

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

In re:) Case No. 17-20526 TPA
)
UNIQUE VENTURES GROUP, LLC,) Chapter 11
)
Debtor.)
)
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)

**DISCLOSURE STATEMENT TO ACCOMPANY CHAPTER 11 PLAN
PROPOSED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: October 25, 2017

WHITEFORD, TAYLOR & PRESTON, LLP

/s/ Michael J. Roesenthaler
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Creditors of Unique Ventures Group, LLC*

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PROPOSED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

The Official Committee of Unsecured Creditors (the “Committee” and “Plan Proponent”) of Unique Ventures Group, LLC (the “Debtor” or “Unique”), by and through undersigned counsel, hereby furnishes this Disclosure Statement to Accompany Chapter 11 Plan Proposed by the Official Committee of Unsecured Creditors (the “Disclosure Statement”) to creditors in the above-captioned bankruptcy case pursuant to section 1125 of the Bankruptcy Code¹ to assist creditors in evaluating the proposed Chapter 11 Plan Proposed by the Official Committee of Unsecured Creditors dated October 25, 2017 (as may be amended, the “Plan”). A copy of the Plan is attached hereto as **Exhibit 1**. Creditors may vote for or against the Plan. Creditors who wish to vote must complete their ballots and return them to the following address before the deadline noted in the order approving the Disclosure Statement. The Bankruptcy Court will schedule a hearing on the Plan pursuant to section 1129 of the Bankruptcy Code.

Address for return ballots:

Whiteford, Taylor & Preston, LLP
Attn: Kelly E. McCauley, Esquire
200 First Avenue, Third Floor
Pittsburgh, PA 15222

This Disclosure Statement does not purport to be a complete description of the Plan, a complete description of the financial data pertaining to the Debtor, a complete description of the applicable provisions of the Bankruptcy Code, or a complete description of any other matters that may be deemed significant by certain creditors.

¹ Capitalized terms not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan.

ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE WHICH ARE OTHER THAN AS CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE COMMITTEE, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.

THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY AN ORDER OF THE BANKRUPTCY COURT AFTER NOTICE AND A HEARING. THE BANKRUPTCY COURT FOUND THAT THE INFORMATION CONTAINED HEREIN IS ADEQUATE PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE. HOWEVER, THE BANKRUPTCY COURT HAS NOT PASSED UPON THE PLAN, NOR ARE THE DISCLOSURE STATEMENT AND ORDER APPROVING THE DISCLOSURE STATEMENT TO BE CONSTRUED AS APPROVAL OR ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

CREDITORS ARE URGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY IN ORDER TO FORMULATE THEIR OPINION WITH RESPECT TO THE PLAN. HOWEVER, IT IS ESPECIALLY IMPORTANT TO READ THE PLAN ITSELF, FOR THE PLAN IS THE CONTROLLING DOCUMENT.

I. BACKGROUND

1. Name of Debtor:

Unique Ventures Group, LLC

2. Type of Debtor (individual, partnership, or corporation):

The Debtor is a Pennsylvania limited liability company.

3. Debtor's Business Operations and the Receivership:

Unique Ventures Group, LLC currently operates 26 PERKINS[®] RESTAURANTS, and owns 2 closed restaurants, pursuant to certain license agreements (the "License Agreements") between Unique and Perkins & Marie Callender's, LLC d/b/a PERKINS[®] RESTAURANTS (hereinafter "PERKINS[®] RESTAURANTS"). Unique is also a licensee of PERKINS[®] RESTAURANTS' intellectual property and the Perkins Operating System pursuant to the License Agreements. Sixteen of Unique's restaurants are located in Pennsylvania, eleven are located in Ohio and one is located in Western New York. There are approximately 400 PERKINS[®] RESTAURANTS located in 33 states and five Canadian provinces, and Unique is one of PERKINS[®] RESTAURANTS' larger franchisees.

Unique originally purchased the PERKINS[®] RESTAURANTS operations in 2007 for approximately \$38,000,000. Unique financed the acquisition of most of its locations through a

sale-leaseback transaction with a fund run by Spirit Realty Capital. Spirit now owns the real property for 23 of the locations and Unique pays Spirit approximately \$265,000 per month to lease those locations. Additionally, Unique pays Spirit approximately \$28,000 in mortgage payments on 3 locations still owned by Unique that are subject to certain ground leases. Spirit holds a security interest in substantially all of Unique's assets pursuant to the terms of the Spirit Agreements.

In an effort to further expand its profits, Unique acquired the Damon's trademark out of its bankruptcy case. Franchisees of Damon's restaurants are required to pay fees to Unique in the amount of approximately \$75,000 per year. In March 2015, certain Insiders of Unique formed a new business entity, known as Elite Restaurant Group, LP ("Elite"). Originally, the Insiders formed Elite to serve as a transferee of some or all of Unique's assets. Elite is a potential litigation target. Additionally, Unique has a 95% ownership interest in CBK Futures, Inc., an Ohio corporation formed in November 2007. CBK Futures, Inc. currently operates nine Burger King restaurants in Northeast Ohio.

