment in full of all amounts owing to the Plaintiff under the Credit Agreement, make recommendations for appropriate distributions of cash or property between the various classes of creditors according to their priority, after such notice as this Court deems appropriate.

35. Within 30 days after entry of this Agreed Order, and consistent with N.C. Gen. Stat. § 1-507.3, the Receiver shall provide the Court with a complete inventory of all estate, property, and effects of each of the Defendants, the natures and probable values of each of those

effects, and an account of all debts due from and to each of the Defendants, as nearly as those debts can be ascertained. The Receiver shall thereafter maintain an accurate accounting of all income collected and expenses incurred by or on behalf of each of the Defendants. Consistent with N.C. Gen. Stat. § 1-507.3, the Receiver shall provide this Court and the Plaintiff with a summary of this accounting, along with a report of all Receivership proceedings, on a quarterly basis until such time as the Court orders otherwise. The first such report shall be filed with the Court within 60 days of the date of entry of this Agreed Order. The next such report will be due on the last business day of the last month in the calendar quarter following the calendar quarter in which the first such report is filed.

36. All funds generated from the Receivership Property and Business Operations are subject to the first-priority liens and security interests of the Plaintiff and as such, shall be subject to an approved budget with the Plaintiff, which shall be updated as determined by the Receiver (such budget as in effect at any time, the "Budget"). Upon delivery thereof, each Budget shall be approved by the Plaintiff in its sole discretion; provided, however, that until such approval is given the previously approved Budget shall control. Amounts available pursuant to the Budget shall be used (i) for payment of health care costs of former employees of the Defendants in an amount not to exceed $90,000 (the "Health Care Costs"); (ii) for payment of such other obligations set forth in the Budget in an amount not to exceed $60,000 (the "Wind Down Costs");[2] and (iii) subject to the approval of this Court, for payment of the costs and expenses of administration of the Receivership; provided, however, that the total amount paid for all costs and expenses of the Receivership (including the Receiver's professional fees and the fees and expenses of any other professional engaged by the Receiver), shall not exceed $50,000 (the

[2] Plaintiff agrees to consider any amended Budget submitted by the Receiver that seeks to increase the amount needed by the Receiver during the Receivership.

"Receiver's Fees"). As additional consideration, the Receiver shall be entitled to receive, without further order of this Court, (a) ten percent (10%) of all amounts distributed by the Receiver in this Receivership in excess of $1,250,000, excluding amounts paid by the Receiver for Health Care Costs, Wind Down Costs, Receiver's Fees, and amounts required to be distributed to the Plaintiff immediately upon the appointment of the Receiver; and (b) ten percent (10%) of the savings realized from any funds in any Receiver Bank Account, excluding those in the Receiver Bank Account representing Receiver Fees, that are unused at such time as this Receivership is closed (the "Additional Receiver Fees").

37. Upon entry of this Agreed Order, the Receiver shall open three (3) separate and segregated bank accounts into which the Receiver shall deposit the funds representing the Wind Down Costs, the funds for the Receiver's Fees, and the funds for the Health Care Costs (collectively, the "Receiver Bank Accounts"). All other funds in the accounts of the Defendants shall be immediately paid to the Plaintiff and applied pursuant to the terms of the Loan Documents and the Credit Agreement. The funds in each Receiver Bank Account shall remain separate and segregated. Any funds remaining in the Receiver Bank Accounts at the closing of this Receivership shall be paid to the Plaintiff to be applied pursuant to the terms of the Credit Agreement and the Loan Documents up to the amounts owing to the Plaintiff thereunder.

38. No proceeds of the Receivership Property and the Business Operations of the Defendants or cash collateral of the Receivership may be used to pursue or assert claims against the Plaintiff (or the Lender under the Credit Agreement or the Loan Documents), to contest the validity, priority, and/or extent of the liens, claims, encumbrances, and security interests of the Plaintiff (or any Lender under the Credit Agreement) or to oppose the enforcement by the

Plaintiff of its rights under the Credit Agreement, the Loan Documents, the orders of this Court, and applicable law.

