

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MASSACHUSETTS

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In Re:	)	
ROBERT J. SPENLINHAUER	)	Chapter 11
Individually and as Trustee and Beneficiary	)	Case No. 13-17191-JNF
of RJS Realty Trust, Trustee and Beneficiary)	)	
of C.C. Canal Realty Trust, Trustee and	)	
Beneficiary of Classic Auto Realty Trust	)	
Debtor	)	
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SIXTH AMENDED DISCLOSURE STATEMENT

On December 16, 2013, the Debtor filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code, said petition being filed in the United States Bankruptcy Court for the Eastern District of Massachusetts (hereinafter the "Court"). On September 8, 2014, the Debtor filed a Plan of Reorganization and a Disclosure Statement with this Court. On December 15, 2014, the Debtor filed a First Amended Plan of Reorganization and First Amended Disclosure Statement with this Court. On October 5, 2015, the Debtor filed a Second Amended Plan and a Second Amended Disclosure Statement. On or about January 5, 2016, the Debtor filed a Third Amended Plan and a Third Amended Disclosure Statement. On January 27, 2016, the Debtor filed a Fourth Amended Plan and a Fourth Amended Disclosure Statement. On August 18, 2016, the Debtor filed a Fifth Amended Plan of Reorganization and a Fifth Amended Disclosure Statement. On October 24, 2016, the Debtor filed a Sixth Amended Plan of Reorganization (the "plan") and a Sixth Amended Disclosure Statement (the "Disclosure Statement").

Pursuant to 11 U.S.C. 1125, the Debtor must provide all known creditors with a

Disclosure Statement, which has been approved by the Court, after notice and a hearing. The within Disclosure Statement should be reviewed carefully by each and every party in rendering a determination whether to accept or reject the Plan.

NO REPRESENTATIONS CONCERNING THE DEBTOR PARTICULARLY CONCERNING THE VALUE OF HIS PROPERTY, ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATION MADE TO SECURE ACCEPTANCE OF THE PLAN WHICH IS OTHER THAN AS CONTAINED IN THE DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY ANY CREDITOR. INFORMATION CONTAINED HEREIN AND THE EXHIBITS ANNEXED HERETO HAVE NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THE RECORDS KEPT BY THE DEBTOR ARE NOT WARRANTED OR REPRESENTED TO BE WITHOUT ANY INACCURACY OR OMISSION. HOWEVER, EVERY EFFORT HAS BEEN MADE TO BE ACCURATE AND COMPLETE.

#### ARTICLE I: PLAN DEFINITIONS

ADMINISTRATIVE CLAIM means a claim for a cost or expense of administration of the Debtor under Sections 503(b) and 507(a)(1) of the United States Bankruptcy Code that is allowed by a final order of the Bankruptcy Court.

ALLOWED means with respect to any Claim:

- (1) A Claim that has been listed by the Debtor in his Schedules and (a) is not listed as disputed, contingent or unliquidated, and (b) is not a Claim for which a proof of claim has been filed;
- (2) A Claim for which a timely proof of claim has been filed by the Bar Date and (i) no

objections to the claim have been filed by the applicable claims objection deadline, or (ii) if an objection has been filed, the Claim has been allowed in whole or in part by a Final Order;

- (3) Any Claim allowed under the Plan in accordance with a Final Order or the order confirming the Plan.

BANKRUPTCY CODE means Title 11 of the United States Code, (Bankruptcy Abuse Prevention and Consumer Protection Act – BAPCPA) as is now in effect or hereafter amended.

BANKRUPTCY RULES means the Rules of Bankruptcy Procedure, as amended, and such local rules of the United States Bankruptcy Court for the District of Massachusetts, as are applicable.

BAR DATE means May 2, 2014, the date set by an order of the Bankruptcy Court as the last date for asserting claims against the Debtor.

BOA means Bank of America and its successors and assigns.

CHAPTER 11 TRUSTEE means Lynne F. Riley, Esq.

COOPERATIVE BANK means The Cooperative Bank of Cape Cod and its successors and assigns.

CLAIM means any right to payment from the Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or any right to an equitable remedy for breach of performance if such breach gives rise to a payment from the Debtors, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

CONFIRMATION means the signing of the Confirmation Order of this Plan or any amended plan by the Bankruptcy Court.

CONFIRMATION DATE means the date on which the Clerk of the Bankruptcy Court enters the order of Confirmation on the docket.

COURT is defined as the United States Bankruptcy Court for the Eastern District of Massachusetts.

DEBTOR is defined as Robert J. Spenlinhauer.

DISBURSING AGENT is defined as Gary W. Cruickshank, Esq.

DISPUTED UNSECURED CLAIM means, respectively, an Unsecured Claim against the Debtor as to which an objection has been or may be timely filed by any party in interest and which objection, if timely filed, has not been withdrawn on or before any date fixed for filing such objection by the Plan or Order of the Bankruptcy Court, and has not been denied by a Final Order. To the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Disputed Claim only to the extent of the objection. Prior to the time that an objection has been or may be timely filed, for the purposes of this Plan, a Claim shall be considered a disputed claim to the extent that the amount of the Claim specified in the proof of claim exceeds the amount of the Claim scheduled by the Debtor as other than disputed, contingent or unliquidated.

D.O.R. means the Commonwealth of Massachusetts, Department of Revenue.

EFFECTIVE DATE means the first business day that is fifteen (15) days after the Confirmation Date and on which date no stay of the Confirmation Order is in effect.

FILING DATE is defined herein as December 16, 2013.

FINAL ORDER means an order or judgment of the Bankruptcy Court as entered on the docket that has not been reversed, stayed, modified or amended and as to which the time to appeal, petition for certiorari, or seek reargument or rehearing has expired and as to which no

appeal, reargument, petition for certiorari, or rehearing is pending or as to which any right to appeal, reargue, petition for certiorari or seek rehearing has been waived in writing in a manner satisfactory to the Debtor, and if an appeal, reargument, petition for certiorari, or rehearing thereof has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed or from which the reargument or rehearing was sought, or certiorari has been denied, and the time to take any further appeal or to seek certiorari, or further reargument or rehearing has expired.

