

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

---

In re: CHAPTER 11  
**362 ROUTE 108 REALTY TRUST** Case No. 16-11405-BAH  
Debtor

---

**DEBTOR'S DISCLOSURE STATEMENT DATED FEBRUARY 27, 2017  
PERTAINING TO PLAN OF REORGANIZATION OF EVEN DATE**

Pursuant to Section 1125 of the Bankruptcy Code of 1978, *as amended*, the Debtor and Debtor in Possession, **362 Route 108 Realty Trust** respectfully submits this Disclosure Statement pertaining to the Debtor's Plan of Reorganization of even date to the Bankruptcy Court and all Plan Parties pursuant to Section 1127 of the Code. The Bankruptcy Court approved has approved this Disclosure Statement and authorized the Debtor to solicit acceptances of the Plan using this Disclosure Statement. The Executive Summary Table, which appears on Pages 2 - 3 hereof, provides Plan Parties with a tabular summary of the Classes to be created by the Plan, the dividends or range of dividends to be paid creditors holding allowed claim and other information. In the Plan Overview, the Debtor provides a synopsis of the Plan and the means for funding the Plan.

Respectfully submitted,

Dated: February 27, 2017

/s/ William S. Gannon  
William S. Gannon

Attorney for:

**362 ROUTE 108 REALTY TRUST**

WILLIAM S. GANNON, PLLC  
889 Elm Street, 4th Floor  
Manchester, NH 03101  
PH: (603) 621-0833

## EXECUTIVE SUMMARY

In this Executive Summary, the Debtor provides Plan Parties with a tabular summary of the Classes to be created by the Confirmation of the Plan, the voting rights of the Classes, a projection of the dividends or range of dividends to be paid on account of Allowed Claims in each Class and a reference to the part of this Disclosure Statement and Plan where more information may be found regarding each Class may be found.

### EXCECUTIVE SUMMARY TABLE

Class Nos. and Class Titles	Dividend Projection by Class:	Allowed to Vote
<p><b>Class 1: Local Government Lien Class</b></p> <p><b>Estimated Allowed Amount:</b> See Ex. A, Line 7</p> <p><b>Potential Objection:</b> No</p> <p><i>For more details see <u>Summary of Class Dividends and Treatment, Class 1, Pg. 8, Article IV, Section A.</u></i></p>	<p><b>Projected Mo. Dividend:</b> \$218.71</p> <p><b>Dividend Formula:</b> Allowed amount in full, with interest at the rate of 18% per annum, in 48 consecutive, equal monthly payments of principal and interest.</p> <p><b>Projected First Payment Date:</b> 30<sup>th</sup> day from the Effective Date (projected effective date – June 1, 2017).</p>	No
<p><b>Class 2: Eastern Secured Claim Class</b></p> <p><b>Estimated Allowed Amount:</b> See Ex. A, Line 12</p> <p><b>Potential Objection:</b> Yes</p> <p><i>For more details see <u>Summary of Class Dividends and Treatment, Class 2, Pgs. 8-9, Article IV, Section B.</u></i></p>	<p><b>Projected Mo. Dividend:</b> Interest only \$1,722.18; principal and interest \$2417.18</p> <p><b>Dividend Formula:</b> Allowed amount in full, with interest at the rate of 5.25%. Interest only beginning on the 90<sup>th</sup> day following Effective Date for a period of 9 months; then 239 consecutive, equal monthly installments of principal and interest and a 240<sup>th</sup> payment equal to unpaid balance.</p> <p><b>Projected First Payment Date:</b> 90<sup>th</sup> day following the Effective Date (projected effective date – June 1, 2017).</p>	Yes
<p><b>Class 3: Sarnia Secured Claim Class</b></p> <p><b>Estimated Allowed Amount:</b> See Ex. A, Line 16</p> <p><b>Potential Objection:</b> Yes</p> <p><i>For more details see <u>Summary of Class Dividends and Treatment, Class 3, Pg. 9, Article IV, Section C.</u></i></p>	<p><b>Projected Mo. Dividend:</b> Interest only \$257.20; principal and interest \$537.19</p> <p><b>Dividend Formula:</b> Allowed amount in full, with interest at the rate of 3.25%. Interest only for 12 months beginning on 180<sup>th</sup> day from Effective Date. Then, 239 consecutive monthly installments of principal and interest and a 240<sup>th</sup> payment equal to unpaid balance.</p> <p><b>Projected First Payment Date:</b> 180<sup>th</sup> day following the Effective Date (projected effective date – June 1, 2017).</p>	Yes

