

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION AT KNOXVILLE**

**In re**

**COMMONWEALTH GROUP--  
MOCKSVILLE PARTNERS, LP**

**Case No. 12-34319  
Chapter 11**

**Debtor**

**AMENDED DISCLOSURE STATEMENT OF  
COMMONWEALTH GROUP--MOCKSVILLE PARTNERS, LP**

Pursuant to 11 U.S.C. § 1125, Commonwealth Group--Mocksville Partners, LP ("Debtor") submits the following Disclosure Statement.

THE HOLDERS OF CLAIMS SHOULD NOT CONSTRUE THE CONTENTS OF THIS AMENDED DISCLOSURE STATEMENT (THE "**DISCLOSURE STATEMENT**") AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE AND SHOULD CONSULT WITH THEIR OWN ADVISORS. FURTHERMORE, APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE AMENDED PLAN OF REORGANIZATION FILED BY THE DEBTOR (THE "**PLAN**"). THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED NOR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT SUMMARIZES CERTAIN PROVISIONS OF THE PLAN, CERTAIN OTHER DOCUMENTS AND CERTAIN FINANCIAL

INFORMATION. DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR THE OTHER DOCUMENTS OR FINANCIAL INFORMATION TO BE INCORPORATED HEREIN BY REFERENCE, THE PLAN SHALL GOVERN FOR ALL PURPOSES.

THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF THEIR REVIEW THAT THE FACTS SET FORTH HEREIN HAVE NOT CHANGED UNLESS SO SPECIFIED HEREIN. EACH HOLDER OF A CLAIM OR INTEREST SHOULD CAREFULLY REVIEW DEBTOR'S PLAN, THIS DISCLOSURE STATEMENT AND THE EXHIBITS IN THEIR ENTIRETY BEFORE CASTING ANY BALLOT.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE VALUE OF ITS PROPERTY HAVE BEEN AUTHORIZED BY DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. HOLDERS OF CLAIMS OR INTEREST HOLDERS SHOULD NOT RELY UPON ANY INFORMATION, REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN ACCEPTANCE OF THE PLAN THAT ARE OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN AND IN THE PLAN.

ALTHOUGH THE DEBTOR HAS USED ITS BEST EFFORTS TO ENSURE THE ACCURACY OF THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT, THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED.

*See* Article XI of this Disclosure Statement, "Risk Factors," for a discussion of certain risk factors that a holder of a claim or equity interest should consider in deciding whether to accept the Plan.

All exhibits to this Disclosure Statement are incorporated into, and are a part of, this Disclosure Statement as if set forth in full herein. Any capitalized terms used herein, not otherwise defined, shall have the same meanings as defined in the Plan.

The Debtor believes that the Plan is feasible, fair and equitable and that confirmation of the Plan is in the best interests of creditors.

## **I. BACKGROUND**

Debtor is in the business of owning and developing 30 acres of commercial property in Mocksville, Davie County, North Carolina. Debtor purchased 57 acres of property at the location in 2004 and sold 22.5 acres of the property to Walmart, Inc. Debtor developed the entire tract (including the Walmart parcel) thru 2005. Debtor constructed a 48,179 square foot retail shopping center on 5.58 acres of the property, which is currently 95% leased to various retail tenants. Walmart constructed a Walmart Super Store on its adjacent parcel. These retail properties were opened in 2006. Debtor retains 24.09 acres for future development of additional retail space and owns six (6) outparcels that it offers for sale or lease. Debtor's primary income consists of lease income from the retail shopping center that it constructed (The

Mocksville Town Commons) and the sale proceeds of the outparcels, which are both subject to the liens of PNC Bank. The properties have an appraised value in excess of \$13,000,000.00, based upon appraisals performed for PNC Bank in 2012. The Mocksville Town Commons property is appraised at \$6,500,000.00. The gross sellout for the six (6) outparcels is \$6,765,000.00, and the bulk sale value is \$3,785,000.00.

The Bank advised the Debtor in May 2012 that it would not renew the Debtor's loan when it came due in September 2012. On October 25, 2012 (the "Petition Date"), Debtor filed a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code to avoid the foreclosure of its property. After a contested hearing on the Debtor's Motion To Use Cash Collateral, on December 13, 2012, the Court entered its Order (Doc 47) permitting the Debtor to use Revenue consistent with a proposed budget. The Order reserved determination on the issue of whether the Revenues are property of the estate or cash collateral.