FIRST CITIZENS means First Citizens Federal Credit Union and its successors and assigns.

HINGHAM REAL ESTATE means the commercial real estate located at 90 and 90A Industrial Park Road, Hingham, Massachusetts.

I.R.S. means the Internal Revenue Service.

KIA means Kia Finance.

MASHPEE REAL ESTATE means 64 Industrial Drive, Mashpee, Massachusetts.

MILTON REAL ESTATE means the Real Estate located at 172 Old Farm Road, Milton, Massachusetts.

NET PROCEEDS means the proceeds of any sale of property, less the aggregate amount of any secured claims, in their order of priority, and minus (1) the costs of selling the property, including but not limited to professional fees, (2) taxes, including capital gains, (3) accrued and unpaid real estate taxes and municipal liens, and (3) closing costs and other usual and ordinary settlement charges.

NORWAY means Norway Savings Bank and its successors and assigns.

OSTERVILLE REAL ESTATE means residential real estate located at 828 Seaview

Avenue, Osterville, Massachusetts, which is the present residence of the Debtor.

PLAN means the within Sixth Amended Plan of Reorganization or any amended plan of reorganization which is filed by the Debtor and then confirmed by the Court.

PNC means PNC Bank and its successors and assigns.

PROMISSORY NOTE is the note due to the Debtor from Thomas McKay relative to the sale of the 4160 Commandee Boat, which note will pay the Debtor \$2,500.00 per month until 2017.

ROCKLAND TRUST means Rockland Trust Company and its successors and assigns.

SANDWICH REAL ESTATE consists of the real estate located at 13 Great Hill Road, Sandwich, Massachusetts.

SECURED CLAIM means a Claim that is secured within the meaning of Section 506(a) of the Bankruptcy Code.

SUTHERLAND means Sutherland Asset I, LLC and its successors and assigns.

TD means TD Bank.

UNSECURED CLAIM means a Claim that is not secured by a valid and enforceable lien against property of the Debtor.

VW CREDIT means VW Credit, Inc. and its successors and assigns.

## ARTICLE II: CLASSIFICATION AND TREATMENT OF CLAIMS

CLASS 1: consists of the secured claim asserted by Cooperative Bank, which entity holds a first mortgage against the Sandwich Real Estate. The claim of the Cooperative Bank is not impaired and is not eligible to vote.

**Treatment.** In full and complete satisfaction of the Cooperative Bank Class 1 Allowed

claim, Cooperative Bank shall receive the following (1) Reinstatement of Cooperative Bank's Allowed Class 1 Claim under the Debtor's pre-petition loan with Cooperative Bank, such that Cooperative Bank's legal, equitable and contractual rights are unaltered; and (2) Payment under the terms of Cooperative Bank's prepetition loan documents by the Debtor post confirmation. Loan payments to Cooperative Bank will be made directly by the Debtor post-confirmation. Any pre-confirmation arrears will be paid within fifteen (15) days of the Effective Date by the Disbursing Agent. To the best of the knowledge of the Debtor, there are no arrearages on the Class I claim. The principal balance on the Class I claim is \$324,710.00 as of September 16, 2016.

**Lien.** Cooperative Bank shall maintain its lien upon the Sandwich Real Estate to secure payment of its Allowed Class 1 Claim. Upon payment in full of the Cooperative Bank Class 1 Allowed Claim, all liens securing the Allowed Cooperative Bank Class 1 Claim shall be deemed canceled, discharged and released, and the holder of the Allowed Cooperative Bank Class 1 Claim shall deliver to the Debtor all mortgage discharges and other documents necessary to effect the discharge and the release of Cooperative Bank's lien.

CLASS 2: consists of the secured claim held by First Citizens, which holds a lien on a 2011 Chevrolet Corvette Coupe. Payments on the motor vehicle loan are current and will be made directly by the Debtor subsequent to Confirmation. Any pre-confirmation arrears will be paid within fifteen (15) days of the Effective Date from the sources described in the preceding sentence. There are no such arrears. The balance due to the Class 2 creditor as of October 20, 2016 is \$3,311.36. The claim of First Citizens is not impaired and is not eligible to vote.

CLASS 3: consists of the secured claim held by Kia Finance, which holds a security interest in a 2012 Kia Optima. Future monthly loan payments to Kia Finance will be paid

directly by the Debtor post-confirmation. Any pre-confirmation arrears will be paid within fifteen (15) days of the Effective Date. There are no such arrears. The balance to the Class 3 creditor is \$2,980.87 as of October 13, 2016. The claim of Kia Finance is not impaired and is not eligible to vote.

CLASS 4: consists of the secured claim held by TD Bank in the 2010 Ford Mustang. The cure amount of \$12,000.00 will be paid in full within 15 days of the Effective Date by the Disbursing Agent from funds presently being held by the Chapter 11 Trustee. The claim of TD Bank will not be impaired and is not be eligible to vote under the Plan.

CLASS 5: are the general unsecured creditors. Pursuant to the proof of claim register in this case, and debts that are scheduled by the Debtor as undisputed, the Class 5 creditors' claims total \$419,071.23<sup>1</sup> and will be paid in full upon confirmation.

The Class 5 creditors are impaired and are eligible to vote upon the Plan.

### ARTICLE III: TREATMENT OF UNCLASSIFIED CLAIMS

All claims for administrative expenses, as that term is defined in 11 U.S.C. 503(b) and 507(a)(1), which are approved by the Debtor or allowed by the Court, including such petitions for fee as may be allowed by the Court, shall be paid in full in cash on the Effective Date or such other time as may be agreed upon by the Debtor and the individual administrative claimant. The administrative expenses to be paid will be fees and expenses awarded to Counsel to the Debtor, Special Real Estate Counsel to the Debtor, the Accountant to the Debtor, the Chapter 11 Trustee,

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<sup>1</sup> The Debtor will be filing an objection to the proof of claim of Peabody & Arnold, which claim is filed in the amount of \$173,920.12. It is the Debtor's position that only 1/2 of the claim, or \$86,960.06 is due and owing.