4. Date of Chapter 11 Petition:

February 13, 2017

5A. Events that Caused the Bankruptcy Filing:

Unique's bankruptcy filing is a function of a number of events occurring over the preceding years. Commencing with the purchase of the Damon's trademark, Unique sought additional revenue streams and opportunities to expand. Unfortunately, the purchase of the Damon's trademark proved less profitable than expected and subsequent expansions proved equally disappointing. Furthermore, Unique is required to make almost \$10 million in renovations to its current PERKINS[®] RESTAURANTS locations pursuant to certain of the License Agreements with Perkins. Unique has been unable to make such renovations to date.

As a result of legal disputes and other disagreements amongst Unique's equity holders, an action was commenced in the Court of Common Pleas of Allegheny County, Pennsylvania on February 16, 2016, seeking, among other relief, the appointment of a receiver over the assets of Unique. By Receivership Order dated October 13, 2016, Eric E. Bononi (the "Receiver") was appointed as receiver for Unique. Upon his appointment, the Receiver began to investigate the assets and operations of Unique, as well as various allegations made by the Unique's Insiders regarding the performance and business of Unique. The Receiver discovered that the corporate accounting books were approximately 8 months behind and a significant amount of taxes were seriously delinquent. The Receiver further discovered that Elite conducted no business of its own and that funds flowing through Elite were the revenue, assets, and property of Unique.

On February 13, 2017 (the "Petition Date"), Unique, by the Receiver, filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"), in the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court"). According to the Receiver's declaration, the bankruptcy filing was necessitated by, among other things, the accumulation of substantial tax delinquencies owed to multiple taxing authorities, including obligations owed to the United State Treasury, the

Pennsylvania Department of Revenue and the State of Ohio in the aggregate amount of approximately \$1.8 million. Additionally, Unique had general accounts payable in the amount of approximately \$2,250,000. The Receiver determined that the unpaid tax obligations, combined with the general accounts payable, created a considerable financial challenge to Unique's ability to continue operations, and the filing of the Chapter 11 Case was deemed necessary in order to permit Unique to reorganize its operations, or to liquidate its assets for the benefit of its creditors.

5B. Significant Post-Petition Bankruptcy Events:

After the Debtor filed the Chapter 11 Case, the Debtor continued in its operations under the control of the Receiver as a debtor-in possession while it attempted to reorganize its estate.

On February 22, 2017, the Office of the United States Trustee for the Western District of Pennsylvania (the "U.S. Trustee") filed a Notice of Formation Meeting for the Official Committee of Unsecured Creditors. The formation meeting was scheduled for March 1, 2017. The following creditors were appointed to the seven-member Committee: 3D Acquisitions, LP, Perkins,² Osterberg Refrigeration, Inc., T&D Landscape & Lawn Care, Inc., Cintas Corporation, Access Point, Inc. and Thomas Quality Cleaning. The Committee employed Whiteford, Taylor & Preston, LLP to represent its interests in this case. The Committee has also employed Albert's Capital Services as its financial advisor.

On March 7, 2017, the Bankruptcy Court granted the U.S. Trustee's Expedited Motion for Appointment of Chapter 11 Trustee and Marie Colette Gibbons (the "Trustee") of Ice Miller, LLP was selected to serve as the chapter 11 trustee in this case. The Trustee employed MacDonald, Illig, Jones & Britton LLP to represent her in the Chapter 11 Case. The Trustee also has employed McDonald Hopkins, LLC as special counsel to represent her in the Chapter 11 Case. Additionally, the Trustee has employed Inglewood Associates, LLC as Financial Advisor to the Trustee. Following the appointment of the Trustee, the Receiver turned over operations of the Debtor to the Trustee.

On April 12, 2017, certain insiders of the Debtor filed their Motion to Dismiss Case for Abuse (the "Motion to Dismiss"). The Motion to Dismiss made general allegations regarding to the improvidence of the Debtor's chapter 11 bankruptcy filing, the scope of the Receiver's authority to file the chapter 11 petition, and the interests of the creditors. The Trustee and the Committee objected to the Motion to Dismiss (as well as subsequent amended versions of the motion). On July 3, 2017, the Trustee filed her Motion for Summary Judgment on the objection to the Motion to Dismiss. On August 8, 2017, the Bankruptcy Court entered its Order denying the Motion to Dismiss.

Since her appointment, the Trustee has continued to operate the Debtor during the pendency of the Chapter 11 Case. The Trustee and the Committee have each sought potential purchasers for the Debtor's assets in an effort to facilitate the orderly liquidation of the Debtor as well as explore other restructuring options.

² Perkins has since resigned from the Committee.

6. Anticipated Future of the Company:

As set forth in greater detail below, the Plan contemplates the sale of substantially all of the Debtor's assets. The Plan proposes to appoint a Plan Administrator to, among other things, liquidate the Debtor's remaining assets, reconcile claims against the Debtor, make all distributions under the Plan, and to wind down the Debtor after the Effective Date of the Plan.

7. Summarize all Significant Features of the Plan Including When and How Each Class of Creditor Will Be Paid and What, if Any, Liens Will Be Retained by Secured Creditors or Granted to Any Creditor Under the Plan

The Plan is structured around the Sale of substantially all of the Debtor's Assets, potentially following an auction at which the Debtor's Assets will be sold, subject to higher and better offers (if such offers are made). The prevailing bidder, whose offer is ultimately approved by the Bankruptcy Court, shall be referred to hereinafter as the "Purchaser."