39. No costs or expenses of administration of the Receivership, or other charge, lien, assessment, or claim of any person or entity, shall be imposed against the Plaintiff (or any Lender under the Credit Agreement), or their claims or their interest in the Collateral, under applicable law or in equity, unless, prior to incurring such cost or expense, the Receiver shall have obtained the written consent of Plaintiff (and the Lender under the Credit Agreement and the Loan Documents) allowing such charge to be imposed against them, their claims, or their interest in the Collateral. Nothing in this Agreed Order or any Budget approved by the Plaintiff constitutes allowance of or consent to a charge under applicable law or in equity against the Plaintiff or any Lender under the Credit Agreement or the Loan Documents.

40. The Receiver, along with any attorneys or other professionals employed by the Receiver, shall submit fee applications in writing to this Court, with notice to all parties that have appeared, including the Plaintiff. The Receiver or other professional seeking fees shall attach to each fee application a billing summary concisely reflecting: (a) the dates on which work was performed; (b) a description of work performed; (c) the name of each individual performing the work; and (d) the hourly rate sought to be charged, or other method used to calculate proposed fees and expenses. The amount of fees and expenses sought by the Receiver and Receiver's counsel are subject to the limitations set forth in paragraph 36 of this Agreed Order. For clarity and the avoidance of doubt, all of said fees and expenses shall be paid from the Receiver's Fees under this Agreed Order. The Receiver is authorized to employ legal counsel to perform professional services that go beyond the ordinary routine of a Receivership and to pay the legal fees of any such retention. The Receiver may apply in writing to the Court for approval to retain

other professionals (including appraisers, auctioneers, brokers, or real estate agents) whose compensation will be claimed against the estate or from the proceeds of the sale of estate property. The amount of fees and expenses sought by the Receiver and Receiver's counsel are subject to the limitations set forth in paragraph 36 of this Agreed Order. For clarity and the avoidance of doubt, all of said fees and expenses shall be paid from the Receiver's Fees under this Agreed Order.

41. All professionals retained by the Receiver must be disinterested persons with no business relationship with the Receiver (other than prior engagements in the ordinary course of such professional's business), or the Defendants, as well as each of their officers, directors, shareholders, agents, and advisors, unless otherwise expressly disclosed and approved in advance by this Court. Unless this Court addresses the applications during the initial hearing on whether to grant a receivership, written notice of all applications to retain professionals other than legal counsel shall be given to Defendants, all parties that have appeared, and all parties for whom service of process remains pending.

42. The retention agreement between the Receiver and every professional retained by the Receiver shall be in writing. Every professional whose retention is approved by this Court is, and shall remain, subject to the jurisdiction of this Court relative to approval of all professional fees and reimbursable expenses.

43. Applications for authority to retain professionals to assist the Receiver shall summarize the experience, current professional licensure, and other qualifications for every person sought to be retained. The application must affirmatively verify that: (a) all necessary licenses are in good standing and not under suspension; (b) appropriate "conflict" checks have been made by the professional; (c) as to lawyers, professional liability insurance is and will be

maintained in an amount equal to the minimum coverage required by any applicable rules of professional conduct in this jurisdiction; and (d) the contract by which the professional is retained will affirmatively state that the professional will avoid any conflict of interest in connection with work on the Receivership; that gross proceeds of any sale or other transaction conducted by that professional will be immediately turned over to the Receiver or placed in a separate trust account; and that the professional will not, under any circumstances, directly or indirectly purchase, acquire, or accept any interest in any property that that person manages, appraises, or sells through the Receivership.