<p><b>Class 4: NHRE Secured Claim Class</b></p> <p><b>Estimated Allowed Amount:</b> See Ex. A, Line 21</p> <p><b>Potential Objection:</b> No</p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 4, Pgs. 9-10, Article IV, Section D.</i></p>	<p><b>Projected Mo. Dividend:</b> Principal and interest, \$273.73</p> <p><b>Dividend Formula:</b> Allowed amount in full, with interest at the rate of 3.25%, in 240 consecutive, equal monthly installments of principal and interest, beginning of the 30<sup>th</sup> day following the last day of second anniversary of the Plan.</p> <p><b>Projected First Payment Date:</b> 270<sup>th</sup> day following the Effective Date (projected effective date – June 1, 2017).</p>	<p><b>Yes</b></p>
<p><b>Class 5: Non-professional Administrative Expense Class</b></p> <p><b>Estimated Allowed Amount:</b> See Ex. A, Line 24</p> <p><b>Potential Objection:</b> No</p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 5, Pg. 10, Article V, Section A.</i></p>	<p><b>Projected Dividend:</b> \$2,500</p> <p><b>Dividend Formula:</b> Allowed amount in full on Effective Date.</p> <p><b>Projected First Payment Date:</b> Effective Date (projected effective date – June 1, 2017).</p>	<p><b>No</b></p>
<p><b>Class 6: Professional Administrative Expense Class</b></p> <p><b>Estimated Allowed Amount:</b> See Ex. A, Line 28</p> <p><b>Potential Objection:</b> Yes</p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 6, Pg. 11, Article V, Section B.</i></p>	<p><b>Projected Mo. Dividend:</b> \$1,408.57 based on Estimated Allowed Amount</p> <p><b>Dividend Formula:</b> Allowed amount in full in 60 consecutive, equal monthly installments of principal and interest beginning on the 7<sup>th</sup> month following the Effective Date.</p> <p><b>Projected First Payment Date:</b> Effective Date (projected effective date – June 1, 2017).</p>	<p><b>No</b></p>
<p><b>Class 7: General Unsecured Claims Class</b></p> <p><b>Estimated Allowed Amount:</b> See Ex. A, Line 44, Column F and H.</p> <p><b>Potential Objections:</b> Yes, including Ms. Laatsch and Empire.</p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 7, Pgs. 11-12, Article VI, Section A.</i></p>	<p><b>Range:</b> Ranges given result from difference between Maximum Allowed Claims and Estimated Allowed Claims.</p> <p><b>Projected Periodic Dividend:</b> First year, \$145.83 per month; next 4 years, \$51.12 per month.</p> <p><b>Dividend Formula:</b> An amount equal to a pro rata share of the lesser of 10% of the Proofs of Claim in this Class - \$35,577 -- or the total amount of Allowed Claims in this Class -- 4,593.31 – payable over 5 years.</p> <p><b>Pro Rata:</b> A fraction, the numerator is the amount of the Allowed Claim held by a creditor in this Class and the denominator is the total amount of Allowed Claims in this Class.</p> <p><b>Projected First Payment Date:</b> Within 60 days of the Effective Date (projected effective date – June 1, 2017).</p>	<p><b>Yes</b></p>
<p><b>Class 8: Equity Interests Class</b></p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 8, Pgs. 12-13, Article VI, Section B.</i></p>	<p>N/A</p>	<p><b>Yes</b></p>

