

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In Re:	*	Chapter 11
	*	Case No. 16-11223-BAH
Kathy Drive Realty Trust	*	
	*	Hearing Date: June 14, 2017
Debtor(s)	*	Hearing Time: 2:00 p.m.
	*	
	*	<u>Objection Deadline: June 7, 2017</u>

FIRST AMENDED DISCLOSURE STATEMENT TO ACCOMPANY FIRST AMENDED LIQUIDATING PLAN OF KATHY DRIVE REALTY TRUST DATED MAY 1, 2017

Kathy Drive Realty Trust (“Debtor”) submits this FIRST AMENDED DISCLOSURE STATEMENT TO ACCOMPANY FIRST AMENDED LIQUIDATING PLAN (the “Plan”) dated May 1, 2017 as follows:

THE ATTACHED LIQUIDATING PLAN IS DESIGNED TO PROVIDE A MECHANISM TO DISTRIBUTE THE REMAINING FUNDS OF THE ESTATE IN AN ORDERLY FASHION. THE SOLE ASSET OF THE ESTATE, REAL ESTATE LOCATED AT 15 KATHY DRIVE, NASHUA, NEW HAMPSHIRE (“KATHY DRIVE”) HAS BEEN SOLD AND THE PROCEEDS USED TO PAY ALL SECURED CREDITORS IN FULL WITH THE EXCEPTION OF THE DISPUTED ATTACHMENT OF BRIAN MOSES (THE “MOSES’ CLAIM”). THE DEBTOR OBJECTED TO THE MOSES’ CLAIM..

THE DEBTOR HAS RESOLVED THE MOSES’ CLAIM WHEREBY JUDGMENT HAS BEEN ENTERED AGAINST MOSES AND HE HAS WITHDRAWN HIS CLAIM. THIS MEANS THAT THE MOSES’ ATTACHMENT HAS BEEN REMOVED AGAINST THE SALES PROCEEDS AND THAT ALL CLAIMS AGAINST THE SALES PROCEEDS ARE UNSECURED CLAIMS.

DEBTOR IS HOLDING APPROXIMATELY \$22,000.00 IN CASH AT THIS TIME (“CASH ON HAND”) TO FUND THE PLAN WHICH INCLUDES PAYMENT OF LEGAL FEES. NON-INSIDER FILED AND SCHEDULED CLAIMS TOTAL \$29,031.64 AND ADMINISTRATIVE CLAIMS CHARGEABLE TO THE CASH ON HAND TOTAL \$10,000. IF THE MOSES CLAIM IS DISALLOWED, NON-INSIDER CREDITORS CAN EXPECT TO RECEIVE A DIVIDEND OF 41% IF ALL CLAIMS ARE ALLOWED IN FULL. THE DIVIDEND MAY BE HIGHER OR LOWER DEPENDING UPON THE ULTIMATE AMOUNT OF CLAIMS AND CASH AVAILABLE FOR DISTRIBUTION.

YOU WILL HAVE THE OPPORTUNITY TO VOTE ON THE PLAN. VOTING IS BY CLASS. A CLASS MUST VOTE IN FAVOR OF THE PLAN BY MORE THAN ONE HALF OF THE CLAIMS VOTING AND 2/3 IN AMOUNT VOTING. IT IS POSSIBLE A CLASS WILL VOTE AGAINST THE PLAN. IN THAT CASE, IN CERTAIN CIRCUMSTANCES, A PLAN CAN BE CONFIRMED OVER A NEGATIVELY VOTING CLASS. IT IS UNLIKELY THERE WILL BE A CLASS VOTING AGAINST THE PLAN IN THIS CASE. THERE IS A BALLOT ATTACHED TO THIS DOCUMENT WHICH PROVIDES INSTRUCTIONS FOR VOTING. IF YOU DO NOT VOTE, YOUR VOTE WILL NOT COUNT. PLEASE VOTE.

HISTORY OF THE DEBTOR

The Debtor was formed on or about 2015, to purchase and develop certain real estate known as Kathy Drive. The Debtor is a realty trust and registered a trade name in the business of “selling, owning, building, developing and leasing residential and commercial real estate”. The Debtor purchased raw land and commenced building a single family house at Kathy Drive. Debtor listed the Property with a broker, Marnie Phillips of the Bean Realty Group, and a co-broker found a buyer (the “Buyer”). Debtor was prepared to close upon the sale and pay all of the sub-contractors when an ex parte attachment was placed on Kathy Drive by Brian Moses in the case Brian Moses v. Lauren Peters, et. al. to secure a debt to another entity having nothing to do with the Debtor. The Debtor disputes the attachment in full because the Debtor is not liable to Moses for any amount. The Debtor filed a voluntary Chapter 11 petition on August 29, 2016 (the “Petition Date”). The purpose of the bankruptcy was to complete the sale of Kathy Drive to the Buyer (which is for fair market value) and then distribute the proceeds to allowed claimholders. The Debtor has never owned any other assets or been in any other business other than to build and sell Kathy Drive.