## **II. SUMMARY OF THE PLAN**

2.1 Introduction -- The Debtor filed a Plan of Reorganization simultaneously with the filing of this Disclosure Statement. Each Creditor of the Debtor has been placed into a class by the Plan. With certain exceptions, each class of creditors must approve the Plan in order for the Plan to be confirmed. A class of creditors accepts the Plan if it is accepted in writing by the voting members of the class holding at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of allowed claims of the voting members in each class. 11 U.S.C. §1126. Payments shall commence on the "Effective Date of the Plan" (the fifteenth day of the month after the Confirmation Order is final and unappealable).

2.2 Plan Summary -- The Plan proposes the Debtor shall continue its operation of the Mocksville Shopping Center in Mocksville, North Carolina. Debtor proposes to pay

Allowed Claims in full, with interest, from its operation of Mocksville Town Commons Shopping Center. The Secured Claim of PNC Bank shall be reduced by a \$140,000.00 principal payment. Monthly payments of \$37,109.51 shall be made beginning on the fifteenth day of the first month after the Effective Date and on the fifteenth day of each month thereafter with a balloon payment of the balance owing on the new Promissory Note (described in Plan Article 6.1(b)) on the seventh (7th) anniversary of the new Promissory Note. The postpetition action filed by PNC Bank in the United States District Court against the guarantors (*PNC Bank, National Association v. Azur Properties Group, et al* (Case No. 3:13-cv-00098)) shall be stayed so long as the Debtor performs its obligations to PNC Bank under a confirmed Plan.

The \$1,600.00 Priority Claim of the Town of Mocksville and the holders of Unsecured Claims less than \$1,000.00 shall be paid on the Effective Date of the Plan. Holders of Unsecured Claims exceeding \$1,000.00 and the Davie County Secured Claim shall be paid in equal monthly installments, beginning on the Effective Date of the Plan, with a final payment of the balance owing on the second anniversary of the Effective Date. Equity Interest holders shall retain their interest.

Debtor's projected revenues and expenses for the seven (7) years beginning in May 2013 are reflected in Exhibit A hereto. A year by year itemization of projected income, expenses and payments under the Plan is attached hereto as Exhibit B.

### **III. MANAGEMENT**

The Debtor's management is overseen by Milton A. Turner and Cathi Wingo, who will continue overseeing management of the Debtor. Commonwealth Properties Group, LP is the Debtor's management company.

#### IV. FUNDING OF THE PLAN

The Debtor's Plan shall be funded from the rent revenues and CAM charges from the Mocksville Town Commons Shopping Center, located on Cooper Creek Drive in Mocksville, North Carolina. Current monthly income from the Shopping Center, including reimbursables, is approximately \$55,000.00. Tenants reimburse the Debtor for common area maintenance charges after a year-end reconciliation. Income from the past three years is as follows:

<u>Year</u>	<u>Gross</u>	<u>Net Operating Income (before Debt Service)</u>
2010	\$640,491	\$492,949
2011	\$663,373	\$469,719
2012	\$725,482	\$498,721

#### V. MANNER OF VOTING AND ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS OR EQUITY INTERESTS

##### 5.1 Classes Entitled to Vote

Only holders of Class 2 (PNC Bank Secured Claim), Class 3 (Davie County Secured Claim), and Class 5 (Unsecured Claims Greater than \$1,000.00) are entitled to vote, because the holders of these claims are the only creditors whose claims are impaired under the Plan.

##### 5.2 Class Acceptance Requirement

A class of Claims shall have accepted the Plan if it is accepted by the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such class that have voted on the Plan.

5.3 **Cramdown**

If all applicable requirements for confirmation of the Plan are met as set forth in section 1129(a)(1) through (16) of the Bankruptcy Code, except subsection (8) thereof, then the Plan shall be treated as a request that the Bankruptcy Code confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to each class of Claims and Equity interests that is impaired under, and have not accepted, the Plan.

**VI. CONFIRMATION OF THE PLAN AND MEANS  
FOR IMPLEMENTATION OF THE PLAN**

6.1 **Solicitation of Acceptance of the Plan**

This Disclosure Statement must be approved by the Bankruptcy Court in accordance with Section 1125 of the Bankruptcy Code (11 U.S.C. §1125). Subsequent to its approval by the Court, it will be provided to all Creditors, Interest Holders, and parties in interest in this Case. This Disclosure Statement is intended to assist Creditors and Interest Holders with their evaluation of the Plan and their decision to accept or reject the Plan. Your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement at the time of, or before, such solicitation.