## PART ONE

### DISCLOSURE STATEMENT OVERVIEW, THE DEBTOR, PRIMARY CAUSES OF BANKRUPTCY AND PLAN OVERVIEW

This Disclosure Statement is divided into Parts. This Part provides Plan Parties with an overview of this Disclosure Statement, the Debtor, the primary causes of this Case and the Plan. This Disclosure Statement provides Plan Parties with a summary in lay terms the most important provisions of the Plan and the means for implementing the Plan and provides the other information mandated by the Code and generally required by Bankruptcy Courts as a condition to the approval of a disclosure statement. Since the Plan confirmed by the Bankruptcy Court will establish and govern the parties' Plan obligations following Confirmation, Plan Parties must read the Plan carefully.

Parts Two and Three of this Disclosure Statement summarize the most important articles, sections and paragraphs of the Plan itself in the sequence in which they appear in the Plan using the same article and section titles<sup>1</sup> as those used in the Plan for easy reference and comparison. In the remaining Parts of this Disclosure Statement, which have no Plan counterpart, the Debtor provides information considered necessary to evaluate the merits of the Plan.

The Debtor is a business trust which was formed and exists in good standing under the laws of the State of New Hampshire. G. Brandt Atkins is the trustee of the Trust. On the Disclosure Date, Mr. Atkins and his mother own the equitable or equity interests in the Debtor. Since its formation, the Debtor has engaged in the business of owning and the leasing the Real Estate, which is commonly known and numbered as 362 Route 108, Somersworth, New Hampshire. At this time, the Real Estate is vacant, but the most recent Eastern Appraisal values it at \$575,000 without a tenant.

Mr. Atkins has been a successful real estate broker for 31 years. He purchased the Real Estate in mid-2000s when commercial property values in Somersworth were significantly higher than they are today. Empire Beauty School, Inc. leased the Real Estate on a triple net basis from the Debtor for approximately 17 years. Empire vacated the Real Estate shortly before the

---

<sup>1</sup> The numbers and letters used in this Disclosure Statement will not correspond to the Plan because this Disclosure Statement does not discuss each provision of the Plan.

Petition Date. It stopped paying the rent and other sums due under the lease despite its failure to surrender the Real Estate to the Debtor in good condition. The Debtor filed the Empire Proceeding in the Rockingham Superior Court to recover the rent due and compensation for the property damage done by Empire.

Janet Laatsch divorced Mr. Atkins in the Atkins Marital Proceeding. The divorce devastated Mr. Atkins emotionally. He was incapable of lending the Debtor the money necessary to cure the defaults under the Eastern Loan Documents. Eastern noticed the foreclosure sale of the Real Estate. In an effort to preserve the value of the Real Estate for lienholders junior to Eastern, including Sarnia, NHRE and Ms. Laatsch, the Debtor commenced this Case

## **PART TWO PLAN SUMMARY**

### **I. Conditions Precedent, Confirmation and Effective Date.**

**A. Conditions Precedent.** The obligation of the Debtor to implement the Plan is conditioned on the occurrence or satisfaction of the following conditions precedent:

1. The entry of (a) an Order in the adversary proceeding filed against Ms. Laatsch that avoid any financial liability or other obligation owed directly or indirectly to her by the Debtor and/or the transfer of the Laatsch Mortgage to her pursuant to the Laatsch Divorce Documents or (b) an Order in the contested matter relating to the value of the Real Estate that results in the avoidance of the Laatsch Mortgage because the value of her interest in the Debtor's interest in the Real Estate is \$0.00.

2. The entry of a Confirmation order that is satisfactory in form and substance to the Debtor.

The Debtor expects the Plan to become effective on **June 1, 2017**. On the Effective Date, the Plan will become a valid and binding contract and shall be enforceable by and against the Debtor and all Plan Parties in accordance with applicable state and federal law. In essence, the Plan creates a new relationship between the Debtor and the other Plan Parties although it may

be based in whole or in part on pre-petition documents in the case of allowed secured creditors.