THE BANKRUPTCY

The Debtor filed a voluntary Chapter 11 petition on August 29, 2016 (the “Petition Date”). Immediately, Debtor sought approval to sell Kathy Drive to the Buyer (who was living in the property at the time). The Court approved the sale by order dated November 9, 2016 [doc 60]. The sale closed on or about December 13, 2017. The proceeds from the sale were disbursed as follows:

Closing:

Gross Sales Price:	\$317,000.00
Seller’s Closing Costs & Expenses:	(\$32,608.30)
Net Proceeds Received from Closing:	\$285,574.20
Extras Paid by Buyer:	\$ 2,500.00
Total Net Closing Proceeds:	<u>\$288,074.20</u>

Uncontested Amounts Paid to Secured Lenders Per Court Order:

Richard Anctil	\$10,329.00	(1 st mortgage/seller finance)
Elizabeth Wilmont	\$ 9,800.00	(1 st mortgage/seller finance)
Belletetes, Inc.	\$17,000.00	(Materialman’s lien)
Gerald Prunier, Trustee of The Michael Tamposi Exempt Trust	\$216,645.12	(2 nd mortgage)
Gerald Prunier, Trustee of The Michael Tamposi Exempt Trust	\$10,000.00	(2 nd mortgage)

Net Sale Proceeds Remaining in Estate: \$24,300.08

After the closing, all liens were paid in full except the Moses’ Claim. Debtor commenced a lawsuit against Moses entitled Kathy Drive Realty Trust v. Brian Moses (adv. proc. 16-1375) seeking to disallow the Moses’ Claim on the basis that Debtor has no liability to Moses for anything.. The litigation has been resolved successfully and the Moses’ Claim has been withdrawn.

The sale was subject to an easement for a sewer hook up (the “Sewer Hookup”). To the extent Kathy Drive has any remaining interest in the Sewer Hookup and can monetize that interest funds will be distributed in accordance with the Plan. Monetizing the interest includes selling the easement rights to a third party.

THE PLAN

The Plan is a simple liquidation plan. Funds will be distributed first to Notinger Law, P.L.L.C. for legal fees and to pay other administrative expenses of the estate like US Trustee fees, then to general creditors who have Allowed Claims defined in the Plan. General Creditors consist of the Debtor’s sub-contractors many of whom have claims that the Debtor disputes. If you see your name and the amount of your claim on the attached list it does not mean your claim will not be objected to by the Debtor, it simply means that the Debtor’s records indicate you asserted a claim in the amount listed or you filed a Claim. The claims register is as follows:

Creditor	Balance
Bernstein Shur	\$ 210.00
Bostonian Woodworking	\$ 4,800.00
Branchi Painting	\$ 750.00
C/W Wiring, Inc.	\$ 1,200.00
CMC Flooring	\$ 3,720.00
Eversource	\$ 200.00
F.W. Webb	\$ 4,789.26
Fieldstone	\$ 2,200.00
John Lissanah	\$ 850.00
Liberty Utilities	\$ 100.00
Mike Lacasse	\$ 1,100.00
Pennichuck	\$ 84.38
Quality Insulation	\$ 1,857.00
Quest	\$ 500.00
R & R Houle	\$ 900.00
Triangle Portable Service	\$ 21.00
Wally's Heating & A/C	\$ 5,000.00
Wendi's Cleaning Service	\$ 750.00
	\$ 29,031.64

The Claims listed above may be objected to by the Debtor. The funds payable to general creditors consist of the Cash on Hand (after payment of administrative claims) and any refunds or chargebacks due from Belletetes or the Michael Tamposi Exempt Trust which could be \$5,000.00 and any proceeds from the sewer hook-up.

CLASSIFICATION OF CLAIMS AND INTERESTS

In accordance with § 1123(a)(1) of the Bankruptcy Code, all Claims against the Debtor, of whatever nature, and all Interests, whether or not scheduled, absolute, unliquidated or contingent, including all Claims arising from the rejection of executory contracts, whether resulting in an Allowed Claim or not, are classified as set forth herein. A Claim shall be in a particular class only to the extent it is within the definition of the class and only to the extent it is an Allowed Claim:

- A. Class 1. Secured Claim of Brian Moses.
- B. Administrative Expense Claims.
- C. Class 2. Unsecured Claims.
- D. Class 3. Insider Claims.
- E. Class 4 Interests

TREATMENT OF CLAIMS

Class 1 Secured Claim of Brian Moses. Withdrawn. Administrative Expense Claims consist of the claims of Notinger Law, P.L.L.C. and the US Trustee. Notinger Law will need to cut its claim to allow for a distribution to Allowed Claimholders. This is an exceedingly small Chapter 11. Regardless, Chapter 11 is designed for much larger cases and does not adapt well to small cases. Based upon the Cash on Hand, Notinger Law's fees are \$27,000.00, but it will agree

to take (subject to court approval) \$15,000.00. If there is a significant increase in the assets in the case after a dividend is paid to Allowed Unsecured Claimholders from the Cash on Hand as indicated above, Notinger Law may request more fees.

