EXHIBIT A

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:	:	Chapter 11
Wordsworth Academy, *et al.*,[1]	:	Case No. 17- 14463 (AMC)
Debtors.	:	Jointly Administered

M&T BANK'S AMENDED OBJECTION TO THE DISCLOSURE STATEMENT WITH RESPECT TO THE DEBTORS' JOINT CHAPTER 11 PLAN

M&T Bank ("M&T"), a secured creditor and party in interest, by and through its undersigned counsel, hereby files this amended objection (the "Objection")[2] to the Motion [Docket Entry 337] (the "Motion") filed by Wordsworth Academy ("Wordsworth"), Wordsworth CUA 5, LLC ("CUA 5") and Wordsworth CUA 10, LLC ("CUA 10" and together with Wordsworth and CUA 5, the "Debtors") seeking approval of the Disclosure Statement with Respect to Debtors' Joint Chapter 11 Plan [Docket Entry 336] (the "Disclosure Statement"), which was filed in connection with the Debtors' Joint Chapter 11 Plan [Docket Entry 337] (the "Plan")[23] proposed by Debtors and establishment of solicitation procedures with respect to the Plan. In support of this Objection, M&T states as follows:

I. INTRODUCTION

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Wordsworth Academy (9031); Wordsworth CUA 5, LLC (0983); and Wordsworth CUA 10, LLC (5980). Wordsworth Academy has an address at 3300 Henry Ave., Philadelphia, PA 19129.

[2] This amended objection is filed to correct an administrative error which resulted in the filing of a draft of the original objection on November 3, 2017 [Docket No. 394]. A blackline reflecting changes to the original objection is attached hereto as **Exhibit A**.

[23] Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Disclosure Statement and the Plan.

1. The Debtors' Disclosure Statement fails to satisfy the requirements of section 1125 of the Bankruptcy Code because it does not include adequate information about the Plan sufficient to enable creditors to make an informed decision to vote against or in favor of the Plan. Additionally, this Court should deny the relief sought in the Motion because the Plan is proposed in bad faith and patently unconfirmable as a matter of law. Solicitation of a plan that cannot be confirmed as a matter of law is a fruitless exercise and an unnecessary expenditure of judicial and estate resources. Accordingly, this Court should deny the Motion.

II. KEY FACTS AND PROCEDURAL HISTORY

2. On June 30, 2017 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

3. The Debtors' chapter 11 bankruptcy cases are being jointly administered pursuant to an Order entered by the Bankruptcy Court [Docket Entry 47]. The Debtors' bankruptcy cases have not been substantively consolidated and the Plan does not propose substantive consolidation of the Cases. *See* Disclosure Statement p. 20, § IV(B).

4. The Debtors are acting as debtors-in-possession and operating their businesses as such.

5. An Official Committee of Unsecured Creditors (the "Committee") was appointed in these cases on or about July 14, 2017.

6. Prior to the Petition Date, M&T made a term loan and line of credit available to the Debtors, secured by substantially all of the Debtors' assets. Each of the Debtors is a co-borrower under such facilities. As of the Petition Date, amounts remained due and owing to M&T under the term loan portion of pre-petition indebtedness. The Debtors stipulated and agreed that M&T is a pre-petition secured creditor of each of the Debtors, and as of the Petition

Date, was owed the sum of $4,806,508.01. *See* Siena DIP Order (as hereinafter defined) at ¶ D. The Debtors further stipulated and agreed that, as of the Petition Date, M&T held valid, properly perfected first priority liens on and security interests in all of the Debtors' assets, including all personal property of the Debtors as well as real property commonly known as (1) 100 Camp Hill Road, partly in Springfield Township and partly in Upper Dublin Township, Montgomery County, Pennsylvania (being known as Parcel Numbers 52-00-14044-007 and 54-00-03541-00-5); and (2) Wenner Way, Upper Dublin Township, Montgomery County, Pennsylvania (being known as Parcel Number 54-00-03552-00-3), together with all buildings, structures, improvements, fixtures, equipment, easements, rights appurtenances, leases, rents contract rights erected, situate or installed upon, or used in the operation or maintenance thereof, and the proceeds thereof (collectively, as more particularly described in the Mortgage, the "Real Property"). No party has disputed these stipulated facts and such stipulations became binding upon the Committee, when the Committee's time to challenge such stipulations expired on October 6, 2017. *See* Final Order Authorizing Debtors' Use of Cash Collateral and Granting Related Relief [Docket Entry 198] at ¶ E.