The Plan establishes and governs the Debtor's and Plan Parties' financial liabilities and obligations and privileges, remedies and rights following Confirmation. The entry of the Confirmation Order will (1) create the Classes described in the *Executive Summary Table*, prescribe the treatment of the claims in each Class, (2) result in the complete satisfaction of all claims against the Debtor and liens in, to and on the property of the estate other than the liens specifically preserved hereby and equity interests in the Debtor and (3) enjoin Plan Parties from taking any action against the Debtor or the Debtor's property prohibited by Code Section 524 with respect to claims. If, and to the extent that there should be any conflict or apparent conflict between the Disclosure Statement and this Plan, the conflict shall be resolved in favor of the Plan.

## **II. Plan Classes; Impairment, Voting and Acceptance.**

The Confirmation of the Plan will create the Classes listed in the *Executive Summary Table*. The *Executive Summary Table* and this part of the Plan identify the impaired Classes, their eligibility to vote on the Plan in the Debtor's opinion, the standard for determining acceptance of the Plan and the right of the Debtor to ask the Bankruptcy Court to Confirm or "cram down" the Plan over the objection of one or more Classes. A claim or equity interest will be impaired by Confirmation if the Plan changes in any way the "legal, equitable, and contractual rights to which the claim or interest entitles the holder" outside of the Case unless the treatment of the claim satisfies the complex provisions of Section 1124(2). Except for insiders (whose votes may not be counted in determining whether an impaired class has accepted the Plan), creditors holding Priority Claims for which the Code prescribes specific treatment and creditors holding claims with respect to which the Debtor has filed an objections, creditors holding impaired claims may vote to accept or reject the Plan.

## **III. Generally Applicable Treatment Provisions.**

In an effort to avoid repetition and accidental inconsistencies, the Plan article titled *Generally Applicable Treatment Provisions* contains provisions that relate to more than one Class. One of the sections of this Article pertains just to secured claim Classes and the other

applies to all Classes of claims. A Class may be exempted from a generally applicable treatment provision in the part of the Plan that addresses specifically the treatment of claims in the Class because that is the exception, not the rule. In this part, the Debtor summarizes the most important provisions applicable to more than one Class.

In the Plan section captioned *Provisions Generally Applicable to Secured Claims*, the Plan sets forth a number of provisions that are generally applicable to secured claims. It includes the following:

1. Except as otherwise provided by orders previously entered by the Bankruptcy Court in this Case, the reorganization value of the Estate property will be the reorganization value proposed by the Debtor in the Plan unless the Bankruptcy Court sets a different value based on a timely objection filed by a Plan. The Debtor has proposed a reorganization value of \$550,000 for the Real Estate based primarily on the most recent Eastern Appraisal, which valued the Real Estate at \$575,000, but giving some consideration to the Local Government assessment for real estate tax purposes and the Sarnia valuation. A Confirmation objection based on a dispute regarding the reorganization value objection will commence automatically a contested, valuation matter as part of the Confirmation process or a separate hearing as deemed appropriate by the Court. The Debtor and a secured creditor may stipulate to reorganization and collateral values and the amount of an allowed secured claim subject to Bankruptcy Court approval. Whether or not the Bankruptcy Court sets the reorganization value of any property, the collateral value of that property to a secured creditor will be determined in accordance with the *Provisions Generally Applicable to Secured Claim Classes*.

2. This part of the Plan also modifies automatically loan documents and other documents evidencing or pertaining to secured claims so that they are conformed automatically to the Confirmed Plan and pre-petition breaches and defaults are automatically waived by the entry of the Confirmation Order.

3. Finally, this part of the Plan limits allowed secured claims and the security provided by preserved liens to the lesser of (i) the collateral value of a secured creditor's collateral, less the principal portion of adequate protection payments made to the creditor or (ii) the amount of the allowed secured claim held by the creditor.