Counsel to the Chapter 11 Trustee and accountant to the Chapter 11 Trustee. Any unpaid post-petition income taxes have been paid or will be paid within thirty (30) days of the Effective Date. The Debtor states that there is no federal or state tax liability for 2014 or 2015. The Debtor asserts there is no tax due from the sale of Hingham Real Estate.

Any allowed, priority, pre-Filing Date claims due to the D.O.R., and the I.R.S., for unpaid priority taxes will be paid in full from the net proceeds of the sale of the Hingham Real Estate which are being held by the Chapter 11 Trustee and will be delivered to the Disbursing Agent upon confirmation for payment to the I.R.S. and the D.O.R.. SAID PAYMENT WILL BE MADE UPON CONFIRMATION. The I.R.S. has filed an amended claim (Claim No. 10-2) in the amount of \$114,541.44 consisting of priority claim of \$62,550.85, a secured claim of \$31,575.88 and a general unsecured claim of \$20,414.71. The D.O.R. has filed an amended claim of in the amount of \$82,706.34 consisting of a priority claim of \$23,699.61 and a general unsecured claim of \$59,006.13 (Claim No. 5-2).<sup>2</sup>

The priority claims of the D.O.R. and the I.R.S. are entitled to interest. The claim of the I.R.S. is entitled to interest pursuant to I.R.S. Code Section 6621. Interest is accruing on that claim from the date of the petition until the date the Plan is confirmed and that interest is not dischargeable pursuant to Section 1141(d)(2) of the Bankruptcy Code. The interest amount will be calculated if the Plan gets confirmed and will be due when the claim amount is paid.

There are presently no unpaid taxes to the Town of Sandwich. There are presently no unpaid taxes due to the Town of Mashpee.

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<sup>2</sup> The Debtor reserves the right to object to the claims of the IRS and DOR.

ARTICLE IV: MEANS FOR IMPLEMENTATION OF THE PLAN

Pursuant to an Order of this Court dated June 10, 2014, the Milton Real Estate was sold on July 2, 2014 to Michael Foran for \$980,000.00. A payment of \$618,272.00 was made to Sutherland as a payment of its mortgage on the Milton Real Estate and \$25,000.00 toward legal fees. All real estate taxes (\$71,920.67) were paid to the Town of Milton and broker's fees of \$49,000.00 were also paid. The balance of the funds from this sale were placed in his Debtor-in-Possession account and have been utilized by the Debtor to fund ongoing payments to creditors and living expenses.

A 1998 Porsche was sold to Luxury Motor Group LLC for the sum of \$46,000.00 and the proceeds were paid to the Town of Sandwich for outstanding real estate taxes. Pursuant to the May 2014 monthly operating report, the amount of \$33,955.59 was paid to the Town of Sandwich and the remaining funds were retained by the Debtor for living expenses.

In December 2014, Mr. Spenlinhauer received an offer to purchase the Hingham Real Estate from Mr. Mark Blotner (the "Initial Offer"). A Notice and Motion for Sale were filed regarding the Initial Offer, to which one additional bidder submitted a timely bid. At the hearing on the sale in February 2015, Mr. Blotner was awarded the Hingham Real Estate for a purchase price of \$5,700,000.00 with a backup bid from Casey & Hayes/ A.W. Perry of \$5,660,000.00 being accepted if Mr. Blotner did not close. After completion of his due diligence period, Mr. Blotner determined that he did not wish to purchase the Hingham Real Estate. Casey & Hayes/A.W. Perry as the back-up bidder signed a purchase and sale agreement for the sale of the Hingham Real Estate, which agreement was dated on or about June 23, 2015.

On September 14, 2015, the Hingham Real Estate was sold for a gross purchase price of \$5,660,000.00. From the sale proceeds the secured claim of Sutherland was paid in full as were

any municipal tax claims to the town of Hingham taxing authorities.

The net proceeds of the sale of the Hingham Real Estate were delivered to the undersigned Counsel for distribution pursuant to the Plan. Said proceeds were being held in escrow by the undersigned. Pursuant to an Order of this Court dated January 20, 2016, said funds were delivered to the Chapter 11 Trustee.

#### ARTICLE V: TREATMENT OF EXECUTORY CONTRACTS

There are no presently existing executory contracts in which the Debtor is the lessor or lessee.

#### ARTICLE VI: TREATMENT OF ADMINISTRATIVE CLAIMS

1. Unclassified claims consist of unpaid expenses of administration entitled to priority pursuant to 11 U.S.C. 507(a)(1). Unpaid administrative expenses consist of the unpaid fees and expenses of Gary W. Cruickshank, Counsel to the Debtor. It is estimated that Counsel to the Debtor will be seeking total fees of approximately \$120,000.00, less interim fee payments which have been made. It is estimated that the fees of the accountant for the Debtor will be approximately \$30,000.00 and fees to special real estate counsel to the Debtor will be approximately \$90,000.00. No payment has been made or promised by the Debtor for services or for costs or expenses in connection with the case or in connection with the Plan and incident to the case except:

- A) Such fees and expenses to be awarded by the Court to Counsel to the Debtor,

Special Real Estate counsel to the Debtor, the Accountant to the Debtor, the Chapter 11 Trustee, her counsel and her accountant;

- B) The sum of \$10,000.00 plus the filing fee was paid by the Debtor to Gary W. Cruickshank, Counsel to the Debtor as a pre-petition retainer just prior to the Filing Date;
- C) Interim fee payments of \$34,950.00<sup>3</sup> were made to Counsel to the Debtor for services prior to June 25, 2014.
- D) Counsel to the Debtor has filed a Second Application for Interim Compensation in the amount of \$44,134.80 for fees and expenses for the period of June 25, 2014 – September 17, 2015.
- E) Counsel to the Debtor anticipates a final fee application of approximately \$69,000.00 for services rendered after September 17, 2015 through October 24, 2016 plus additional time thereafter.
- F) Special Real Estate Counsel to the Debtor has filed a fee application in the amount of \$81,479.11 and a further fee application of approximately \$10,000.00 is anticipated. Special Real Estate Counsel was also paid \$7,720.00 plus \$78.25 for services rendered relative to the sale of the Milton Real Estate.
- G) The Accountant to the Debtor was paid \$4,406.70 as an interim fee and will be filing a second fee application in the approximate amount of \$30,000.00 for services rendered, inter alia, relative to the 2014 and 2015 federal and state tax returns.