7. M&T filed a proof of claim against each of the Debtors, asserting a fully secured claim against Wordsworth and partially secured claims against CUA 5 and CUA 10. See Claim Nos. 21-23 in Wordsworth bankruptcy case and Claim No. 3 in each of CUA 5 and CUA 10 bankruptcy cases (collectively, the "M&T Proofs of Claim").

8. M&T is a creditor and party in interest and has standing to file this Objection pursuant to 11 U.S.C. § 1109(b) (2006) and Fed. R. Bankr. P. 3017(a).

9. On July 26, 2017, the Bankruptcy Court approved, on a final basis, the Debtors obtaining post-petition financing from Learn and Play, Inc. t/a Play and Learn (Play and Learn")

in the maximum principal amount of $1,500,000 (the "Play and Learn DIP Facility"). *See* Docket Entry 149. The Play and Learn DIP Facility is secured by a second priority lien on the Real Property.

10. On September 20, 2017, the Bankruptcy Court entered an Order (I) Authorizing the Debtors to Obtain Postpetition Financing on a Final Basis, (II) Granting Adequate Protection to M&T Bank; (III) Modifying The Automatic Stay, and (IV) Granting Related Relief, Pursuant To 11 U.S.C. Sections 105, 361, 362, 363(c), (d) & (e), 364(c), 364(d)(1), 364(e) and 507(b) [Docket Entry 300] (the "Siena DIP Order"). The Siena DIP Order authorized the Debtors to obtain debtor in possession financing from Siena Lending, LLC ("Siena") in the aggregate principal amount of up to $5,000,000 (the "Siena DIP Facility"). The Siena DIP Facility is secured by a priming lien on all of the Debtors' personal property and a third priority lien on the Real Property.

11. On October 6, 2017, the Debtors filed the Motion, Plan and Disclosure Statement. On October 11, 2017, the Debtors' filed an amended notice of Motion, setting the deadline to respond to the Motion as November 3, 2017.

12. The Debtors' Plan proposes to pay M&T's claim over a 10 year term, based on a 25 year amortization schedule, at a fixed rate of interest equal to the prime rate plus 1%, as of the date of confirmation of the Plan, with M&T to retain its liens on the Real Property and personal property and other assets to the same extent and priority as exists on the date of confirmation of the Plan. (Disclosure Statement pp. 13-14; Plan § 3.06.)

13. The Plan also proposes that the Debtors will affiliate with PHMC, pursuant to which the Debtor will become subsidiaries of PHMC or its affiliates, and incorporates an Affiliation Agreement entered into between PHMC and Wordsworth prior to the Petition Date.

PHMC also will obtain funding, constituting the Exit Facility, which will be used to repay in full Play and Learn's and Siena's debtor in possession loans and fund certain other payments under the plan. *See* Disclosure Statement p. 18, ¶ E. The Affiliation Agreement provides that PHMC will replace the Debtors' current mortgage financing (*i.e.*, M&T's claim) "as of the Plan Effective Date . . . so long as PHMC's bank has approved the replacement subject to approved collateral to support the real estate mortgage requirements." *See* Plan, Exhibit A (Affiliation Agreement) at §§§ 7(G) and 11(E). However, contrary to the express terms of the Affiliation Agreement, the Plan does not provide for replacement financing of the M&T term loan, comprising M&T's claim.

III. OBJECTIONS TO THE DISCLOSURE STATEMENT

14. The Disclosure Statement should not be approved because it lacks adequate information, sufficient to enable a reasonable hypothetical investor to determine whether to vote in favor of or against the plan, and because it purports to describe a plan that is unconfirmable as a matter of law. Accordingly, the relief sought in the Motion should be denied.

A. The Disclosure Statement Should Not Be Approved Because It Lacks Adequate Information.

15. Prior to soliciting acceptances for a plan of reorganization, a plan proponent must receive bankruptcy court approval of a written disclosure statement containing "adequate information." 11 U.S.C. §1125(b). The term "adequate information" is defined in §1125(a)(1) of the Bankruptcy Code as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records...to make an informed judgment about the plan. . . ."

16. "[D]isclosure requirements are crucial to the effective functioning of the federal bankruptcy system." *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362

(3d Cir. 1996) (citations omitted). "Because creditors and the bankruptcy court rely heavily on the debtor's disclosure statement in determining whether to approve a proposed reorganization plan, the importance of full and honest disclosure cannot be overstated." *Id.* (citations omitted).