44. Applications to employ professionals shall also set forth: (a) the professional's usual and customary hourly rate or fee; (b) their proposed fee, hourly rate, or other alternative method or formula for determining compensation in the Receivership; (c) whether any fees were paid to the professional during the one-year period preceding the filing of the application from, or involving: (i) Defendants; (ii) a person or party closely related to Defendants; or (iii) a person or party known to be adverse to Defendants and to have a material claim in the Receivership; and (d) the amount, date paid, and source of any retainer or other compensation already received by the professional for preparatory work relative to the Receivership.

45. In addition to the powers and authority granted elsewhere in this Agreed Order, the Receiver is and shall be, at all times after entry of this Agreed Order, responsible for the ongoing operations and corporate governance of the Defendants whenever there is dissension among directors, members, officers, and/or partners, and when such dissension would otherwise make normal business operations impossible or impractical. The Receiver shall not, however, be responsible for any acts, omissions, or obligations of the Defendants or any of the Defendants'

agents, directors, employees, officers, owners, or representatives that arose or were incurred before entry of this Agreed Order.

46. In addition to the powers and authority granted elsewhere in this Agreed Order, the Receiver shall have all the authority vested in the directors, members, officers, and/or partners of each Defendant. The Receiver also is and shall be deemed to be the responsible director, member, officer, and/or partner of each Defendant and as such shall have sole and exclusive authority to manage and direct the Receivership Property and Business Operations of each Defendant, including without limitation the authority to petition for protection under Title 11 of the U.S. Bankruptcy Code for and on behalf of any of the Defendants. In connection with any such petition, the Receiver is and shall be deemed to be the person responsible for acting on behalf of any or all of the Defendants under applicable law.

47. Consistent with N.C. Gen. Stat. § 1-504, the Receiver shall obtain a surety bond in the amount of $ 100,000, which bond, in the event of this Agreed Order, shall automatically stand over and serve as the bond for the Receivership of the Receivership Property and Business Operations, guaranteeing performance by Receiver of the duties and obligations of her or his office of Receivership, the bond to be payable to this Court in order to provide coverage to the Plaintiff, Defendants, and other parties, as their respective interests may appear, for loss due to acts of all agents, servants, or employees or independent contractors of the Receiver.

48. After first utilizing any proceeds authorized to be expended under this Agreed Order, the Receiver may from time to time borrow only from Plaintiff such amounts as may be agreed between the Receiver and Plaintiff, except any amounts that Receiver seeks to borrow from Plaintiff shall be approved by this Court. Any funds borrowed by Receiver under this

paragraph shall bear interest at a rate to be agreed upon by the Receiver and Plaintiff, but which shall not be greater than the default rate provided for in the Loan Documents. The Receiver may issue one or more Receiver's Certificates of Indebtedness in favor of the Plaintiff ("Certificates") to evidence any borrowings under this paragraph. The principal and interest evidenced by such Certificates shall be a super-priority lien and security interest upon the Receivership Property and Business Operations, and upon all rents, earnings, and income of the Receivership Property and Business Operations, senior to all other liens on the Receivership Property and Business Operations. The lien of each Certificate shall be prior and superior to the rights, titles, and interest in the Receivership Property and Business Operations of all parties to this action, as well as to the lien of any mortgages and other security instruments for which foreclosure is sought in this action and the promissory notes and other obligations secured thereby (the "Security Documents"). The lien of each Certificate shall be prior and superior to the interest or lien of all judgment holders, mechanics' lien claimants, partners, and creditors of Defendants. Without limiting the foregoing, the sums evidenced by each Certificate shall also be secured by the lien and security interests of the Security Documents. Nothing herein shall obligate Plaintiff to advance all or any part of the borrowings authorized herein. In any event, the Certificates and all sums due thereon shall mature no later than the business day immediately prior to the day of judicial or other sale of the Receivership Property and Business Operations.

49. Until further order of this Court, the prosecution of any action or other proceeding affecting or related to the Receivership Property and Business Operations, and the enforcement of any judgment or other lien or encumbrance against the Receivership Property and Business Operations, are hereby enjoined, but the foregoing shall not apply to the prosecution of this action by Plaintiff, or any other action that may be commenced by Plaintiff, and the entry of any

further orders or any judgments in this action. No third-party subpoenas shall be served on the Receiver, other than the Plaintiff's, without leave of this Court.