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<sup>3</sup> Including the \$10,000.00 retainer.

H) The fees and expenses of the Chapter 11 Trustee, her counsel and accountant are as follows:

Chapter 11 Trustee and Counsel fees and expenses through September 30, 2016		\$215,000.00 approx.
	(+)	
Accountant to Chapter 11 Trustee (through September, 2016)		<u>\$ 25,000.00</u>
Total:		\$240,000.00

ARTICLE VII: HISTORY AND CAUSES OF CHAPTER 11

The Hingham Real Estate was a prime location, fronted directly on State Highway Route 3 in the Hingham's South Shore Park, and includes a recently updated (circa 1998), 61,000 sq. ft., Class A one/two story brick office/educational building, formerly serving as a regional special needs school for children attending grades 1 thru 12.

The former tenant, the South Shore Educational Collaborative (SSEC), provided year round, full-time, educational and special training needs for young adults and children from all over the South Shore towns and cities. The SSEC functions as the primary educational school for over 10 member communities and towns in the region. These include towns as far south as the Duxbury, Plymouth and the Marshfield, to as far north as the Braintree, Quincy and Randolph for special needs populations centers as well.

Because of constraints on the existing building and land area, it became impractical for the continued tenancy of the SSEC without many drastic building changes and major investment requirements. As the SSEC moved forward with their expansion plans, it became more evident to Mr. Spenlinhauer and financially feasible for the SSEC to relocate to a larger, more updated

facility as their major facility requirements exceeded the possibilities of our location.

The newly completed, SSEC facility is presently located further within the South Shore Park. It consists of over 85,000 sq. ft. of an ultra modern, new building, raising the level of services and provided specialties for their students. Some new features includes extensive therapy and training pools, numerous gourmet culinary educational and training kitchens and other sports facilities not available at our location. The expansion cost and plans providing the new, ultra-modern school and supporting land was ultimately privately financed and funded by their new landlord and owner, as this factor created an exceptional low-cost opportunity. This ultimately became a primary factor which led to the inducement to the SSEC for their relocation. Their new facility was rumored to be in excess of 10 Million Dollars in its final investment outlay. Mr. Spenlinhauer's financial resources could not accommodate this costly requirement and expansion, and he therefore did not participate in the program for their future needs.

The tenant, SSEC, completed their lease obligations on July 1, 2013 as required, and moved into their newly completed building located in the park at that time.

The marketing strategy before the vacancy of the SSEC school provided ample time and several years of planning to re-let the building to other potential private and public schools. As the managing Trustee of the real estate holding company, the RJS Realty Trust, Mr. Spenlinhauer hired the firm of Grossman Companies in Quincy Mass. to represent him in procuring new, potential tenants. The marketing effort was extensive and precisely tailored to include a direct mailing campaign to all of the possible schools in the southeast Mass areas. He sought to locate all schools whose possible educational needs could be supplemented or ideally suited for opening new programs. The building would feature the availability of a "turn-key

facility", with immediate availability to a school, without the need of costly investment. It offered very favorable, start-up initial lease costs, low operating overhead, a solid, well planned building with multi-level support office and staff training areas. These inducements were planned initiatives to help attract the potential of a specialized school as a target clientele group. The Hingham Real Estate was offered and shown to as many as 6 educational clients during the 2012 and 2013 periods, but presently without further success.

In late 2012 and early 2013, the marketing efforts where supplemented by Grossman Companies and the agent, Mr. Richard McKinnon. The solicitations were now centered to include additional mailings to other, non-school related possible tenants, whose space requirements could utilize the site and building with other requisites or uses. These sought after clientele were determined to be much broader user groups including possibilities for office, medical, research & development, and corporate, executive office relocation potentials. Sale efforts focused on these clients, those looking to locate at this exclusive, Hingham location, and, offering the high visibility of this site on Route 3. These efforts are ongoing, and continue now along with current marketing plans.

However, since the vacancy of the building in July of 2013, the efforts to market the Hingham Real Estate became two-fold out of necessity and timing. It became apparent that Mr. Spenlinhauer would need to re-assess all aspects of potential and viable opportunities to market the Hingham Real Estate. He faced a severe lack of cash flow because of the SSEC vacancy at the successful past tenancy to the numerous clients at the Hingham Real Estate during the past 20 years had adequately provided the primary source of major income to the Spenlinhauer family. This rental stream was realized through its holding entity, the RJS Realty Trust.

ARTICLE VIII: PROCEEDINGS DURING CHAPTER 11

As indicated above, during the course of this case, Mr. Spenlinhauer sold the Milton Real Estate. He has also sold a Porsche motor vehicle, the proceeds which were utilized to pay the Town of Sandwich. In October 2014 he sold a 2010 Sail Fish for the price of \$56,000.00 to Michael Gianette, from which the secured claim of Norway in the approximate amount of \$26,000.00 was paid. The balance of the sale proceeds from this vessel were deposited in his Debtor in Possession account and utilized for various living expense.

On March 27, 2014, the Debtor filed a document (number 151) entitled Motion of Debtor for Entry of Order Relative to Real Estate Located at Zero Landing Drive, Brewster, Massachusetts ( the "Brewster Real Estate").

As disclosed in Document 151 and the Statement of Financial Affairs, by deed dated January 17, 2013, the Brewster Real Estate was transferred by the Debtor to Eric D. Josephson, Trustee of Landing Drive Realty Trust for \$1.00 and subject to an existing lien of the Internal Revenue Service.

The Brewster Real Estate was sold to Paul and Cynthia Doutech in April of 2014 and the IRS was paid approximately \$303,088.96, which was the entire net proceeds of the sale of the Brewster Real Estate.

By order of this Court dated April 10, 2014, the transaction involving the Brewster Real Estate was approved by this Court. The Debtor did not receive any proceeds from the sale of the Brewster Real Estate.