The Plan section captioned *Provisions Generally Applicable to All Claims* sets forth basic rules applicable to secured and unsecured creditors. “Disputed,” as used in Exhibit A, Class, Creditor and Claim Summary means disputed, contingent and/or unliquidated in amount. In the Plan, the Debtor reserves the right to object to a claim or claims not marked disputed in Exhibit A if: (1) the Debtor did not have Knowledge of the basis for an objection on or before the Disclosure Date or (2) the objection is limited to an accounting for the amount actually due the creditor as opposed to the Debtor’s liability to the creditor. Finally, this part of the Plan allows creditors in any Class to accept less favorable treatment than proposed in the Plan and preserves their offset and recoupment rights under the Code.

**PART THREE**  
**SUMMARY OF CLASS DIVIDENDS AND TREATMENT**

**IV. Secured Claims Classes.**

**A. Class 1: Local Government Lien Class.**

This single-creditor Class includes only Somersworth, New Hampshire, which is also referred to as the Local Government, and the secured claims held or asserted by the Local Government. The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table and Exhibit A with respect to this Class and the part of the Plan captioned “Local Government Lien Class.” On the Effective Date, the claim in this Class will be automatically Allowed as a secured claim in the amount of tax due on the Effective Date and then paid as described in the Executive Summary Table and otherwise treated as provided for in the part of the Plan bearing the same title as this Section. The Debtor expects the Allowed Secured Claim in this Class to be paid in full, with interest. The Plan preserves for the Local Government its lien on the Real Estate. Except as modified and limited by the Confirmation of the Plan, the Local Government will retain all of its rights, privileges and remedies with respect to the collection of the Local Government Allowed Secured Claim.

**B. Class 2: Eastern Secured Claim Class.**

The single-creditor Class includes only Eastern and its claims arising from, out of or incidental to the Eastern Loan Documents to the extent agreed or determined to be an Allowed



Secured Claim. The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table and Exhibit A with respect to this Class and the part of the Plan titled "Eastern Secured Claim Class." The Debtor may file an Objection to the claim in this Class. On the Effective Date, the claim in this Class will be allowed in such amount as may be agreed to by the Debtor and Eastern or set by the Court, modified as provided for in the Plan and then paid as described in the Executive Summary Table and otherwise treated as provided for in the part of the Plan bearing the same title as this Section. The Debtor expects each Allowed Claim in this Class to be paid in full, with interest. The Plan preserves for Eastern its lien on the Real Estate as security for the payment of the Eastern Allowed Secured Claim. Except as modified and limited by the Confirmation of the Plan, Eastern will retain all of its rights, privileges and remedies with respect to the collection of the Eastern Allowed Secured Claim.

**C. Class 3: Sarnia Secured Claim Class.**

The single-creditor Class includes only Sarnia and its claims arising from, out of or incidental to the Sarnia Loan Documents to the extent agreed or determined to be an Allowed Secured Claim. The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table and Exhibit A with respect to this Class and the part of the Plan captioned Sarnia Secured Claim Class. The Debtor may file an Objection to the claim in this Class. On the Effective Date, the claim in this Class will be allowed in such amount as may be agreed to by the Debtor and Sarnia or set by the Court, modified as provided for in the Plan and then paid as described in the Executive Summary Table and otherwise treated as provided for in the part of the Plan bearing the same title as this Section. The Debtor expects the Allowed Claim in this Class to be paid in full, with interest. The Plan preserves for Sarnia its lien on the Real Estate as security for the payment of the Sarnia Allowed Secured Claim. Except as modified and limited by the Confirmation of the Plan, Sarnia will retain all of its rights, privileges and remedies with respect to the collection of the Sarnia Allowed Secured Claim.