Tentatively, and subject to the outcome of an auction, the Plan provides for the Sale of substantially all of the Debtor's assets to 5171 Campbell Land Co. LLC or its assignee ("Campbell") as set forth in the Campbell APA. Campbell has proposed to purchase the Acquired Assets, including, without limitation, all assets in and related to the Debtor's twenty eight (28) PERKINS[®] RESTAURANTS locations as well as any and all of the Debtor's interests in CBK Futures, Inc. The Sale consideration being offered by Campbell at the time of the filing of the Plan is an amount equal to \$26.245 million, of which an estimated \$21 million³ shall be allocated to the sale/purchase of the Spirit Agreements and real property referenced therein. The balance of the Campbell Purchase Price includes, Cash, the payment of the aggregate amount of Campbell Assumed Liabilities, the payment of Cure Claims, and the Deferred Consideration Note (having a face amount of \$2,000,000 and being payable over three years). A sale to Campbell remains contingent upon certain approvals by PERKINS[®] RESTAURANTS as well as Spirit's agreement to sell the Real Property Designated for Transfer to Campbell. Proceeds from a Campbell Sale shall be distributed in accordance with the priority provisions of the Bankruptcy Code.

In the event a competing bidder (other than Campbell) is ultimately determined by the Bankruptcy Court to be the Purchaser, Holders of Allowed Claims and, if applicable, Equity Interests shall be paid ratably and in accordance with the priority provisions of the Bankruptcy Code from the proceeds of the Sale.

The Plan provides for payment in full of all Administrative and Secured Claims, subject to caps established in connection with Retained Administrative Expense Claims (claims of Professionals). Holders of Allowed General Unsecured Claims will receive a distribution of their ratable share from the available proceeds of the Sale, which would include the Deferred Consideration Note if Campbell is the Purchaser. Holders of Equity Interests will not likely receive a distribution under the Plan absent the submission of a higher and better offer that would pay Holders of Allowed General Unsecured Claims in full. The Claims of

³ This amount includes sums to be allocated to related transactional/settlement costs.

Insiders are Disputed Claims. All Equity Interests will be cancelled without further action by the Debtor upon the Effective Date.

Following the Closing on the Sale, the Plan contemplates the complete liquidation of those remaining Assets (including the Excluded Assets) by a Plan Administrator to be appointed pursuant to the Plan. The Plan Administrator shall be responsible for making distributions to Holders of Allowed Claims, as well as all other administrative tasks necessary for ultimate resolution of the Chapter 11 Case, pursuant to the terms of the Plan and the Plan Administrator Agreement. The Plan Administrator will also be responsible for assessing and authorizing the filing of Causes of Action, which may yield additional funds for the payment of Allowed Administrative Expense Claims and other Allowed Claims in accordance with the priority provisions of the Bankruptcy Code. Distributions otherwise allocable on account of Disputed Claims shall be placed in a Disputed Claims Reserve pending adjudication of the Disputed Claims. Upon the resolution of all Disputed Claims and upon the distribution of all proceeds derived from the Debtor's Assets, the Debtor will be wound down and the Chapter 11 Case will be closed.

The specific treatment of Claims and Equity Interests is set forth in section V below.

- 8. Are All Monthly Operating Statements Current and on File with The Clerk of Court?** Yes X No _____

If Not, Explain:

- 9. Does the plan provide for releases of non-debtor parties? Yes. Specify which parties and terms of release.**

No.

- 10. Identify executory contracts to be assumed or assumed and assigned:**

The Plan provides that on the Effective Date, all Contracts and Leases shall be deemed automatically rejected in accordance with the provisions and requirements of sections 365 and 1123(b)(2) of the Bankruptcy Code, unless any such Contract or Lease: (i) has been previously subject to a Final Order of the Bankruptcy Court authorizing assumption/assignment or rejection, as the case may be, entered prior to the Effective Date; (ii) is the subject of a motion to assume, assume and assign or reject pending as of the Effective Date; or (iii) is listed on a schedule of assumed Contracts and Leases in connection with the Purchaser's APA and/or is a Campbell Acquired Contract. See Plan section 9.1. The Contracts and Leases proposed to be assumed by the Debtor and assigned to Campbell are set forth on Schedule 2.12 to the Campbell APA, a copy of which is attached to the Plan as Exhibit A.

- 11. Has a bar date been set?** Yes X No _____

A Bar Date was set for August 1, 2017 for nongovernmental creditors and August 14, 2017 for all Governmental Units.

12. **Has an election under 11 U.S.C. §1121(e) has been filed with the Court to be treated as a small business?** Yes _____ No X

13. **Specify property that will be transferred subject to 11 U.S.C. § 1146(a).**

Section 7.3 of the Plan provides that pursuant to section 1146(a) of the Bankruptcy Code, the consummation of the transactions contemplated by the Agreement and Plan, including but not limited to the assignment or surrender of any lease or sublease, and the delivery of any deed or other instrument of transfer (including, without limitation, any deeds, bills of sale or assignments executed in connection with any disposition of assets contemplated by the Plan) will be deemed to be in furtherance of or in connection with the Plan and will not be subject to any stamp, real estate transfer, mortgage recording or other similar tax. If the Campbell Sale is approved by the Bankruptcy Court, the Real Property Designated for Transfer on Exhibit D to the Plan shall be subject to 11 U.S.C. § 1146(a).