In early 2015, a Motion was filed by the Debtor and approved by this Court authorizing the sale of a 1988 Mercedes Benz SL 560 to Noreen Kennedy for \$10,000.00. \$8,000.00 of said



figure was delivered to Counsel to the Debtor and applied to an interim fee award authorized by this Court. The balance of \$2,000.00 has not been paid. When said balance of \$2,000 is paid, the Debtor will deliver the title to this vehicle to Ms. Kennedy.

The Debtor filed a Motion to sell a 2010 Dodge Ram (document number 573), which was granted by this Court - Document No. 608. Subsequent to Court approval, the proposed purchaser of said vehicle, Michael Sorgi, did not complete the sale and the Debtor still owns that vehicle.

VW Credit filed on February, 24, 2014, a Motion for Relief from Stay to repossess a 2008 Bentley Azure. Said Motion was allowed in October or November of 2014 because the Debtor was not able to sell that vehicle. VW Credit filed a deficiency claim against the Debtor, which was subject to objection by the Debtor and disallowed by the Court. VW Credit does not have a claim against the estate

#### APPOINTMENT OF CHAPTER 11 TRUSTEE

On December 8, 2015, the United States Trustee filed a Motion to Convert this case to Chapter 7 or the appointment of a Chapter 11 Trustee. A hearing on said Motion occurred on December 15, 2015 at 11:30 A.M. The Debtor filed an opposition to said Motion. The Motion was allowed and a Chapter 11 Trustee was appointed. Annexed hereto collectively as Exhibit A are the Motion, the Response of the Debtor to the Motion and the Order of the Court authorizing the appointment of the Chapter 11 Trustee.

Lynne F. Riley was appointed Chapter 11 Trustee.

On December 28, 2015, the Debtor timely filed a Notice of Appeal of the order

appointing the Chapter 11 Trustee and an Election to have that appeal heard in the United States District Court for the District of Massachusetts.

On December 30, 2015, the Debtor filed a Motion with the Bankruptcy Court for a Stay Pending Appeal. A hearing on said Motion occurred on January 6, 2016 at 10:15 A.M. and was denied. A Motion for Stay pending appeal was then filed with the United States District Court and a hearing on said Motion was scheduled for December, 2016 at 2:41 P.M. in the District Court.

A stay pending appeal was not granted by the District Court. Oral argument on the appeal is presently scheduled for December, 2016.

#### CHAPTER 11 TRUSTEE'S REQUEST TO CONVERT THE CASE TO CHAPTER 7

In April, 2016 the Chapter 11 Trustee filed a Motion to Convert this case to Chapter 7 (the "Conversion Motion"). The Conversion Motion was vigorously contested by the Debtor and a first day of trial on the Conversion Motion occurred on May 4, 2016. At that hearing the Debtor submitted testimony of his tax professionals that the capital gains tax on the sale of the Hingham Real Estate was likely not as estimated by the Chapter 11 Trustee and that additional time would be needed to make a final determination on said issue.

Before the second day of trial, which was scheduled for May 11, 2016 the Debtor filed a Motion to Continue the Trial which was allowed by the court and a second day of trial occurred on July 26, 2016. Just prior to the second day of trial, the Trustee filed an Amended Motion to Convert. A third day of trial was scheduled for and occurred on August 19, 2016 at 10:00 A.M.

On August 19, 2016, the Court concluded the evidentiary hearing on the Chapter 7

Trustee's Motion to Dismiss. The Court also issued an Order requiring both the DOR and the IRS to file statements of position regarding certain tax issues involving the Debtor. The Court ordered those responses to be filed by September 19, 2016.

Both the DOR and the IRS filed responses in compliance with the Court Order.

On or about September 29, 2016, the Debtor filed a request at a hearing on the responses filed by the IRS and DOR.

The Court issued an Order on September 29, 2016, Document No. 981, which, inter alia, articulated six issues which the Court asked the parties to address at a final hearing on the Chapter 11 Trustee's Amended Motion to Convert, which was to be held on October 13, 2016. A copy of that Order is annexed hereto as Exhibit B.

The Debtor submitted a Memorandum of Law addressing those six issues. None of the other parties submitted written answers to those issues but addressed some at the closing arguments on the Amended Motion to Convert.

On October 13, 2016, the Court entered an order which denied the Amended Conversion Motion. The Debtor indicated that he would file a Sixth Amended Plan and Disclosure Statement to include updated information since the Fifth Amended Plan and Disclosure statement was filed.

The Court indicated, inter alia, that the answers to Questions 1-6 in Exhibit B remain inconclusive. The Court also indicated that the uncertainty of these issues does not prevent this case from proceeding toward confirmation of a Chapter 11 Plan.

OSTERVILLE REAL ESTATE ISSUE

The Cooperative Bank obtained during the summer of 2014 relief from stay in order to foreclose upon the Osterville Real Estate. However, due to a dispute with BOA relative to title issues, the foreclosure was not actually scheduled until November 23, 2015.

By that time, the Debtor had sold the Hingham Real Estate and filed a Motion with this Court seeking to reinstate the automatic stay based upon those changed circumstances. By Order dated November 6, 2015, the automatic stay was reinstated and Cooperative Bank was ordered to postpone its auction sale from November 19, 2015 to a date after February 15, 2016 (hereinafter the "November 6 Order"). Part of the November 6 Order required the Debtor, although such relief was not requested, to file a Plan which provides for sale of the Osterville Real Estate within 120 days after the effective date of confirmation of the plan. The Debtor filed a Motion to Alter, Amend or Clarify that portion of the November 6 Order, which was denied by Order of this Court dated November 24, 2015.

The Debtor filed a Notice of Appeal on December 8, 2015, to that portion of the November 6 Order requiring a sale of the Osterville Real Estate within four (4) months of the Effective Date of Confirmation of the Plan. Said appeal was denied by the United States District Court for the District of Massachusetts.

The Third Amended Plan filed by the Debtor, which was a cure and maintain plan, would have required the resolution of the dispute with Cooperative Bank as to the amount of the ongoing payments on the mortgage on the Osterville Real Estate. The Debtor asserted that, pursuant to loan documentation by and between Cooperative Bank and the Debtor that principal payments which would begin on April 1, 2016 at 1% of the outstanding principal per year, which

would be approximately \$1,200.00 per month plus interest. The Cooperative Bank had taken the position that the principal payment is 1% per month which would result in a payment of approximately \$12,000.00 per month plus interest.