**D. Class 4: NHRE Secured Claim Class.**

The single-creditor Class includes only NHRE and its claims arising from, out of or incidental to the NHRE Loan Documents to the extent agreed or determined to be an Allowed Secured Claim. The Debtor incorporates the disclosures and information given to Plan Parties in

the Executive Summary Table and Exhibit A with respect to this Class and the part of the Plan captioned NHRE Secured Claim Class. On the Effective Date, the NHRE claim in this Class will be automatically Allowed in an amount equal to the Collateral Value of the NHRE Mortgage – the reorganization value of the Real Estate, less the total amount of Allowed Secured Claims secured by senior liens on the Real Estate. The Plan requires NHRE to subordinate the NHRE Mortgage to the Creditors’ Mortgage to be granted to the Creditors’ Agent, who is expected to be William S. Gannon. The subordination and standby provisions of the Plan will prevent the Debtor from paying, and NHRE from accepting any dividends on account of the NHRE Allowed Secured Claim unless all dividends due on account of Allowed Secured Claims held by senior Classes and Priority Allowed Claims and General Unsecured Allowed Claims have been paid in full although the Executive Summary shows the amount that may be paid. Subject to the subordination provisions of the Plan, the Plan preserves for NHRE its lien on the Real Estate as security for the payment of the modified NHRE Allowed Secured Claim and its rights, privileges and remedies with respect to the collection of the Sarnia Allowed Secured Claim.

**V. Priority Claims Classes.**

**A. Class 5: Non-professional Administrative Expense Class.**

Except for Professional Administrative Expense Creditors and their claims, this Class includes all Priority Creditors holding or asserting claims entitled to priority under Code Section 507(a) (2), including without limitation, those named in Exhibit A, “Non-professional Administrative Expense Creditors and Claims,” but excludes Professionals. The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table, Exhibit A and the Plan itself with respect to this non-voting Class.<sup>2</sup> This Class includes the claims held by the United States Trustee for quarterly fees and creditors that provided goods or services to the Debtor after the Petition Date to the extent entitled to priority. On the Effective Date, the Debtor will pay in full in cash all quarterly fees then due the UST and any other allowed Administrative Expense Claims in this Class unless the creditor should agree to less favorable treatment.

---

<sup>2</sup> The Non-professional and Professional Administrative Classes are not technically “Classes,” but are treated as Classes for Plan accounting, payment and cash flow purposes.

**B. Class 6: Professional Administrative Class.**

This Class includes all Professionals retained by the Debtor pursuant to Code Section 327 with Bankruptcy Court approval that hold or assert claims against the Debtor entitled to priority under Code Section 507(a)(2), including without limitation, those named in Exhibit A, "Non-professional Administrative Expense Creditors and Claims." but excludes Professionals, by the attorneys, accountants, consultants and other professionals, including without limitation, the Debtor's Counsel. The unpaid claims in this Class are entitled to priority under Section 507(a)(2) if, and to the extent approved by the Bankruptcy Court. The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table, Exhibit A and the Plan itself with respect to this non-voting Class. No dividends will be paid to any professional until the Bankruptcy Court enters an order granting a fee application filed by the professional in whole or in part. The Debtor's Counsel will accept payment of any allowed administrative expense claims in this Class in 60 consecutive, monthly installments of principal, with interest at the rate of 6% per annum. As security for the payment of the allowed administrative expense claim, the Debtor will grant the Debtor's Counsel a Mortgage and Security Agreement of the Milton Premises and Somersworth Premises which will be junior only to the liens held by TD Bank and Optima Bank.

**VI. Non-priority Unsecured Claims and Equity Interest Classes.**

**A. Class 7: General Unsecured Claims Class.**

This Class includes all creditors holding or asserting Non-priority Unsecured Claims against the Debtor, including without limitation, those named in the part of Exhibit A, "General Unsecured Creditors and Claims." The Debtor incorporates the disclosures made to, and information given to Plan Parties in the Executive Summary Table and Exhibit A with respect to this Class and the part of the Plan captioned "General Unsecured Claims Class."

Under the Plan, the Debtor will pay creditors holding Allowed Claims in this Class a pro rata share of the lesser of the total amount of Allowed Claims in this Class, which may be as low as \$4,593.31 or 10% of the "PoC" Amount -- \$355,777.96 -- thereof, which would be approximately \$35,577 if the counterclaims asserted by Empire should be allowed in full. The

dividends paid could be as high as \$35,577 or as low as \$4,593.31 depending primarily on whether the allows the Empire claim in whole or in part. If the Court disallows the Empire claim and the claim held by Ms. Laatsch, creditors holding allowed claims will be paid in full without interest.