50. The Receiver and the Receiver's counsel and agents (a) may rely on any and all outstanding court orders, judgments, decrees, and rules of law, and shall not be liable to anyone for their own good-faith compliance with any such order, judgment, decree, or rule of law; (b) may rely on, and shall be protected in any action upon, any resolution, certificate, statement, opinion, report, notice, consent, or other document believed by them to be genuine and to have been signed or presented by the proper parties; (c) shall not be liable to anyone for their good-faith compliance with their duties and responsibilities as a receiver, or as counsel or agent for Receiver; and (d) shall not be liable to anyone for their acts or omissions, except upon a finding by this Court that such acts or omissions were outside the scope of their duties or were grossly negligent. Except for matters set forth in subsection (d) of the preceding sentence, persons dealing with the Receiver, including general unsecured creditors of the Defendants and former employees, shall only look to the Receivership estate assets and bond posted by the Receiver to satisfy any liability by the Receiver, and neither the Receiver nor Receiver's counsel or agents shall have any personal liability to satisfy any such obligation. No party or other claimant may sue the Receiver without prior leave of this Court.

51. The Receiver is authorized to record this Agreed Order with government offices and to serve a copy of this Agreed Order on any person as he deems appropriate in furtherance of his responsibilities as Receiver.

52. In carrying out his duties under this Agreed Order, the Receiver is entitled to exercise his own business judgment as he deems appropriate and within his sole discretion. The Receiver shall not be liable for any action taken or not taken by him in good faith and shall not

be liable for any mistake of fact or error in judgment or for any acts or omissions of any kind apart from those resulting from willful misconduct or gross negligence.

IT IS SO ORDERED.

This 8th **day of** September, **2016.**

Superior Court Judge Presiding

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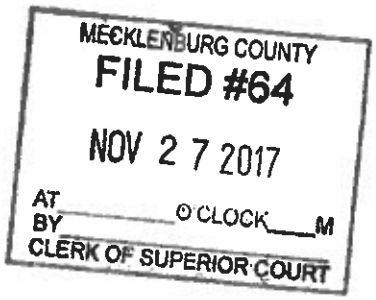
ATTORNEYS FOR DEFENDANTS INDUSTRIAL PIPING, INC., IPI ACQUISITION, LLC, and IPI SUPPLY, INC.

STATE OF NORTH CAROLINA COUNTY OF MECKLENBURG MIDMARKET CAPITAL PARTNERS, LLC, as successor Administrative Agent for Lender (identified herein), Plaintiff, v. INDUSTRIAL PIPING, INC.; IPI ACQUISITION, LLC; and IPI SUPPLY, INC., Defendants.	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 16-CVS- 16166



ORDER GRANTING RECEIVER'S MOTION FOR JUDICIAL ASSISTANCE TO ALLOW AUTOMATIC DATA PROCESSING, INC. TO TERMINATE THE 401K PLAN OF INDUSTRIAL PIPING, INC

THIS MATTER came before the Court for hearing on November 27, 2017 (the "Hearing") upon the *RECEIVER"S MOTION FOR JUDICIAL ASSISTANCE IN ALLOWING ADP TO TERMINATE 401K PLAN OF INDUSTRIAL PIPING, INC.* and *NOTICE OF HEARING* (the "Motion") filed by the Finley Group, the court-appointed receiver (the "Receiver") in the above-captioned matter. John C. Woodman appeared as counsel for the Receiver and Steve McCauley appeared for the Receiver. No counsel was present for Automatic Data Processing, Inc. ("ADP").