II. CREDITORS

The Debtor’s Schedules indicate that the total amount of Claims owed to Creditors is \$7,264,603.07, of which \$1,582,798.94 are scheduled as Secured Claims, \$2,745,054.56 are scheduled as Priority Claims and \$2,936,749.57 are scheduled as General Unsecured Claims. The Claims Register maintained by the Clerk of the Bankruptcy Court identifies proofs of claim being filed in the aggregate amount of \$14,356,153.22, of which \$1,626,919.19 are filed as Secured Claims, \$1,990,911.13 are filed as Priority Claims and \$10,738,322.90 are filed as General Unsecured Claims.

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified in the Plan, but the treatment for such unclassified Claims is set forth in Article II of the Plan.

Article III of the Plan designates the following Classes of Claims against and Equity Interests in the Debtor and specifies which of those Classes are (i) Impaired or unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code and (iii) deemed to reject the Plan:

<u>Class</u>	<u>Designation</u>	<u>Impairment</u>	<u>Entitled to Vote</u>
Class 1	Priority Non-Tax Claims	No	No, deemed to accept
Class 2	Spirit Claims	Yes	Yes
Class 3	All other Secured Claims	No	No, deemed to accept
Class 4	General Unsecured Claims	Yes	Yes
Class 5	Equity Interests	Yes	No, deemed to reject

A Claim or Equity Interest is deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class, and is be deemed classified in a different Class to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such different Class.

Classes 2 and 4 are impaired under the Plan and are entitled to vote on the Plan. The Committee is seeking votes to accept the Plan from holders of Claims in these Classes.

III ASSETS

The Debtor has scheduled assets having a stated aggregate value of at least \$3,377,044.38. Certain assets are believed to have value but listed as having an “Unknown” value, including a promissory note due from the purchase of assets of Damon’s Restaurants. The Debtor does not own the vast majority of the real property on which it operates.

It is contemplated that the Debtor will sell substantially all of its assets, excluding, among other things, the promissory note relating to Damon’s Restaurants, Avoidance Actions, related insurance rights and other assets. The assets excluded from the Sale will ultimately be reduced to monetary sums and distributed to Holders of Allowed Claims in accordance with the priority provisions of the Bankruptcy Code.

IV. SUMMARY OF PLAN

THE FOLLOWING IS A SUMMARY OF THE SIGNIFICANT ELEMENTS OF THE PLAN. THIS SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN AND THE COMMITTEE STRONGLY URGES YOU TO READ THE PLAN IN ITS ENTIRETY.

1. Effective Date of Plan:

The Effective Date of the Plan is the Closing Date, a Business Day on or after the Confirmation Date specified by the Plan Proponent on which (i) no stay of the Confirmation Order is in effect, (ii) the conditions to the effectiveness of the Plan specified in section 10.1 of the Plan have been satisfied or waived, (and, if applicable, provided that the stay imposed by Bankruptcy Rule 3020(e) has been waived by the Bankruptcy Court), and (iii) the conditions precedent under the Purchaser’s APA have been satisfied or waived by the applicable party, but in no event later than December 31, 31, 2017, or such later date as agreed to in writing by the Plan Proponent, the Trustee and the Purchaser.

2. Will cramdown be sought? X Yes* ___ No

If Yes, state bar date: August 1, 2017 is the bar date for nongovernmental creditors and August 14, 2017 is the bar date for all governmental units.

***IF ANY CLASS REJECTS THE PLAN, THE PLAN PROPONENT WILL SEEK TO CONFIRM THE PLAN PURSUANT TO THE CRAM DOWN METHOD PROVIDED BY SECTION 1129(b) OF THE BANKRUPTCY CODE. THE TREATMENT AFFORDED CREDITORS IN EACH CLASS IN THE EVENT OF A “CRAM DOWN” WILL BE AS INDICATED HEREIN.**

Section 1129(b) of the Bankruptcy Code permits the Bankruptcy Court to approve the Plan even if one or more classes of impaired claims or interests do not accept the Plan. This is referred to as a cram down. Under section 1129(b), the Bankruptcy Court may confirm the Plan only if it finds that certain circumstances exist. First, the Plan must be accepted by at least one impaired class and must not discriminate unfairly against, and be fair and equitable to, all non-accepting impaired classes. Second, unless all members of a non-accepting, impaired class receive payment in full of their Allowed Claims, no class that is junior in priority to the non-accepting impaired class may receive anything under the Plan.

3. Treatment of Unclassified Claims

a. Treatment of Administrative Expense Claims.

(1) Treatment of Administrative Expense Claims if Campbell is the Purchaser. If Campbell is the Purchaser, other than Retained Administrative Expense Claims and Cure Claims, and except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a different treatment or as otherwise expressly provided for in the Plan, Campbell will on the Effective Date assume all current and not materially past due Administrative Expense Claims and pay each Holder of an Allowed Administrative Expense Claim in Cash in the ordinary course as and when they become due.