Beginning on the Effective Date, the Debtor will pay to the Agent an amount equal to 5% of the dividends to be paid to Allowed Creditors in this Class in 12 consecutive, equal monthly installments of principal. For example, if there should be \$35,577 in Allowed Claims in this Class, the Debtor or Real Estate Owner would be obligated to pay approximately \$1,750 to the Agent over the year. If the total Allowed Claims in this Class should be \$4,593.31, the initial dividend would be \$145.83. After the first payment, the Debtor or Real Estate Owner will pay to the Agent monthly an amount equal to 1/60th of the remainder of the dividends due hereunder, beginning of the 30th day after the date of the first payment made to the Agent and on the same date of each month thereafter until paid in full. The total monthly dividend may be as high as \$563.15 per month or as low as \$51.12.

Within 10 business days from the date on which the Agent receives a payment from the Debtor or the Real Property Owner, the Agent shall pay himself an amount equal to 10% thereof and then pay to each General Unsecured Creditor holding an Allowed Claim a fractional part of the remainder, the numerator of which shall be the amount of an Allowed Claim and the denominator of which shall be the total of all of the Allowed Claims in this Class.

Pro rata means a fractional portion, the numerator of which is the amount of an Allowed Claim in this Class and the denominator of which is the total amount of Allowed Claims in this Class. Using Raiche & Company [Ex. A, Line 40] as an example, if the dividends to be paid to the Class totaled \$4,593.31 and the Allowed Claims in this Class totaled the same amount, then the pro rata share of Raiche & Company would be \$500 divided by \$4593.31 or 11% and it would be paid 11% of the total dividend amount -- \$499.97.

**B. Class 8: Equity Interest Class.**

This Class includes the Equity Interest Holders, Mr. Atkins and Ms. Atkins, and those claiming by, through or under either of them. The Debtor incorporates the disclosures made to,

and information given to Plan Parties in the Executive Summary Table and Exhibit A with respect to this Class. Under the Plan, the Equity Interest Holders will retain their equity interests in the Debtor in consideration of the new value provided by the Atkins Working Capital Loan subject to the liens preserved or created for the benefit of Eastern, Sarnia, the Creditors' Agent and NHRE which exhaust the equity in the Real Estate and the Mortgagee's Purchase Options granted Sarnia and NHRE.

## **PART FOUR**

### **SUMMARY OF PRIMARY MEANS FOR IMPLEMENTING PLAN.**

This part summarizes the means for implementing the Plan, which are set forth in the Articles IX through XV of the Plan. It explains the purpose of the acts, actions and transactions important to the successful implementation of the Plan. Like Part Three, this part uses the same article and section titles used in the Plan itself.

#### **VII. Implementation Generally.**

This article establishes the Debtor's authority to implement the Plan, which will become a contract between the Debtor and each holder of an allowed claim or interest. It obligates the Debtor and each Plan Party to implement the Plan – pay, perform and satisfy their financial liabilities and other obligations to each other under the Plan and execute any Plan documents that satisfy the requirements of the *Plan Documents* part of the Plan and Disclosure Statement titled. Confirmation may impose on Plan Parties the implied contractual duties of good faith and fair dealing arising under state law. The Debtor and the Plan Parties must do, execute or cause to be done and executed all further acts and documents as may be reasonably necessary to implement the Plan. In addition, the entry of the Confirmation Order will authorize the Debtor to do or take, or cause to be done or taken, close or cause to be closed and execute or cause to be executed any other act, action, document or transaction, which the Debtor reasonably believes to be necessary for the successful implementation of the Plan or incidental thereto.