17. Overall, a disclosure statement should provide holders of claims and interests with sufficient information to evaluate a plan and make a reasonably informed decision on whether to accept or reject such a plan. *In re Microwave Prods. of Am., Inc.*, 100 B.R. 376, 377 (Bankr. W.D. Tenn. 1989). Accordingly, a proper disclosure statement must clearly and succinctly inform an average unsecured creditor of what it is going to receive under the plan, when it is going to receive it, and what contingencies there are to receiving a distribution. *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

18. Both the legislative history and case law direct bankruptcy courts to employ a flexible approach when determining if a disclosure statement provides "adequate information" by looking at the facts and circumstances of the particular case. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 408-09 (1977); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (finding that under §1125(b) "adequate information will be determined by the facts and circumstances of each case.").

19. Various factors, including the size and complexity of the case, the type of plan proposed, the type of creditors and claims impaired by the proposed plan, and the impaired creditors' access to relevant information from other sources, will determine whether a disclosure statement is adequate. *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001).

20. While not exhaustive, most often, to satisfy the adequate information requirement, descriptions of the following must be included:

a. the events leading to the filing of the petition;

b. a summary of the proposed plan of reorganization;

c. the debtor's available assets and their value;

d. the condition and performance of the debtor while in chapter 11;

e. information regarding claims against the estate;

f. a liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;

g. the accounting and valuation methods used to produce the financial information in the disclosure statement;

h. the collectability of any accounts receivable;

i. any financial, valuation or pro-forma projections that would be relevant in determining whether to accept the plan;

j. information relevant to the risk being taken by the creditors and interest holders;

k. the actual or projected value that can be obtained from avoidable transfers;

l. the existence, likelihood and possible success of non-bankruptcy litigation;

m. the relationship of the debtor with affiliates;

n. the future management of the debtor; and

o. the anticipated future of the company.

See, e.g., In re Dakota Rail, Inc., 104 B.R. 138, 142 (Bankr. D. Minn. 1989); *In re Microwave Prods., Inc.*, 100 B.R. at 378; *In re Diversified Investors Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988); *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170 (Bankr. S.D. Ohio 1988); *In re Reilly*, 71 B.R. 132, 134 (Bankr. D. Mont. 1987); *In re Jeppson*, 66 B.R. 269, 292 (Bankr. D. Utah 1986); *In re Metrocraft Publ'g Serv. Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984); *In*

re Malek, 35 B.R. 443 (Bankr. E.D. Mich. 1983); *see also In re Texas Extrusion Corp.*, 844 F.2d at 1157 (noting list is not exhaustive); *In re Reilly*, 71 B.R. at 134 (same).

21. Courts consistently refuse to approve disclosure statements that lack the information a "reasonable hypothetical investor" would require to make an informed decision about the proposed plan. *See, e.g., Ryan Operations G.P.*, 81 F.3d at 362; *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417-418 (3d Cir. 1988); *In re Route 202 Corp.*, 37 B.R. 367, 375-76 (Bankr. E.D. Pa. 1984); *In re Fiermann*, 21 B.R. 314, 315 (Bankr. E.D. Pa. 1982); *In re Union County Wholesale Tobacco & Candy Co., Inc.*, 8 B.R. 442, 443-444 (Bankr. D.N.J. 1981).

22. Upon examination of the facts and circumstances of the present Bankruptcy Cases and the application of the above factors, is it clear that the Disclosure Statement, in its current form, lacks adequate information to enable creditors to evaluate and make an informed decision about whether to support or reject the Plan.

23. Specifically, M&T submits that the Disclosure Statement must be amended to provide adequate information regarding the following key issues:

a. Status of Approvals Concerning Proposed Affiliation. The Disclosure Statement lacks adequate information concerning the status of the Debtors' and PHMC's efforts to obtain approval of the proposed affiliation, including the status of PHMC's efforts to obtain a "No Objection Letter" from the Pennsylvania Attorney General and/or Orphans Court approval (if necessary);

b. **Proposed Exit Financing**. The Disclosure Statement lacks adequate information concerning the Exit Facility, including, without limitation, the terms of such facility, the liability of the Debtors' with respect to such facility, and whether any of the Debtors' assets

will secure the Exit Facility. The Disclosure Statement also fails to offer any information concerning whether, the Debtors and/or PHMC ~~has~~obtained, or even attempted to ~~secure~~obtain financing to refinance M&T's claim, as required by the Affiliation Agreement.