(2) Treatment of Administrative Expense Claims if Campbell is not the Purchaser. If Campbell is not the Purchaser, unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Plan Administrator or Purchaser, as applicable, each Holder of an Allowed Administrative Claim (other than of a Professional Claim) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) in the ordinary course following the Effective Date, or (b) if the Administrative Claim is not Allowed as of the Effective Date, within forty five (45) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter.

b. Treatment of Section 503(b)(9) Claims. Holders of Allowed Section 503(b)(9) Claims will be paid in full by the Plan Administrator in Cash within twenty (20) days after the date on which an order Allowing any Section 503(b)(9) Claim becomes a Final Order, or twenty (20) days after the Plan Effective Date if a Final Order was entered prior to Plan Confirmation, or as soon as reasonably practicable thereafter. Section 503(b)(9) Claims are not Administrative Expense Claims to be assumed by the Purchaser on the Effective Date rather they will be paid from the Sale proceeds.

c. Administrative Expense Claim Bar Date. All requests for allowance and payment of Administrative Expense Claims other than Cure Claims, but including Section 503(b)(9) Claims must be filed with the Bankruptcy Court and served in accordance with the Bankruptcy Rules within Ninety (90) days after the later of (i) entry of the Post-Confirmation Order and Notice, or the Effective Date. Administrative Expense Claims that are not timely filed will be disallowed automatically and deemed forever barred, estopped, and enjoined from assertion, and without the need for any objection by the Purchaser or the Plan Administrator or any further notice to or action, order, or approval of the Bankruptcy Court, and are not enforceable against the Purchaser or the Estate, and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Claim.

d. Professional Compensation. All final requests for payment of Professional Fee Claims incurred through and including the Effective Date shall, unless otherwise ordered by the Bankruptcy Court: (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is thirty (30) days after the Effective Date. Unless otherwise agreed to by the Plan Administrator, any Person that fails to File their final application for allowance of compensation for services rendered and reimbursement of expenses incurred by the deadline set forth above, shall be forever barred from asserting such Professional Fee Claim against the Debtor, the Estate, or its property, and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Professional Fee Claim.

In the event that Campbell is the Purchaser, all Professional Fee Claims shall be treated as Retained Administrative Expense Claims, and subject to the caps set forth in section 1.93 of the Plan, shall be paid in such amounts as are approved by the Bankruptcy Court by the Plan Administrator from the proceeds of the Sale. To the extent the amounts of Retained Administrative Expense Claims approved by the Bankruptcy Court exceed the caps set forth in section 1.93 of the Plan, such amounts exceeding the caps may be paid from proceeds from Campbell Excluded Assets, but not from the proceeds of a Sale. For the avoidance of doubt, Professional Fee Claims and/or Retained Administrative Expense Claims are not Administrative Expense Claims to be assumed by Campbell on the Effective Date.

In the event that Campbell is not the Purchaser, all Professional Fee Claims shall be paid in full in such amounts as are approved by the Bankruptcy Court upon the later of (a) five (5) business day following the date upon which the order relating to any such Professional Fee Claim is entered or (b) upon such other terms as may be mutually agreed upon between the Holder of such a Professional Fee Claim and the Plan Administrator.

Objections to Professional Fee Claims, if any, must be filed and served pursuant to the procedures set forth in the Confirmation Order no later than fifteen (15) days after the date that the Person seeking allowance of such Professional Fee Claim Files its final application with the Bankruptcy Court and provides written notice of such application and the objection deadline related thereto in accordance with the procedures set forth in the Confirmation Order, unless otherwise ordered by the Bankruptcy Court.

e. Treatment of Priority Tax Claims. On, or as soon as reasonably practicable after the date a Priority Tax Claim becomes an Allowed Priority Tax Claim, but in no event later than the date that is five (5) years after the Petition Date, a Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement and release of and in exchange for such Allowed Priority Tax Claim, (i) Cash in an amount equal to the aggregate principal amount of the unpaid portion of such Allowed Priority Tax Claim, plus interest on the unpaid portion of such Allowed Priority Tax Claim from the Effective Date through the date of payment at the rate of interest determined under applicable nonbankruptcy law as of the calendar month in which the Confirmation Date occurs, or (ii) such other treatment as such Holder and the Plan Administrator shall have agreed upon in writing; provided, however, that the Plan Administrator shall have the right to pay any Allowed Priority Tax Claim, or any remaining balance of any Allowed Priority Tax Claim, in full at any time on or after the Effective Date without premium or penalty.

Notwithstanding anything to the contrary contained herein or any Proof of Claim filed in this Chapter 11 Case, the Holder of an Allowed Priority Tax Claim shall not be entitled to receive any payment on account of any penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) arising with respect to or in connection with the Allowed Priority Tax Claim. The Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such penalty from the Debtor, the Estate or its property. The penalty portion of all Priority Tax Claims shall be deemed disallowed upon entry of the Confirmation Order, without the need for any Claim objection or further order of the Bankruptcy Court.

f. Fees Under 28 U.S.C. § 1930. All fees payable in the Chapter 11 Case under 28 U.S.C. § 1930, as agreed by the Debtor or as determined by the Bankruptcy Court, will, if not previously paid, be paid in full in Cash on the Effective Date and will continue to be paid by the Plan Administrator as required under 28 U.S.C. § 1930 until such time as an order is entered by the Bankruptcy Court closing the Chapter 11 Case. The Fees under 28 U.S.C. § 1930 are not Administrative Expense Claims to be assumed by the Purchaser on the Effective Date rather they will be paid from the Sale proceeds.