Pursuant to the November 6 Order, the Debtor was required to make an adequate protection payment of \$35,000.00 to the Cooperative Bank, by November 30, 2015 which was made and \$5,000.00 per month beginning January 1, 2016, which payment was made.

The Osterville Real Estate was subject to a foreclosure sale on April 6, 2016. The Cooperative Bank was the sole bidder at the sale for a price of \$1,100,000.00. The Cooperative Bank assigned the successful bid to a third party. Mr. Spenlinhauer continues to reside at the Osterville Real Estate. The Chapter 11 Trustee has abandoned the Osterville Real Estate.

The purchaser of the Osterville Real Estate from the Cooperative Bank, Georgia Driz, LLC commenced litigation against all occupants of the Osterville Real Estate including Mr. Spenlinhauer, in Barnstable District Court Civil Action No. 16 25 SV 137 (the "Eviction Action"). Mr. Spenlinhauer has been vigorously defending the Eviction Action, including filing a Notice of Appeal of a Judgement for possession issued by the Barnstable District Court.

Mr. Spenlinhauer filed a Notice of Appeal of said eviction judgment as well as a Motion to Waive Appeal Bond, which Motion to Waive Appeal Bond was filed on October 17, 2016.

On October 20, 2016, the Barnstable District Court entered an order requiring the Defendants in the Eviction Action to post a bond in the total amount of \$26,500.00 representing what the Court found to be a monthly rental value of the property of \$2,200 (x 12 months) plus a cost bond of \$100.00 to be posted by 4:00 P.M. on October 31, 2016.

Mr. Spenlinhauer posted the bond by October 31, 2016. Therefore, the eviction is stayed for the appeal period, the exact duration of which is unknown.

In an amended proof of claim, the Cooperative Bank added \$50,000.00 to its proof of claim based upon a payment the Cooperative Bank made to BOA to settle the title litigation. The Debtor has filed an objection to the original claim of Cooperative Bank which resulted in the filing of an amended proof of claim in the amount of \$299,051.71<sup>4</sup>. It is the position of the Debtor that he is not responsible for that \$50,000 charge because that claim arose as a result of the negligence of an agent of either Cooperative Bank or BOA.

**TRUSTEE'S PURSUIT OF ALLEGED FRAUDULENT CONVEYANCE OF REAL ESTATE IN PLYMOUTH, MASSACHUSETTS AND ALLEGED FRADULENT CONVEYANCE AGAINST JACKSON HOLE CLASSIC CARS, LLC AND ERIC JOSEPHSON**

As disclosed in Amended Statement of Financial Affairs, Mr. Spenlinhauer in January of 2013 transferred to Erik D. Josephson, real estate located at 84 Winding Way Plymouth, Massachusetts (the "Plymouth Real Estate").

The Chapter 11 Trustee took the position that said transfer was a fraudulent conveyance and commenced litigation against Mr. Jacobson to avoid that transfer. Adversary Proceeding 16-01064. This litigation remains pending.

Mr. Josephson sold the Plymouth Real Estate.

On June 28, 2016, the Court entered an injunction relative to the net proceeds of the sale of said Plymouth Real Estate, which proceeds are \$375,120.00. These funds are presently being held by counsel to Mr. Josephson.

On August 2, 2016, the Chapter 11 Trustee filed an adversary proceeding against Jackson Hole Classic Cars, LLC and Erik D. Josephson alleging that in January of 2013, Mr. Spenlinhauer fraudulently conveyed to said defendants 6 motor vehicles. Said litigation is being

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<sup>4</sup> The Debtor filed an objection to said amended proof of claim on October 21, 2016.

defended by said Defendants. Mr. Spenlinhauer is not a Defendant in the adversary proceeding. Said litigation is ongoing.

ARTICLE IX: FEASIBILITY

Annexed hereto as Exhibit C is a document entitled Monthly Operating Report Summary through December 2015, which is the last full month operating report prior to the appointment of the Chapter 11 Trustee.

The Debtor is anticipating confirmation of this Plan in January, 2017. Until that time, the Debtor anticipates that the Trustee will make the following monthly payments on secured claims:

1. First Citizens auto loan \$811.83 x 3 months	\$ 2,435.49
2. Kia Finance auto loan \$440.00 x 3 months	1,320.00
3. Mortgage on Sandwich Real Estate \$1,939.47 x 3 months	5,818.41
4. Sandwich Real Estate taxes \$740.00 x 3 months	2,220.00
5. Glen NH property taxes \$70.83 x 3 months	212.58
6. Mashpee Real Estate \$275.00 x 3 months	<u>825.00</u>
TOTAL	\$ 12,831.48

The Debtor is informed of the following relative to the Trustee's fees:

1. Trustee commission/legal fees and expenses as of September, 2016: approximately \$215,000.00.
2. Accountant to the Trustee fees and expenses: \$25,000.00 as of July 15, 2016.

Upon confirmation of the Plan, the Chapter 11 Trustee will be discharged of her duties because the Plan will be confirmed.

The Disbursing Agent anticipates that he will be holding shortly after confirmation from funds delivered to him by the Chapter 11 Trustee the following:

\$171,088.76	Balance in Chapter 11 Trustee’s account as of 10/12/16
(+) <u>\$910,500.00</u>	Refund of estimated federal and state taxes
\$1,081,588.76	
(-) <u>12,831.35</u>	Payments for 3 months as described on preceding page above.
\$1,068,757.28	(the “Plan Distribution Fund”)
(-) <u>240,000.00</u>	Chapter 11 Trustee fees and expenses
828,752.28	

The Disbursing Agent will pay on the Effective Date the allowed professional fees, priority secured tax claims and the 100% distributions to the class 5 creditors from the projected \$828,752.28 that will be delivered to the Disbursing Agent by the Trustee.