6.2 **Votes Considered in Determining Acceptance of the Plan**

When acceptance of the Plan is determined by the Court, in accordance with Bankruptcy Code Section 1126 (11 U.S.C. § 1126) and Fed. R. Bankr. P. 3018, votes of Creditors will only be counted if submitted by Creditors with Allowed Claims. If you are in any way uncertain if or how your Claim has been scheduled, you should review the Debtor's Schedules and any

amendments thereto which are on file with the Clerk's Office of the United States Bankruptcy Court, located at 800 Market Street, Suite 330, Knoxville, Tennessee 37902.

6.3 **Hearing on Confirmation of the Plan**

If this Disclosure Statement is approved, the Court will set a hearing to determine if the Plan has been accepted by the required number of holders of Claims and interests and if other requirements for confirmation of the Plan outlined in the Bankruptcy Code have been satisfied. You will be notified when a hearing on confirmation of the Plan is scheduled. Any objections to confirmation of the Plan must be in writing and must be filed with the Clerk of the Court and served on counsel for the Debtor and the United States Trustee within the time set by the Court.

6.4 **Determining Whether Impaired Classes Have Accepted the Plan**

At the scheduled hearing on Confirmation of the Plan, the Bankruptcy Court must determine, among other things, if the Plan has been accepted by each Impaired Class. Under Section 1126(c) of the Code (11 U.S.C. § 1126(c)), an Impaired Class of Claims is deemed to have accepted the Plan if Class members holding at least two-thirds ( $2/3$ ) in amount and more than one-half ( $1/2$ ) in number of all Allowed Claims of Class members actually voting have voted in favor of the Plan. Under § 1126(d) of the Bankruptcy Code (11 U.S.C. §1126(d)), an Impaired Class of Interests is deemed to have accepted the Plan if Class members holding at least two-thirds in amount of the Allowed Interests of Class members actually voting have voted in favor of the Plan. Further, under Section 1129 of the Bankruptcy Code (11 U.S.C. §1129(a)(7)(A)(ii)), the Bankruptcy Court must also find that each member of an Impaired Class will receive or retain as much under the Plan as the member would receive or retain if the Debtor was liquidated, as of the Effective Date of the Plan, under Chapter 7 of the Bankruptcy Code. This is known as the "best interest of creditors test."



6.5 **Confirmation of the Plan Without Consent of all Impaired Classes**

The Plan may be confirmed even if not accepted by all Impaired classes, if the Bankruptcy Court finds that all other requirements of Confirmation under Section 1129(a) of the Bankruptcy Code (11 U.S.C. §1129(a)) are satisfied and certain additional conditions are met. These conditions are set forth in Section 1129(b) of the Bankruptcy Code (11 U.S.C. §1129(b)), and require, generally, a showing that the Plan does not discriminate unfairly and that the Plan is "fair and equitable" with respect to each Class of Claims and Interests that is impaired under, and has not accepted, the Plan. In order to be "fair and equitable" as required by Section 1129(b) of the Bankruptcy Code, the Plan must provide that Creditors and Interest Holders in non-consenting, impaired classes will either receive or retain on account of their Claims or Interests, property of a value, as of the Effective Date of the Plan, at least equal to the value of such Claims or Interests or, if they receive less than full value, no Class with a junior priority will receive or retain anything on account of such junior claim or interest. These are complex statutory provisions and this summary is not intended to be a complete statement of the law.

6.6 **Absolute Priority Rule**

The absolute priority rule involves the application of the requirement that a plan of reorganization's treatment of a particular class of creditors is "fair and equitable." 11 U.S.C. §1129(b)(1). Generally, the absolute priority rule prevents a junior class of creditors from receiving a payment or value in excess of a class of creditors senior to it. A plan which proposes to treat a junior class of creditors more favorably than a senior class of creditors violates the absolute priority rule and is, therefore, not fair and equitable. Debtor's Plan fully complies with the absolute priority rule.