4. Treatment of Classified Claims

The following is a summary of the treatment of Classified Claims and Interests under the Plan:

<u>Class Description</u>	<u>Estimated Amount of Allowed Claims</u>	<u>Estimated Recovery (% of Claim)</u>	<u>Impaired</u>	<u>Treatment</u>
Class 1 - Priority Non-Tax Claims	Less than \$10,000	100%	No	Each Holder of an Allowed Priority Non-Tax Claim shall receive, in full and complete satisfaction, discharge and release of its Priority Non-Tax Claim, (1) Cash in an amount equal to the amount of such Allowed Non-Tax Priority Tax Claim; or (2) such other treatment agreed

<u>Class Description</u>	<u>Estimated Amount of Allowed Claims</u>	<u>Estimated Recovery (% of Claim)</u>	<u>Impaired</u>	<u>Treatment</u>
				upon in writing by such Holder and the Plan Administrator.
Class 2 - Spirit Claims	\$1,000,000	100%	Yes	The Holders of Allowed Class 2 Claims shall receive an amount sufficient to fully satisfy their claims on the Effective Date if the Purchaser is Campbell. In the event Campbell is not the Purchaser, the Spirit Claims will be cured by the Purchaser pursuant to the applicable APA.
Class 3 - Other Secured Claims	\$780,000	100%	No	The Holders of Allowed Class 3 Claims will receive from the Purchaser either: (a) payment pursuant to contract terms; (b) Cash on the Effective Date in an amount equal to such Allowed Class 3 Claims required to be paid pursuant to section 506(b) of the Bankruptcy Code; or (c) surrender of the Collateral of the holder of such Allowed Class 3 Claim within ten (10) days following the Effective Date.
Class 4 – General Unsecured Claims	\$3,600,000	To be determined	Yes	Holders of Allowed Class 4 Claims shall receive a ratable share of any and all proceeds derived from the Sale and Excluded Assets, including, without limitation, Causes of Action, after payment of all Allowed Claims having greater priority pursuant to the priority provisions of the Bankruptcy Code.
Class 5 - Equity Interests	N/A	0%	Yes	Equity Interests will be deemed automatically cancelled and the Holders of Class 5 Equity Interests will receive no distribution under the Plan.

Estimated Claim amounts for certain Classes are based upon a preliminary analysis by the Committee and its financial advisor based upon the Schedules and the Claims filed in the Chapter 11 Case. There can be no assurance that these estimates are correct. The estimated recoveries under the Plan are directly linked to the amount and value of the Allowed Claims and the proposed treatments are possible only if the Plan is approved and the Committee’s estimate of the Claims is determined to be valid by the Bankruptcy Court. The timing of distributions under the Plan, if any, is subject to conditions and determinations described in later sections of this Disclosure Statement.

- a. Treatment of Priority Non-Tax Claims. The Plan classifies Priority Non-Tax Claims as Class 1 Claims. To the extent not otherwise satisfied, each Holder of an Allowed Priority Non-Tax Claim shall receive, in full and complete satisfaction,

discharge and release of its Priority Non-Tax Claim (1) Cash in an amount equal to the amount of such Allowed Non-Tax Priority Tax Claim; or (2) such other treatment agreed upon in writing by such Holder and the Plan Administrator. Payment shall be made as soon as practicable after the later of: (a) the twentieth (20th) Business Day after the Effective Date or (b) the date on which a Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim.

b. Treatment of Spirit Claims. Class 2 consists of Holders of the Spirit Claims relating to the Spirit Agreements. Holders of Class 2 Claims will be paid approximately \$21,000,000 by Purchaser on the Effective Date if that Purchaser is Campbell. The payment of the Spirit Consideration to Spirit shall serve as settlement of the Spirit Claims against the Estate and transfer to Campbell of all of Spirit's interests held in connection with the Debtor, the Spirit Agreements, including, without limitation, Real Property Designated for Transfer. Subject to the payment of the Spirit Consideration and transfer of the Real Property Designated for Transfer, the Debtor shall have no further obligation on account of the Spirit Claims and neither Spirit nor Campbell shall have any further claim against the Estate in that regard. In the event Campbell is not the Purchaser, the Spirit Claims will be satisfied by the Purchaser pursuant to the applicable APA.

c. Treatment of Other Secured Claims. Class 3 consists of the Holders of Other Secured Claims. Except to the extent that a holder of an Allowed Class 3 Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of Allowed Class 3 Claims, holders of Allowed Class 3 Claims will receive from the Purchaser either:

(i) payment pursuant to contract terms;

(ii) Cash on the Effective Date in an amount equal to such Allowed Class 3 Claims required to be paid pursuant to section 506(b) of the Bankruptcy Code; or

(iii) the Collateral of the holder of such Allowed Class 3 Claim within ten (10) days following the Effective Date, in which case the holder of such Allowed Class 3 Claim will have thirty (30) days from the date of surrender of such Collateral to file a General Unsecured Claim representing any deficiency.

e. Treatment of General Unsecured Claims. The Plan classifies General Unsecured Claims as Class 4 Claims. Holders of Allowed Class 4 Claims shall receive a ratable share of any and all proceeds derived from the Sale and Excluded Assets, including, without limitation, Causes of Action, after payment of all Allowed Claims having greater priority pursuant to the priority provisions of the Bankruptcy Code.

f. Treatment of Equity Interests. The Plan classifies Equity Interests as Class 5 Equity Interests and provides that upon the Effective Date, Allowed Class 5 Interests will be deemed automatically cancelled without further action by the Debtor. The Holders of Class 5 Equity Interests will receive no distribution under the Plan.