c. Treatment of M&T's Claim. The Debtors are each jointly and severally liable to M&T for all amounts due and owing to M&T. The Disclosure Statement treats M&T's claim as a fully secured Class 2 Claim. However, since the Plan does not provide for substantive consolidation of the Debtors, the Disclosure Statement should be amended to reflect that a portion of M&T's claim against CUA 5 and CUA 10 is unsecured. Additionally, the description of unsecured claims against CUA 5 and CUA 10 (*i.e.*, Class 5B and Class 5C) should be amended to reflect the value of M&T's unsecured claim, the estimated aggregate allowed amount of the unsecured claims in such classes and the estimated percentage recovery for all unsecured creditors. At the very least, the Disclosure Statement should be amended to reflect M&T's position concerning the classification of claims, due to the significant impact that the classification of M&T's claims may have on other unsecured creditors.

d. Priority of M&T's Liens on Personal Property. The Disclosure Statement lacks adequate information concerning the priority of M&T's liens with respect to the Debtors' personal property collateral from and after the Plan Effective Date. M&T's liens currently are junior in priority only to the liens in favor of Siena, granted pursuant to the Siena DIP Order. ~~It is unclear The language in priority of M&T's~~ The Disclosure Statement provides that M&T will retain its liens ~~with respect to~~on the Real Property and personal property and other assets to the same extent and priority as exists on the date of confirmation of the Plan. Disclosure Statement pp. 13-14; *see also* Plan § 3.06. The language concerning M&T's liens after Plan confirmation is vague and ambiguous. Such language, coupled with the lack of

adequate information concerning the Exit Facility, renders it impossible for M&T to determine the actual priority its of its liens on the Debtors' assets from and after confirmation of the Plan.

e. **The Projections are Not Sufficiently Detailed**. The projections are not sufficiently detailed to enable creditors to make an informed decision as to the financial viability of the Plan and the Debtors' future operations and resulting financial condition. The projections are monthly for a period of 6 months and then provided on an annual basis. More troubling, however, is the lack of information in the Disclosure Statement and Plan concerning the sources of revenue for the Debtors, including the current and projected status of the Debtors' various contracts with the City and Philadelphia School District, among others, and whether the Debtors' contract counterparties are supportive of the proposed affiliation with PHMC. The schedule of executory contracts and unexpired leases that the Debtors propose to assume, does not appear to include any revenue generating contracts. *See* Plan Schedule 6.02. Finally, the Debtors make reference to material assumptions which are an integral part of the Projections being listed on Appendix B to the Plan; however, no such assumptions are included in Appendix B to the Plan. See Disclosure Statement p. 40 at ¶ VII(E), p. 44-45 at ¶ IX(A).

f. **The Debtors' Relationship with PMHC.** The Disclosure Statement fails to fully disclose the relationship between the Debtors and PMHC both before and after confirmation. It is disclosed that the Debtors will become subsidiaries of PMHC, but it is not disclosed what consideration or "new value" is being provided or paid by PMHC for PMHC's ownership interest in the Debtors, if any, and how the Debtors intend to comply with the absolute priority rule given that unsecured creditors will not be paid in full.

B. The Disclosure Statement Should not Be Approved because it Describes a Plan that Cannot Be Confirmed as a Matter of Law.

24. Where a plan is defective on its face such that confirmation is impossible, courts generally agree that the disclosure statement ~~should~~need not be ~~disseminated~~approved for dissemination and a confirmation hearing should not be scheduled. *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012) (concluding "bankruptcy court may address the issue of plan confirmation where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the disclosure statement is patently unconfirmable"); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) (citing *In re Cardinal Congregate I,* 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); *In re Monroe Well Service, Inc.*, 80 B.R. 324 (Bankr. E.D. Pa. 1987); *In re Pecht*, 57 B.R. 137 (Bankr. E.D. Va. 1986)); *see also In re Market Square Inn*, 163 B.R. 64, 68 (Bankr. W.D. Pa. 1994) ("Where it is clear that a plan of reorganization is not capable of confirmation, it is appropriate to refuse the approval of the disclosure statement.") (citations omitted). "Such an exercise of discretion is appropriate because undertaking the burden and expense of plan distribution and vote solicitation is unwise and inappropriate if the proposed plan could never legally be confirmed." *In re Phoenix Petroleum Co.*, 278 B.R. at 394 (citations omitted).