## VII. DESCRIPTION OF ASSETS AND LIABILITIES

Debtor owns the Mocksville Town Commons Shopping Center, appraised at \$6,500,000.00 in April 2012. Debtor also owns six (6) outparcels in the Mocksville Town Commons Shopping Center, also appraised in April 2012, at a gross sale value of \$6,765,000.00. Debtor maintains signs on the outparcels, but Debtor has not hired an agent to sell the outparcels. Debtor has received calls but has had only three serious negotiations for any of the parcels during the last three years. Release prices for the outparcels are included in the Loan Agreement and Amendments between Debtor and PNC Bank. Debtor is working on a new development plan for the outparcels. Debtor listed Tenant Rents Due of \$102,329.55 in its Schedule B.

Debtor scheduled PNC Bank, NA with two secured claims totaling \$7,515,229.73. Debtor scheduled the Davie County Tax Collector with a \$69,275.83 claim for 2012 property taxes. These taxes were paid postpetition with PNC Bank's consent. Excluding codebtors scheduled based on their guaranty of the debt to PNC Bank, Debtor believes the Unsecured Claims exceeding \$1,000.00 total \$51,759.01. Dominion Real Estate Svs. is an "insider" of the Debtor. Only four claims had been filed as of the preparation of this Disclosure Statement. Two of the claims were filed by Davie County; one of the two has been paid, and the second in the amount of \$1,650.00 is not disputed by the Debtor. The Town of Mocksville filed a priority claim in the amount of \$1,600.00. PNC Bank filed a secured claim in the amount of \$8,602,427.10. The PNC Bank claim includes \$1,084,105.96 for "Attorney Fees and Expenses to 10/25/12." Debtor questions the reasonableness of those fees and expenses and will object to the PNC Bank claim unless an agreement is reached about the claim amount. A list of the

Unsecured Claims excluding contingent claims of two guarantors is attached hereto as Exhibit C.

### **VIII. LIQUIDATION ANALYSIS**

Debtor's postpetition liabilities, excluding any obligation to PNC Bank and Debtor's attorney fees, total \$6,234.41 through February 28, 2013. Debtor's unbilled attorney fees and expenses are \$18,500.90 through March 15, 2013. Considering the appraised values of its real property as of April 2012, Debtor believes creditors would be paid in full if its assets were liquidated. Because Debtor proposes to pay its creditors in full with interest, the "best interest of Creditors test" (11 U.S.C. §1129(a)(7)(A)) is satisfied under the Plan. Debtor is not aware of any postpetition appraisals of Debtor's real property.

### **IX. EXECUTORY CONTRACTS AND LEASES**

The Tenants listed in Exhibit B have lease agreements with the Debtor which shall be assumed. Tenants are responsible for heat and air and interior space. Debtor is responsible for repairs to the roof and building. No major capital expenses or repairs are scheduled during the next seven years.

### **X. LITIGATION**

Debtor is not a party to any pending litigation. Debtor does not have any avoidance claims under 11 U.S.C. §§544, 547 or 548. Debtor was not insolvent on the Petition Date nor within the one-year period preceding the Petition Date. Debtor may pursue litigation if necessary to recover tenant rents.

## XI. RISK FACTORS

The risk associated with the Plan includes the risk of default in payments after the Effective Date. However, debtor's projections, supported by its historical results, reflect the ability to perform the Plan.

## XII. FINANCIAL INFORMATION

The Debtor's postpetition Monthly Operating Reports are available on PACER, or a copy may be obtained from Debtor's attorney. A copy of the February 2013 Monthly Operating Report providing postpetition information is attached hereto as Exhibit D. Debtor's February 2013 Monthly Operating Report reflects a \$121,373.04 balance in the operating account.

Dated: March 28, 2013

COMMONWEALTH GROUP--  
MOCKSVILLE PARTNERS, LP

By: \_\_\_\_\_  
Milton A. Turner

Its: Chief Manager of Commonwealth  
Mocksville, LLC, General Partner

/s/ Maurice K. Guinn  
Maurice K. Guinn  
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Mocksville Partners, LP

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 28, 2013, the foregoing **Amended Disclosure Statement of Commonwealth Group--Mocksville Partners, LP** was filed electronically. Notice of this filing will be sent by operating of the Court's electronic filing system to all parties indicated on the electronic filing receipt, including Nelwyn Inman and Patricia C. Foster. The following has been served by United States Mail, postage prepaid:

U.S. Securities and Exchange Commission  
Office of Reorganization  
950 East Paces Ferry Road, Suite 900  
Atlanta, Georgia 30326-1382

/s/ Maurice K. Guinn  
Maurice K. Guinn

*MKG/bd:Pleadings - 7472 Amended Disclosure Statement 03-27-2013*