5. Voting on the Plan and Acceptance

Only Holders of Claims in Classes 2 and 4 will be entitled to vote to reject or accept the Plan. Holders of Equity Interests in Class 5 are Impaired but not entitled to vote on the Plan as such Holders will receive no Distribution under the Plan and are thus deemed to reject the Plan. In order for the Plan to be accepted under the Bankruptcy Code, the Plan has to be accepted by each class of creditors and interest holders whose rights are impaired under the Plan. Each class of claims will be deemed to have accepted the Plan if it is accepted by creditors holding at least two thirds in amount and more than one-half in number of the Allowed Claims or Interests of such class of claims that actually vote. If all the requirements of confirmation of the Plan under the Bankruptcy Code are satisfied, except that the Plan is not accepted by each class of creditors, the Bankruptcy Court may confirm the Plan without acceptance of creditors, under the cram down provisions of section 1129(b) as described herein.

If a Creditor holds a Claim in Class 2 or 4, the Creditor is encouraged to vote to accept or reject the Plan.

- a. How to Vote. IN ORDER FOR A VOTE TO BE COUNTED, THE BALLOT MUST BE PROPERLY COMPLETED IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED BY THE VOTING DEADLINE BY THE COMMITTEE'S COUNSEL AS SET FORTH ON THE BALLOT.
- b. Ballots. Creditors must use only the ballot or ballots sent to them with this Disclosure Statement. If a Creditor has Claims in more than one Class, it should receive multiple ballots. IF A CREDITOR RECEIVES MORE THAN ONE BALLOT THE CREDITOR SHOULD ASSUME THAT EACH BALLOT IS FOR A SEPARATE CLAIM AND SHOULD COMPLETE AND RETURN ALL OF THEM.

IF A CREDITOR IS A MEMBER OF A VOTING CLASS AND DID NOT RECEIVE A BALLOT FOR SUCH CLASS, OR IF SUCH BALLOT IS DAMAGED OR LOST, OR IF A CREDITOR HAS ANY QUESTIONS CONCERNING VOTING PROCEDURES, PLEASE CONTACT:

Whiteford, Taylor & Preston, LLP
Attn: Kelly E. McCauley, Esquire
200 First Avenue, Third Floor
Pittsburgh, PA 15222
T: 412-318-5601
kmccauley@wtplaw.com

6. Will periodic payments be made to unsecured creditors?

Yes. If Campbell is the Purchaser, distributions to Priority Creditors and General Unsecured Creditors holding Allowed Claims will be funded in part by the Deferred Consideration Note. A Plan Administrator, to be appointed pursuant to the Plan, will make interim distributions to Holders of Allowed General Unsecured Claims from proceeds of the Deferred Compensation Note. The Deferred Consideration Note will be issued by the Purchaser, as maker, to the Estate, as payee, for the benefit of Holders of Allowed General Unsecured Claims and shall be paid over the following thirty-six (36) months:

(a) The first payment of five hundred and thousand dollars (\$500,000.00) due on or before the one year anniversary of the Closing;

(b) The second payment of seven hundred and fifty thousand dollars (\$750,000.00) due on or before the second year anniversary of the Closing;

(c) The final payment of seven hundred and fifty thousand dollars (\$750,000.00) due on or before the third year anniversary of the Closing; and

(d) The Deferred Consideration Note shall accrue interest at WSJ Prime Rate plus 1% and shall be paid upon each installment date for interest that has accrued as of that date.

Additionally, the periodic distributions to General Unsecured Creditors will be funded in part by and the liquidation of the Debtor's remaining Assets. The Plan contemplates the complete liquidation of those remaining Assets by the Plan Administrator.

V. MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN

(a) Financial Sources of Plan Distributions.

Distributions under the Plan will be funded from two sources: proceeds from the Sale of the Acquired Assets, and proceeds from the liquidation of Excluded Assets (including litigation proceeds from Causes of Action). A Sale to Campbell will occur on the Effective Date, as the Sale will be approved pursuant to the Plan, the Sale Order and Confirmation Order. A Sale to another Purchaser may occur at another time, subject to the Bankruptcy Court approved Bid Procedures. In either scenario, the Sale proceeds shall be used to implement the Plan and pay or otherwise satisfy Claims against the Estate pursuant to the priority provisions of the Bankruptcy Code. Excluded Assets shall subsequently be liquidated and the proceeds therefrom shall be used to for the same purpose. The Sale will likely provide for certain Contracts, Leases and Claims to be assumed and/or assigned and the payment of related Cure Amounts.

(b) Effectuating the Sale.

The Trustee has filed motions for approval of Bid Procedures and a Sale. The Orders approving those motions will establish the sale procedures and ultimately will result in the Bankruptcy Court approving the Sale and Purchaser. The process provides for the sale of the

Assets “as is, where is,” free and clear of all Liens, Claims, encumbrances, and any and all other interests, except as otherwise provided in the Plan and the applicable asset purchase agreement. The Bid Procedures will provide for an opportunity for the submission of higher or better offers.

On the Effective Date or such earlier date as the Bankruptcy Court may order, the Trustee (or if applicable, the Plan Administrator), and Purchaser, will each execute all documents and take other actions necessary or required to transfer, sell and convey, and where applicable, assume and assign, all of the Acquired Assets to the Purchaser and otherwise effectuate all transactions contemplated under the applicable APA.

(c) Appointment of the Plan Administrator.