1. The Plan Does Not Satisfy § 1129(a) Of The Bankruptcy Code; Thus, The Disclosure Statement Should Not Be Approved.

25. In order for a debtor to confirm a plan of reorganization, each of the requirements set forth in § 1129(a) must be satisfied. *In re Dupell*, No. 99-10561, 2000 Bankr. LEXIS 118, at *17-*18 (Bankr. E.D. Pa. Feb. 15, 2000) (citing *In re Adkisson Village Apartments of Bradley County, Ltd.*, 133 B.R. 923, 925 (Bankr. S.D. Ohio 1991)) ("The provisions of § 1129(a) of the Bankruptcy Code are mandatory and the Court must find that all have been met prior to

confirming a proposed plan of reorganization."). The Plan cannot satisfy several of the requirements set forth in § 1129(a). Therefore, the plan cannot be confirmed and the Disclosure Statement should not be approved.

26. The Plan suffers from the following fatal defects, which render confirmation under § 1129(a) of the Bankruptcy Code impossible:

a. The Plan Improperly Classifies M&T's Claims Against CUA 5 and CUA 10 (11 U.S.C. §§ 1122, 1129(a)(1).

The Plan does not properly classify M&T's Claims against CUA 5 and CUA 10 because such claims are partially secured and partially unsecured. Each of the Debtors is a borrower under the terms of the prepetition loan documents among the Debtors and M&T, evidencing M&T's claim. *See* M&T Proofs of Claim. Therefore, by not seeking substantive consolidation, the Plan improperly limits recourse to one debtor (Wordsworth), even though M&T has claims against all of the Debtors.

b. The Plan is not Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Plan has not been proposed in good faith, as required under ~~Section~~section 1129(a)(3) of the Bankruptcy Code because it is contrary to the Affiliation Agreement dated June 26, 2017, by and among Wordsworth Academy and PHMC, which is incorporated by reference and attached to the Plan. Pursuant to ~~section~~sections 7(G) and 11(E) of the Affiliation Agreement, the parties agreed to replace Wordsworth's current mortgage financing (*i.e.*, the prepetition M&T Bank term loan facility). M&T acted in reliance upon the provisions in the Affiliation Agreement and the Debtor's statements that M&T Bank would be paid in full in connection with any plan, which influenced M&T's strategy and actions in the Bankruptcy Case. Not only does the Plan contradict the Affiliation Agreement attached thereto, the Debtors' departure from and simultaneous reliance upon the Affiliation Agreement means that the Plan is not proposed in good faith.

c. The Plan is not in the Best Interest of ~~the~~ Creditors. The Debtor cannot prove that the Plan is in the "best interests" of all creditors as required by § 1129(a)(7) of the Bankruptcy Code. In order to satisfy the best interests of the creditors test under § 1129(a)(7) of the Bankruptcy Code, the Debtor must prove that the Plan provides all creditors with an amount greater than or equal to the amount such creditor would receive in a liquidation of the debtor under chapter 7 of the Bankruptcy Code. *See, e.g., In re Oakwood Homes Corp.*, 449 F.3d 588, 598 (3d Cir. 2006). According to the Debtor's Liquidation Analysis, the liquidation value of the Debtor's total assets ($11,916,670) is greater than the total value of the secured debt and liquidation/ administrative expenses ($10,948,127). *See* Disclosure Statement, Appendix C (Liquidation Analysis). Thus, if the case were liquidated under chapter 7, M&T's claim would be paid in full now. Given the treatment of M&T's claim and the uncertainty of the Debtors' continued source of revenue and future financial viability, as described herein, there is no certainty that the Debtors' speculative projections will prove true. Consequently, the Debtors cannot demonstrate that the Plan is in the best interest of all creditors and that, under the Plan, the Lenders would receive at least as much as in a liquidation scenario.

d. The Plan is not Feasible (11 U.S.C. § 1129(a)(11)). The Plan does not satisfy the feasibility requirement set forth in § 1129(a)(11). Section 1129(a)(11) requires that "[c]onfirmation 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." 11 U.S.C. § 1129(a)(11). Here, the Plan is not feasible because the Plan lacks information concerning how the Debtors will pay M&T's claim, on the proposed terms, including information about ongoing revenue sources and how, after 10 years, the Debtors will be able to pay the balloon payment due under the Plan.