The Motion was duly served on all parties entitled to notice of the Motion, including MidMarket Capital Partners, LLC and ADP. All parties in interest have had adequate notice of

these proceedings and an opportunity to be heard and object. No objections or responses were filed with the Court. The Court having reviewed the Motion, other papers in the file before the Court; having considered the testimony and other evidence presented by the Receiver; and considered the arguments of counsel, makes the following:

FINDINGS OF FACT

1. This Court has jurisdiction over this Motion pursuant to that certain *Agreed Order Appointing the Finely Group as Receiver* (the "Order") entered on September 8, 2016. Attached as *Exhibit A* to the Motion was a true and accurate copy of the Order.

2. Pursuant to paragraph 29 of the Order, the Receiver assumed "immediate control over any and all assets, property, and business operations" of Industrial Piping, Inc., IPI Acquisition, LLC, and IPI Supply, Inc. (collectively, the "Defendants") as well as to "exercise full control over the Receivership Property and Business Operations, prevent waste, and to preserve, manage, secure, and protect the Receivership Property and Business Operations" of the Defendants. *See Agreed Order Appointing the Finely Group as Receiver* entered on September 8, 2016, in Meck. Co. Case No. 16-CVS-16166.

3. Pursuant to paragraph 33(b) of the Order, the Receiver shall not "sell or otherwise dispose of any of the Collateral, without the express written consent of the Plaintiff and the approval of this Court." *Id.*

4. When operational, IPI provided its employees the opportunity to contribute to a 401(k) Profit Sharing Plan (the "Plan") with ADP.

5. IPI currently does not have any employees.

6. In administering the Plan, IPI had a designated employee as the plan administrator and upon certain financial distress incurred by IPI, Samuel Hewitt of GlassRatner Advisory &

Capital Group, LLC became interim Chief Financial Officer for IPI and the administrator of the Plan.

7. The foregoing administrators failed to terminate the Plan prior to the entry of the Agreed Order appointing the Receiver. Moreover, Mr. Hewitt, the former Plan Administrator resigned his post on or about April 11, 2017. Attached as *Exhibit B* to the Motion was a true and accurate copy of the Mr. Hewitt's resignation as Plan Administrator.

8. The Receiver is receiving inquiries and requests from IPI's former employees seeking access to the Plan funds which were contributed by them and currently held by ADP. ADP requires that the Plan be terminated prior to releasing the subject Plan funds to IPI's former employees. Attached hereto as *Exhibit C* to the Motion was a true and accurate copy of correspondence sent by ADP to the Receiver outlining the steps in terminating the Plan.

9. The funds held by the Plan are not property of this receivership estate and never were property of IPI.

10. As the Receiver is not the current Plan administrator and does not desire to be said Plan administrator, and upon information and belief, due to the former plan administrators not willing to terminate the Plan and questionably would not have the authority to terminate the Plan, the Receiver sought assistance from this Court in terminating the Plan. In terminating the Plan it will allow IPI's former employees the ability to have access to the funds in the Plan.

11. As the funds are not property of the receivership estate, the Receiver consequently does not have the authority to terminate the Plan.

12. In the Motion the Receiver requested the following relief:

(i) by this order, the Receiver be authorized to terminate the Plan;

(ii) the Receiver execute and effectuate any and all documents to the terminate the Plan in accordance with any Order entered by this Court, provided however, that the Receiver not be deemed ever to be the Plan Administrator;

(iii) that the Court require ADP to accept any signatures by the Receiver on behalf of IPI in terminating the Plan;

(iv) that ADP not treat the Receiver as the Plan Administrator;

(v) that upon termination of the Plan, as ADP has the requisite information, ADP notify the Plan participants directly as it relates to the process of transferring or releasing the subject funds;

(vi) that ADP be responsible in distributing all assets according to the Internal Revenue Code and the pertinent rules contained in the Plan;

(vii) that ADP send via certified mail, return receipt requested, a *Distribution Request*, *Special Tax Notice* and *Termination Form* to each Plan participant;

(vii) that any correspondence sent by ADP to the plan participants provide the following language:

> **The legal rules involved with terminating a retirement plan can be complex. The consequences of violating these rules can be serious and difficult to correct, both for you and for your plan's participants. While this letter describes our general understanding of certain rules governing plan terminations, ADP Retirement Services cannot provide you with legal or tax advice. Nothing in this letter is intended to be legal advice and you should not regard it as such. We strongly recommend that you consult with your legal or tax advisor before you formally terminate your plan and as you distribute assets on account of your plan termination.**

(viii) that ADP complete the termination and distribution quickly and in the most efficient and professional manner possible allowing for the Plan participants to realize on the funds held by ADP; and

(ix) that ADP has full discretion within the confines and rules of the Internal Revenue Code to force distributions on Plan termination for any participant that may not respond to any distribution correspondence sent by ADP.

Based upon the Foregoing **FINDINGS OF FACT**, the Court makes the following:

CONCLUSIONS OF LAW

13. This Court has jurisdiction over this Motion pursuant to that certain *Agreed Order Appointing the Finely Group as Receiver* (the "Order") entered on September 8, 2016

14. Venue of this case and this motion in this Court is proper.

15. The Court concludes that the funds held by ADP in the Plan are not property of IPI but that of the Plan participants.

16. Good cause exists to grant the relief requested by this Order as failure to grant the relief requested herein would unequivocally cause great harm to the Plan participants as they would not be able to access the funds they contributed while employed with IPI.

17. Further cause exists as requiring the Receiver to terminate the Plan when it is not the Plan Administrator could potentially cause liability to the Receivership estate, which is already projected to be insolvent.

18. Sitting in a posture of equity, this Court has sufficient grounds to grant the relief requested.

19. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law and to the extent a finding of fact is deemed to be a conclusion of law, and *vice versa*, the record shall be deemed to have been corrected.

Based upon the forgoing Findings of Fact and Conclusions of Law and the entire record in this matter, and for good and sufficient cause otherwise shown, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

A. The Motion is **APPROVED**;

B. The Receiver is authorized to terminate the Plan;

C. The Receiver shall execute and effectuate any and all documents to the terminate the Plan in accordance with any Order entered by this Court, provided however, that the Receiver shall not be deemed ever to be the Plan Administrator;

D. That ADP shall accept any signatures by the Receiver on behalf of IPI in terminating the Plan;

E. That ADP shall not treat the Receiver as the Plan Administrator;

F. That upon termination of the Plan, ADP shall notify the Plan participants directly as it relates to the process of transferring or releasing the subject funds;

G. That ADP shall be responsible in distributing all assets according to the Internal Revenue Code and the pertinent rules contained in the Plan;

H. That ADP shall send via certified mail, return receipt requested, a *Distribution Request*, *Special Tax Notice* and *Termination Form* to each Plan participant;

I. That any correspondence sent by ADP to the plan participants shall provide the following language:

The legal rules involved with terminating a retirement plan can be complex. The consequences of violating these rules can be serious and

difficult to correct, both for you and for your plan's participants. While this letter describes our general understanding of certain rules governing plan terminations, ADP Retirement Services cannot provide you with legal or tax advice. Nothing in this letter is intended to be legal advice and you should not regard it as such. We strongly recommend that you consult with your legal or tax advisor before you formally terminate your plan and as you distribute assets on account of your plan termination.

J. That ADP shall complete the termination and distribution quickly and in the most efficient and professional manner possible allowing for the Plan participants to realize on the funds held by ADP;

K. That ADP shall have full discretion within the confines and rules of the Internal Revenue Code to force distributions on Plan termination for any participant that may not respond to any distribution correspondence sent by ADP; and

L. Counsel for the Receiver shall serve this order on the registered agent for ADP and counsel for MidMarket Capital Partners, LLC; and

M. This Court shall have exclusive jurisdiction to implement and enforce the terms and provisions of this order, the Motion and the Exhibits attached thereto, including any disputes with respect to this order.

Superior Court Judge Presiding