Professional fees—approx.	\$ 200,000.00 <sup>5</sup>
Priority and secured tax claims	117,826.34
100% dividend to Class 5 creditors	<u>419,071.23</u>
Subtotal	\$ 736,897.57
Total	\$828,752.28
	(-) <u>736,987.57</u>
	\$ 91,854.71

The Debtor agrees to sell the Mashpee Real Estate, the Sandwich Real Estate and/or any retained motor vehicles in order to insure that future monthly payments to the Class 1-4 creditors are timely made or if the disputed amended unsecured claim of Cape Cod Cooperative Bank is allowed. Said claim is in the amount of \$299,051.71.

Annexed hereto as Exhibit D is a one page projection prepared by the accountant for the Debtor.

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<sup>5</sup> Not including the allowed fees for the Chapter 11 Trustee, her counsel and her accountant which will be paid by the Chapter 11 Trustee prior to the Plan Distribution Fund being delivered to the Disbursing Agent. The Debtor is estimating these fees to be \$240,000.00 as of 10/12/16.



Annexed hereto as Exhibit E is a document entitled Fund Distribution Chart which counsel to the Debtor submitted as a chalk at the hearing on October 13, 2016.

#### ARTICLE X: VOTING

11 U.S.C. 1129 provides that the Plan may be confirmed if at least one impaired class of creditors with allowed claims holding two-thirds of the amount and more than one-half in number of the allowed voting claims in said class have voted to accept the Plan. If the Plan is not so accepted, the Plan may nonetheless be confirmed under the “cram-down” provisions of the Bankruptcy Code as set forth in 11 U.S.C. 1129(a).

The Debtor asserts that there will be no violation of the absolute priority rule unless there is a negative vote of creditors. If there is a negative vote, the Debtor will file the appropriate pleadings to implement the request for a cramdown, as explained below. Solicitation of votes cannot be accomplished until such time as there is approved disclosure statement.

11 U.S.C. 1129(a)(8) provides that with respect to each class of claims or interests:

- A) such class has accepted the plan, or
- B) such class is not impaired under the plan.

11 U.S.C. 1129(b)(1) provides that if all applicable requirements of subsection (a) of Section 1129 other than paragraph 8 are met with respect to the plan, the Court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. 1129(b)(2) provides that for a plan to be fair and equitable with respect to a class, the following requirements, inter alia, must be met.

11 U.S.C. 1129(b)(2)(A) with respect to a class of secured (emphasis added) claims, the Plan provides:

(i) I. That the holders of such claims retain the lien securing such claims, whether the property subject to such liens is retained by the Debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

II. That each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the Effective Date of the Plan, of at least the value of such holder's interest in the estate's interest in the property;

(ii) For the sale, subject to Section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under Clause (i) or (iii) of this subparagraph; or

(iii) For the realization by such holders of the indubitable equivalent of claims.

11 U.S.C. 1129(b)(2)(B) with respect to a class of unsecured (emphasis added) claims

(i) The plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) Provides that 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 interest any property.

In the event that the Debtor seeks to invoke the aforementioned "cramdown" powers against unsecured creditors, the Plan must pay Class 7 unsecured creditors in full before the Debtor can retain his equity interest in any of the real estate to be retained.

11 U.S.C. 1126(f) provides that a class of creditors which is not impaired under the plan is conclusively presumed to have accepted the plan and solicitation of acceptance from such class is not required. Classes 1-4 are not impaired. Class 5 is impaired.

Please forward any inquiries regarding the absolute priority rule to Counsel to the Debtor.

ARTICLE XI: MISCELLANEOUS PROVISIONS

All personal federal and state tax returns through 2014 have been filed.

The Debtor and the Chapter 11 Trustee have been paying quarterly U.S. Trustee fees.

The Debtor filed his 2014 federal and state tax returns on January 14, 2016. There is no liability to the I.R.S. or the D.O.R. for 2014.

The Accountant to the Debtor and the Trustee have recently determined that there is no tax, federal or state, due for 2015 as a result of the sale of the Hingham Real Estate.

Calculation of 2015 Taxes Relative to the Sale of the Hingham Real Estate

As indicated elsewhere in this Disclosure Statement, the Hingham Real Estate was sold in September, 2015.

After the Trustee was appointed, the Trustee conducted an analysis of the capital gains tax relative to the sale of the Hingham Real Estate and made estimated state and federal tax payments. Approximately \$705,000.00 was paid to the Internal Revenue Service for estimated 2015 taxes and \$165,500.00 was paid to the Commonwealth of Massachusetts (hereinafter the "Estimated Tax Payments").

The Debtor, his special real estate counsel and the accountant for the Debtor spent several months analyzing historical records and have determined that a tax basis of Ten Million Dollars (\$10,000,000) was an appropriate starting point for the analysis and as a result have determined that there is not a tax liability for the sale of Hingham Real Estate. A copy of the analysis of the Accountant is annexed hereto as Exhibit F.

As a result, the Debtor asserts that a refund of the Estimated Tax Payments of \$910,500 is appropriate and will be utilized to fund the payments under the Plan. To the best of the

knowledge of the Debtor. The Chapter 11 Trustee has filed tax returns seeking a refund of the Estimated Tax Payments.

Mr. Spenlinhauer's 2015 federal and state tax returns have not been filed because Mr. Spenlinhauer did not generate any income from assets/activity outside of the Chapter 11 estate. His social security income was included on the tax return filed by the Chapter 11 Trustee.

Relative to the foreclosure sale of the Osterville Real Estate, if there is a gain, the net operating loss carry forward from 2015 is in excess of \$2 Million Dollars on the tax return filed by the Trustee. Therefore, any gain on the Osterville Property will be eliminated by this loss carry forward resulting in no taxable income from the foreclosure sale.

Any taxable cancellation of debt income from the foreclosure sale will be offset by the aforementioned loss as well. Based upon preliminary calculations, the net operating loss carry forward from the return filed by the Trustee would be sufficient to eliminate the gain from the sale of the Osterville Property as well as the potential \$300,000.00 in cancellation of indebtedness income.

The Debtor does not anticipate surrendering any assets at this time. He was attempting to sell the Mashpee Real Estate at a listing price of \$499,000.00 and he reserves the right to sell various motor vehicles and the Sandwich Real Estate in the future to fund ongoing payments to class 1-4 creditors.