In evaluating feasibility, courts must consider several factors including the debtor's capital structure, earning power, management capabilities; management continuity; economic conditions; and any matters related to likelihood of success to enable performance under the Plan. *In re Calvanese*, 169 B.R. ~~at 109 (citing *In re Temple Zion*, 125 Bankr. 910, 915~~104, 109 (Bankr. E.D. Pa. ~~1991~~1994). The feasibility analysis, therefore, requires bankruptcy courts to determine whether the events required to be done after confirmation, can actually be done as a practical matter based upon the facts of the debtor's case. *In re Holley Garden Apartments*, 238 B.R. 488, 494 (Bankr. M.D. Fla. 1999) (citing *In re Clarkson*, 767 F.2d 417, 420 (11th Cir. 1985)). Thus, to avoid a debtor relying on a reorganization plan to delay an inevitable default, bankruptcy courts require more than mere speculation about the source of funding for a debtor's plan of reorganization. *In re Dupell*, 2000 Bankr. LEXIS 118, at *22 (Bankr. E.D. Pa. Feb. 15, 2000).

27. Moreover, in the case of a plan that includes deferred payments over time with a future balloon payment, courts have found that such balloon payment may render the debtor's reorganization plan unfeasible. *See In re 625 Corp.*, 228 B.R. 758, 761 (Bankr. M.D. Fla. 1998) ("It is seriously problematical that the Debtor would never be able to come up with the lump sum balloon payment which will become due at the end of the term."); *In re Cherry*, 84 B.R. 134, 138-39 (Bankr. N.D. Ill. 1988) (finding plan not feasible where debtor failed to demonstrate a reasonable prospect of success for projected income or contingent personal injury settlement required to fund balloon payment). While a reorganization plan that includes a balloon payment does not automatically fail to satisfy the Bankruptcy Code's feasibility requirement, there must exist "some basis to conclude that the funds will be available" when due. *In re Dupell*, 2000 Bankr. LEXIS 118, at *22 (Bankr. E.D. Pa. Feb. 15, 2000) (citing *In re Crosscreek Apts., Ltd.*,

213 B.R. 521, 524 (Bankr. E.D. Tenn. 1997))); *but see In re Eddington Thread Mfg. Co.*, 181 B.R. 826 (Bankr. E.D. Pa. 1995) (finding lack of a guaranty as to refinancing required in the future is not fatal to reorganization plan)).

28. The Debtors fail to offer any concrete information concerning current and revenue streams, let alone information concerning how M&T's claim will be paid when it reaches maturity 10 years from now. In fact, the Debtors' projections do not extend beyond June 2022, which is more than 5 years before the proposed expiration of the repayment term for M&T's claim. Because the Plan is wholly devoid of information upon which to conclude that that the Debtors will not fail again financially, the Plan is not feasible and cannot be confirmed.

2. The Debtor Cannot "Cramdown" Confirmation Of The Plan In Accordance With § 1129(b); Thus, The Disclosure Statement Should Not Be Approved.

29. ~~27.~~ M&T's claim is impaired and M&T will not vote in favor of the Plan. Accordingly, the Debtors cannot satisfy the requirement in § 1129(a)(8) of the Bankruptcy Code and the only ~~the only~~ remaining possibility for confirmation is through the judicial "cramdown" provisions set forth in § 1129(b) of the Bankruptcy Code. The Plan cannot be confirmed over M&T's objection because the Debtors cannot demonstrate that the Plan (i) does not unfairly discriminate; and (ii) is "fair and equitable." See 11 U.S.C. §1129(b)(1).

30. ~~28.~~ In the case of an impaired secured creditor who rejects a plan, a debtor may seek confirmation of its plan notwithstanding such rejection only by complying with one of the three options under § 1129(b)(2) of the Bankruptcy Code. The Debtor cannot meet any of the "cramdown" provisions of § 1129(b)(2) of the Bankruptcy Code; therefore, the Debtor cannot confirm the Plan over the objection of the Lenders.

31. ~~29.~~ Section 1129(b)(2)(A) of the Bankruptcy Code provides that a secured creditor must either (i) retain its liens in the debtor's property and receive deferred cash payments totaling the present value of its allowed claim as of the effective date; (ii) receive a lien on the proceeds of any sale of property subject to the lien of the secured creditor; or (iii) receive the "indubitable equivalent" of the secured creditor's claim, in order to confirm a plan over the objection of an impaired secured creditor. 11 U.S.C. § 1129(b)(2)(A).