Class 2 General Unsecured Creditors. General Unsecured Creditors total \$29,031.64. Claims, if and when Allowed, will be paid from Cash on Hand (net administrative claims) and any refunds from Bellettets or the Michael Tamposi Exempt Trust and any payment for the Sewer Hook-up. The first distribution will be 60 days after the Confirmation Date. This will allow time for objections to claims. On the distribution date, if there are still disputed claims, those claims will be reserved for so that a distribution can occur to other claim holders. All other distributions shall be at the discretion of the Debtor. Non-Insider claims will be paid first until they are paid in full, and then Class 3 insider claims will be paid. Claims in Class 2 are impaired.

Class 3. Insider Claims. Insider claims will be paid from any excess after full payment of Class 2 claims and from any recovery from any malicious prosecution claim that insiders bring against Moses, which Insiders shall fund out of their own resources. Insider claims are identified as follows: Patricia Thibodeau, International Balancing and Assoc., Inc. and International Consultant Company, Inc.

Class 4. Interests. Interests shall be retained through the complete liquidation of the Debtor, then the Trust shall be automatically dissolved.

MEANS FOR EXECUTION OF THE PLAN

The Means for execution of the Plan already exist. Debtor has the Cash on Hand in escrow pending distribution to Allowed Claimholders. The Confirmation Order shall constitute

the authority for the Debtor to consummate this Plan and shall ratify all actions to be taken in this Plan. Unclaimed funds will be turned over to the Court in accordance with Federal Rules.

DISCHARGE

This is a liquidating Plan, Debtor will not receive a discharge.

POST-PETITION CLAIMS

All post-petition allowed administrative expenses of the Debtor will be paid in accordance with the Plan.

SUBSTANTIAL CONSUMMATION

Pursuant to 11 U.S.C. §1101, consummation of the Confirmed Plan shall occur on or after the Distribution Date.

INFORMATION IN PLAN AND DISCLOSURE STATEMENT

All information in the Plan and Disclosure Statement has been provided solely by the Debtor or from records of the Debtor. Each Creditor is advised to contact its own accountant to determine the tax consequences to it. Any capitalized term not defined in the Disclosure Statement is defined in the Plan.

POSSIBLE CLAIMS AGAINST THIRD PARTIES

The Debtor is not aware of any claims against third parties except for the claims identified herein. The Debtor is not aware of any actionable avoidance actions. The Insiders, through the Debtor, may bring a malicious prosecution claim against Moses at their own expense. It is unclear what the value of this claim is at this time as these types of claims are difficult to bring and are

highly speculative. The Insiders believe the value of the Debtor was destroyed by Moses. The only way this claim can be pursued is if someone funds it and the Insiders indicated they are willing to do so to try to recover their losses. Third party claims also include claims against creditors in excess of the amount claimed against the Debtor.

TAX CONSEQUENCES OF PLAN

The Debtor is not Federally taxed at the entity level.

STATUS OF THE DEBTOR POST-CONFIRMATION

The Debtor will continue to exist post-confirmation in the same form, with the same management and it exists pre-confirmation until it is dissolved.

All fees payable pursuant to section 1930 of Title 28 of the United States Code after the Effective Date shall be paid on a quarterly basis until the Chapter 11 case is closed, converted, or dismissed. The reorganized Debtor and the Disbursing Agent shall be jointly and severally liable for the payment of all quarterly fees due pursuant to section 1930 of Title 28 after the Effective Date. Notinger Law, P.L.L.C. shall be the Disbursing Agent.

The Disbursing Agent shall provide the United States Trustee with post-confirmation quarterly reports that shall include all of their respective disbursements for that quarter.

LIQUIDATION ANALYSIS

Debtor has proposed a liquidating plan. The only difference between this plan and Chapter 7 is that Chapter 7 will have the additional expenses associated with a Chapter 7 Trustee and the delays inherent in the Chapter 7 process. Otherwise this is a liquidation and is better than Chapter 7 because it is cheaper and quicker.

Respectfully submitted,
Kathy Drive Realty Trust
Chapter 11 Debtor-in-Possession
by its Attorneys
Notinger Law, P.L.L.C.

May 24, 2017

/s/ Steven M. Notinger
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