On the Effective Date, the Plan Administrator shall be appointed and shall be responsible for implementing the liquidation and wind down of the Debtor contemplated by the Plan, including monetizing or abandoning any assets, pursuing, settling or abandoning all Causes of Action, resolving all Claims and distributing Cash pursuant to the Plan and the Plan Administrator Agreement. By confirmation of the Plan, and pursuant to the Plan Administrator Agreement, the Plan Administrator shall be authorized to take all actions provided for therein and execute all documents necessary to carry out the Plan and to liquidate and wind-down the Estate. Upon the Distribution of all Assets of the Debtor pursuant to the terms of the Plan and the Plan Administrator Agreement, conclusion of the wind down of the Debtor, and following the closing of the Chapter 11 Case, the Plan Administrator may file for the Debtor an appropriate certificate of dissolution and the Debtor shall cease to exist.

V. MANAGEMENT SALARIES

The Plan Administrator shall receive compensation for services rendered and expenses incurred in fulfilling its duties pursuant to the Plan and the Plan Administrator Agreement, including any necessary services rendered and expenses incurred prior to the date that the Plan Administrator Agreement becomes effective. The Plan Administrator shall be compensated at the rate of \$320 per hour. The Plan Administrator shall also be entitled to reimbursement for all reasonable out-of-pocket expenses incurred in connection with this assignment, such as travel, lodging and meals. The compensation and reimbursement of the Plan Administrator’s expenses shall be paid out of the Administrative Fund in the ordinary course of business.

VI. MATTERS AFFECTING PLAN PAYMENTS

The Plan provides that after the Effective Date the Plan Administrator, as successor to the Debtor, Trustee and/or the Committee, shall retain all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal including, without limitation, any adversary proceeding filed. Except as otherwise provided in the Plan, in accordance with section 1123(b)(3) of the Bankruptcy Code, any other Claims, rights, and Causes of Action in that the Debtor may hold against any Entity or Person shall vest upon the Effective Date in the Estate. The Plan Administrator, on

behalf of the Estate, be vested with and may exclusively enforce any and all such claims, rights, or Causes of Action. After the Effective Date, the Plan Administrator shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle or compromise any and all such claims, rights, and Causes of Action without the consent or approval of any third party and without notice to or action, order, or approval of the Bankruptcy Court. Any recovery from the Causes of Action may increase the funds available to distribute to Holders of Allowed General Unsecured Claims. The likelihood of recovery on these causes of action is uncertain.

Unless a Claim or Cause of Action against a Person or Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, all such Claims or Causes of Action are expressly reserved for the Estate and its Beneficiaries for later adjudication by the Plan Administrator (including, without limitation, Claims and Causes of Action not specifically identified or which the Debtor, Trustee or Committee may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor, Trustee or Committee at the time or facts or circumstances which may change or be different from those which the Debtor, Trustee or Committee now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Claims or Causes of Action upon or after the Confirmation or consummation of the Plan (including without limitation, the Disclosure Statement), except where such Claims or Causes of Action have been expressly released in the Plan. In addition, all rights are expressly reserved for the Plan Administrator as of the Effective Date and thereafter, to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

16. Effect of Plan Confirmation

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against, or Equity Interest in, the Debtor and its respective successors and assigns, whether or not the Claim or Equity Interest of such Holder is impaired under the Plan and whether or not such Holder has accepted the Plan.

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to section 105 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until all obligations of the Debtor and the Plan Administrator under the Plan have been performed and the Chapter 11 Case has been closed.

VII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

1. Liquidation Under Chapter 7.

If no chapter 11 plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate the assets of the Debtor. The Committee believes that liquidation under chapter 7 would result in smaller distributions, if any, being made to creditors than those provided for in the Plan because of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals during such liquidation.

The Committee, with the assistance of its professionals, has prepared a Liquidation Analysis, attached hereto as **Exhibit 2**. The Liquidation Analysis is based upon a hypothetical liquidation in a chapter 7 case. The Committee have taken into account the nature, status and underlying value of its assets, the ultimate realizable value of its assets, and the extent to which such assets are subject to the liens and security interests.

The likely form of any liquidation would be the sale of the Debtor's individual assets. Based on this analysis, it is likely that a chapter 7 liquidation of the Debtor's assets would produce less value for distribution to creditors than that recoverable under the Plan. Among other things, a chapter 7 liquidation would prevent the Debtor from closing on the Sale and any alternative sale of such assets would likely be on less favorable terms than are now contemplated under the Plan. In the opinion of the Committee, the recoveries projected to be available in a chapter 7 liquidation are not likely to afford the Holders of Claims as great a realization potential as do the Plan.

2. Alternative Plan of Reorganization.

If the Plan is not confirmed, the Debtor or any other party in interest could attempt to formulate a different plan of reorganization. During the course of negotiation of the Plan, the Committee explored various other alternatives and concluded that the Plan represented the best alternative to protect the interests of creditors, residents and other parties in interest. The Committee has not changed its conclusions.

VIII. FEASIBILITY

In connection with confirmation of the Plan, the Bankruptcy Court must determine that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan. The Plan liquidates the Debtor's assets and distributes them to creditors pursuant to the Plan and Bankruptcy Code.

IX. CONCLUSION AND RECOMMENDATIONS

The Committee urges all creditors entitled to vote on the Plan to vote to accept the Plan and to evidence such acceptance by immediately returning their properly completed ballots to the Committee's counsel as set forth above and on the ballots within the time stated in the notice served with this Disclosure Statement.