32. ~~30.~~ The Plan contemplates payment of M&T over 10 years through deferred cash payments, with the final payment (estimated by M&T to be in excess of $3.5 Million, and approximately 70% of the claim) due nearly 8 years after the current scheduled maturity date of April ~~2020.~~2020 (under the prepetition loan documents between M&T and the Debtors). While the Bankruptcy Code permits secured creditors to be paid over time through deferred cash payments, such deferred cash payments must equal the present value of such creditors' claims, as of a plan's effective date. 11 U.S.C. § 1129(b)(2)(A)(i)(II). The Plan fails to establish that the proposed fixed interest rate (of prime plus 1%, as of the date of confirmation of the Plan) results in M&T receiving ~~the~~ the present value of its allowed secured claim. *See, e.g.*, *Bank of Montreal v. Official Committee of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 568 (6th Cir. 2005); *Momentive Performance Materials Inc. v. BOKF, NA (In re MPM Silicones, L.L.C.)*, ~~(2d Cir. Oct. 20, 2017)~~*Apollo Glob. Mgmt., LLC v. Bokf, NA (In re MPM Silicones, L.L.C.)*, Nos. 15-1682 (L), 15-1824 (CON), 15-1771, 2017 U.S. App. LEXIS 20596, *23-26 (2d Cir. Oct. 20, 2017). The Disclosure Statement lacks information concerning the Debtors' position with respect to whether an efficient market rate of interest exists and, if so, the rate of corresponding market rate of interest. Accordingly, the Debtors' inclusion of a formulaic "prime + 1.0%" rate of interest is improper. Assuming, arguendo, the formulaic

approach is proper, the risk premium of 1.0% is insufficient to ensure M&T receives the present value of its allowed secured claim.

33. ~~31.~~ Moreover, even if the interest rate were found adequate (which is not conceded), where, as here, junior creditors will be paid before M&T, the Plan unfairly shifts too much risk from such junior creditors to M&T. *See In re Ellen J. Calvanese*, 169 B.R. 104, 112-14 (Bankr. E.D. Pa. 1994) ("If the [property] cannot be sold for an amount equaling the full amount of [the secured creditor's claim], it does indeed seem unfair that junior creditors already will have received cash payments on what has turned out to be unsecured claims prior to [the secured creditor]"); *see also Aetna Realty Investors v. Monarch Beach Venture, Ltd. (In re Monarch Beach Venture, Ltd.)*, 166 B.R. 428, 436 (C.D. Cal. 1993) ("This Court holds that, to be fair and equitable, a plan of reorganization cannot unfairly shift the risk of a plan's failure to the creditor."); *In re Consul Restaurant Corp.*, 146 B.R. 979, 989 (Bankr. D. Minn. 1992) ("The concept of fair and equitable involves more than an application of a mechanical calculation of absolute priority based on distribution of property valued abstractly. When the proposed distribution would substantially shift the risk of failure of the plan from a junior class to a senior dissenting class for no legitimate purpose, the plan is not fair and equitable to the dissenting class."); *In re Miami Center Assocs., Ltd.*, 144 B.R. 937, 942 (Bankr. S.D. Fla. 1992); *In re EFH Grove Tower Assocs.*, 105 B.R. 310, 314-15 (Bankr. E.D.N.C. 1989) (rejecting debtor's plan for imposing too much risk on creditor and stating that debtor would have "presented a stronger case if it had been willing to assume more of the risk"); *In re McCarty*, 69 B.R. 377, 378 (Bankr. M.D. Fla. 1987) (finding that secured creditor "is entitled to the benefit of its bargain and cannot be forced to finance the debtor's plan of reorganization")). Accordingly, the Plan fails to meet

the judicial cramdown requirements set forth in 11 U.S.C. § 1129(b)(2)(A)(i) and such subsection cannot be used as a basis for confirmation over M&T's objection.

34. ~~32. Since the~~The Plan contemplates that the Debtors will remain in possession of all their assets and real estate and does not contemplate a sale under § 363(k). Accordingly, the Debtors cannot rely on section 1129(b)(2)(A)(ii) to cramdown the Plan over M&T's objection.