The Debtor or the Chapter 11 Trustee will pay all ongoing quarterly fees until the case is closed by entry of a final decree.

The Debtor will be responsible for timely payment of quarterly fees incurred pursuant to 28 U.S.C. §1930(a)(6) until the case is closed. After confirmation, the Debtor will serve the United States Trustee with a quarterly disbursement report for each quarter (or portion thereof)

that the case remains open. The quarterly report shall be due fifteen days after the end of the calendar quarter. The quarterly financial report shall include the following:

- (1) a statement of all disbursements made during the course of the quarter, by month, whether or not pursuant to the plan;
- (2) a summary, by class, of amounts distributed or property transferred to each recipient under the plan, and an explanation of the failure to make any distributions or transfers of property under the plan, if any;
- (3) a description of any other factors which may materially affect the Debtors' ability to complete its obligations under the plan; and
- (4) an estimated date when an application for final decree will be filed with the Court (in the case of the final quarterly report, the date the decree was filed).

The Debtor shall obtain a discharge only upon completion of payments under the plan pursuant to 11 U.S.C. 1141(d)(5).

Pursuant to 11 U.S.C. 1141(b), the property of the estate will vest in the Debtor at the time of discharge.

Gary W. Cruickshank, Counsel to Mr. Spenlinhauer, will act as disbursing agent.

## ARTICLE XII

### PROCEEDS OF PROPERTY DAMAGE INSURANCE FROM HINGHAM REAL ESTATE

In early 2015, a pipe burst in the Hingham Real Estate and an insurance claim was submitted. By a check dated May 26, 2015, a payment in the amount of \$109,190.58 was forwarded to RJS Realty Trust by York Risk Services Group. Those proceeds were deposited in the Cape Cod Cooperative Bank account. Ball & Boyd, the adjusters were paid \$17,500.00 for

which an application for fee was not filed by the undersigned Counsel.<sup>6</sup> Additional disbursements from said insurance check for the month of June 2015 consisted of payment for various motor vehicle loans, a payment to Able Restoration for services rendered regarding the repair of the Hingham Real Estate in the amount of \$30,000.00, a payment of \$13,716.90 to Cooperative Bank for the mortgage on the Sandwich Real Estate, various living expenses including emergency veterinary expenses.

In June 2015, the insurance company also issued two other checks, which were paid directly to the Town of Hingham for real estate taxes and Hingham Municipal Light Company. These checks resulted in a reduction of the Town of Hingham real estate taxes by \$129,212.11 and the reduction of the Hingham Light claim by \$11,596.61.

On October 29, 2015, a check in the amount of \$228,684.51 was received by the Debtor as a further payment of the insurance proceeds from the Hingham Real Estate and deposited in the Cooperative Bank of Cape Cod account.

On November 12, 2015, another check in the amount of \$198,847.34 was received by the Debtor from insurance proceeds and deposited in the Cape Cod Cooperative Bank account.

There is a remaining insurance claim in a presently unknown amount.

Mr. Curtis, the adjuster had originally informed the undersigned that this latter check would not arrive until early 2016. The undersigned Counsel will file with the Court a Motion to Pay the contingent fee of \$14,000.00 to Ball & Boyd relative to the payment of \$198,847.34.

From the insurance proceeds, Mr. Spenlinhauer paid the amount of \$65,000.00 to PNC Bank in full settlement of a redemption claim regarding a 2005 Holiday Rambler Endeavor Motor Home (the "Motor Home"). This resulted in a significant savings of the possible

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<sup>6</sup> Counsel apologizes for that oversight.

deficiency proof of claim in the amount of approximately \$66,000.00. Mr. Spenlinhauer believes the value of the Motor Home is approximately \$70,000.00.

Also from the proceeds of the insurance claim, a 2013 GMC owned by Mr. Spelinhauer was traded and he purchased a 2015 Chevrolet Silverado from Quirk Chevrolet and paid \$18,202.06 in addition to the trade in value for the 2013 GMC. The value of the 2015 Chevrolet Silverado is approximately \$45,000.00 and there are no liens on the 2015 Chevrolet Silverado.

The total insurance proceeds received by Mr. Spenlinhauer relative to the damage at the Hingham Real Estate is \$536,732.43.

#### ARTICLE XIII: ALTERNATIVE TO THE PLAN

If the Plan is not confirmed, conversion to a Chapter 7 liquidation would likely occur. The significant period of time involved in the liquidation of assets will significantly delay the distribution of 100% to Class 5 creditors and the secured and priority tax creditors. There would also be Chapter 7 liquidation expenses estimated to be approximately \$150,000.00, in addition to the fees and expenses of the Chapter 11 Trustee which have already been incurred which would be paid prior to the payment to unsecured creditors. Annexed hereto as Exhibit G is a document entitled Proposed Asset Distributions/Retention Chart.

The Debtor requests that the creditors accept the Plan and avoid the expense and delay of a Chapter 7 liquidation.

Robert J. Spenlinhauer  
By his Counsel,

Dated: November 2, 2016

/s/Gary W. Cruickshank, Esq.  
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CERTIFICATE OF SERVICE

I, Gary W. Cruickshank, hereby certify that on November 2, 2016, I electronically filed with the Clerk of the Bankruptcy Court, the attached Sixth Amended Disclosure Statement and served same in the following manner upon the interested parties:

E-mail service: via the Court's CM/ECF system which sent notification of such filing to the following:

- **Paula R.C. Bachtell** paula.bachtell@usdoj.gov
- **David M. Baker** dblaw2@cox.net, jlflaw1@aol.com
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And by regular United States mail, postage prepaid upon the following:

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**Maria Tsagaris**  
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And to all creditors on the annexed list

/s/Gary W. Cruickshank, Esq.

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**Citicards**

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**Commonwealth of Massachusetts**

Department of Revenue  
Bankruptcy Unit  
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**TD Bank N.A.**  
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**Town of Mashpee**  
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Mashpee, MA 02549

**Town of Milton**  
Tax Collector  
525 Canton Avenue  
Milton, MA 02186

**Town of Osterville**  
Tax Collector  
367 Main Street  
Hyannis, MA 02601

**Town of Sandwich**  
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