35. ~~33.~~ The Debtors' only remaining means of achieving judicial cramdown is to provide secured creditors with the "indubitable equivalent" of their claims. *See* 11 U.S.C. § 1129(b)(2)(A)(iii). The Plan does not provide M&T with the indubitable equivalent its claims. To satisfy the "indubitable equivalent" standard, bankruptcy courts must consider whether the claim of the secured creditor is compensated and the likelihood that the creditor will receive the payments proposed. *In re Atlanta So. Bus. Bank Ltd.*, 173 B.R. 444, 448 (Bankr. N.D. Ga. 1994). "[P]rovision of a payment stream with a present value of less than the allowed amount of the claim will not suffice." ~~7-1129~~ COLLIER ON BANKRUPTCY ~~15th Edition Rev. P 1129.05~~ ¶ 1129.04 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (citing 124 Cong. Rec. 32,407 (1978) ("present cash payments less than the secured claim would not satisfy the standard because the creditor is deprived of an opportunity to gain from a future increase in value of the collateral") (statement of Rep. Edwards); *id.* at 34,007 (statement of Sen. DeConcini)). "Thus, if a plan proposes a below market interest rate for a deferred stream of payments equal to the allowed amount of the claim, not only ~~with~~will the treatment fail clause (i), but it will fail clause (iii) as well." ~~7-1129 Collier on Bankruptcy P 1129.05, n. 38 (15th Ed. Rev.).~~*Id.* at n. 39.

36. ~~34.~~ Furthermore, Plan does not provide for the assumption of the prepetition Loan Documents between M&T and the Debtors. The Loan Documents provide certain protections to M&T and enable M&T to recover fees and costs (including attorneys' fees) incurred in

connection with the exercise of its rights and remedies under the Loan Documents. Termination of the prepetition Loan Documents will deprive M&T of negotiated rights under the prepetition loan documents between M&T and the Debtors. As such, M&T is not afforded the "indubitable equivalent" of its claim. Through the proposed treatment of M&T's claim under the Plan, the Debtors unfairly and unreasonably expect M&T to bear the risk of the Debtors' future financial failure (which must be assumed due to the lack of any information or projections to the contrary), for an extended period of time, without adequately being compensated for such risk and afforded the benefit of the terms under the prepetition loan documents between M&T. Accordingly, M&T is not afforded the indubitable equivalent of its claim and the Plan cannot be confirmed under § 1129(b)(2)(A)(iii).

37. ~~35.~~ Finally, with respect to the unsecured portion of M&T's claims against CUA 5 and CUA 10, the Plan also cannot be crammed down because it violates the absolute priority rule set forth in ~~Section~~section 1129(b)(2)(B) of the Bankruptcy Code. Due to the amount of M&T's unsecured claims against CUA 5 and CUA 10 ($1,621,884.01 and $2,985,549.01, respectively), M&T holds more than 2/3 in amount of the claims in Class 5B and 5C. *See* M&T Proofs of Claim; Disclosure Statement at pp 9-10, estimating amount sof general unsecured claims against CUA 5 and CUA 10 as $13,000 and $600, respectively. As noted above, M&T will not vote in favor of the Plan, therefore such classes will be deemed to have rejected the Plan. Therefore, to confirm the Plan, the Debtors must also satisfy section 1129(b)(2)(B) of the Bankruptcy Code, which they cannot do.

38. ~~36.~~ The Plan does not provide for M&T to receive property equivalent to the value of M&T's unsecured claims against CUA 5 and CUA 10. *See* Disclosure Statement pp. 9-10 (estimating 5.4% recovery for unsecured creditors, without accounting for M&T's unsecured

claims). Therefore, ~~Section~~section 1129(b)(2)(B) of the Bankruptcy Code requires that the Debtor comply with the "absolute priority rule," which mandates that the "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property . . . ." 11 U.S.C. § 1129(b)(2)(B). Here, the Plan violates the absolute priority rule because the Debtors seek to retaining existing ownership and membership interests, or to transfer those interests for little, if any, consideration, without paying unsecured creditors in full. Accordingly, the Plan cannot be confirmed for this additional reason.

39. ~~37.~~ As proposed, the Plan is not confirmable under either 11 U.S.C. § 1129(a) or 11 U.S.C. § 1129(b). The fatal defects on the face of the Plan render dissemination of the Disclosure Statement and a confirmation hearing unnecessary under the circumstances.

IV. RESERVATION OF RIGHTS

40. ~~38.~~ M&T is continuing to review the Disclosure Statement and reserves the right to raise additional objections to the Disclosure Statement.

41. ~~39.~~ M&T reserves and preserves all of its objections to the confirmability of the Plan. M&T further reserves and preserves all of its objections to confirmation of the Plan which is unacceptable to M&T.

WHEREFORE, based on the foregoing, M&T respectfully requests that the Court sustain the Objection and deny the Motion to approve the Disclosure Statement, and grant such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

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