#### **VIII. Post-Confirmation Debtor, Ownership, Management and Business Continuation.**

**A. Reorganized Debtor, Ownership and Management.** The reorganized Debtor shall continue to be a New Hampshire business trust. It will be owned by the Equity Interest

Holders. Mr. Atkins will continue to serve as the trustee of the Debtor because he is uniquely qualified to market the Real Estate for sale or lease. No Equity Interest Holder, Trustee or any other insider may be paid for management services provided to or work done for the Debtor. An Equity Holder, Trustee or an insider may be reimbursed for costs and expenses reasonably actually paid in connection with management services provided to the Debtor. The Debtor may also distribute to the Equity Interest Holders an amount equal to any liability for federal or state tax liability imposed on such person or entity by reason of Debtor's revenues or payroll if, but only if all dividends then due creditors holding Allowed Claims have been paid in full. Subject to the fiduciary duties owed to creditors holding Allowed Claims, the Trustee shall have full and complete authority to manage the Debtor, its business and day to day affairs, including without limitation, the prosecution or settlement of the Empire Proceeding.

**IX. Primary Implementing Acts and Transactions.**

**A. Atkins-NHRE Working Capital Loan; New Equity Interests.** To the extent that the Debtor's revenue shall not be sufficient to pay dividends becoming due hereunder, the Plan requires Mr. Atkins and NHRE to commit themselves to lending the Debtor the money necessary to pay them on an unsecured basis. The loans will be treated as additional paid-in capital. Mr. Atkins and NHRE may charge interest at the minimum rate necessary to prevent the imputation of interest. Under no circumstances, however, will the Debtor make any payments to Mr. Atkins or NHRE on account of loans made to the Debtor until the Allowed Secured Claims held by Eastern has been paid in full. If the Equity Holders shall not be permitted to retain their Equity Interests in the Debtor, the Debtor shall issue new beneficial interests in the Trust to Mr. Atkins and Ms. Atkins or their nominees in consideration of the new value provided by them.

**B. Creditors' Agent and Creditors' Financing Documents.**

The Confirmation order will appoint William S. Gannon, Esq. as the initial Creditors' Agent for General Unsecured Creditors holding Allowed Claims, who are referred to as the Benefited Creditors in the Plan. On or before the Effective Date, the Debtor will execute and deliver the Creditors' Note, Creditors' Mortgage and any other Creditors' Financing Documents to the Creditors' Agent. The Creditors' Financing Documents will document the dividend payments to be made to General Unsecured Creditors holding Allowed Claims and provide them



with security for the payments. Assuming that the Real Estate is worth \$550,000, the Creditors' Mortgage should attach to approximately \$42,333 in equity because of the subordination of the NHRE Mortgage.

The Plan requires the Debtor to pay the dividends due the Benefited Creditors to the Creditors' Agent for redistribution to the Benefited Creditors. The Creditors' Financing Documents will give the Debtor a period of 30 days to cure any default after written notice has been given to the Debtor. The Creditors' Agent may (but need not) commence foreclosure proceedings against the Real Estate or take such other lawful actions as the Creditors' Agent deems to be in the best interests of the Benefited Creditors in the event of a default under the Creditors' Financing Documents, which is not cured as permitted by the Financing Documents.

**C. Subordination of NHRE Allowed Secured Claim.**

To provide General Unsecured Creditors holding Allowed Claims with some Collateral, NHRE will subordinate by agreement the NHRE Mortgage to the Creditors' Mortgage to be held by the Creditors' Agent. The subordination creates equity where none exists otherwise. No payment may be made to, or accepted by NHRE unless all dividends then due the Creditors' Agent have been paid in full.

**D. Sale of Real Estate to Third Party.**

1. To fund the Plan, the Debtor will lease or sell the Real Estate unless Sarnia or NHRE shall exercise their Mortgagee's Purchase Options granted to them in the Plan. The Debtor will retain Mr. Atkins or another qualified commercial real estate broker, as determined by the Debtor, to list the Real Estate for lease or sale. The initial listing price may not be less than the reorganization value of the Real Estate. The commission due the broker will be paid only from the proceeds of a lease or sale and will not exceed 5% of the proceeds thereof. In the case of a lease, the commission will be paid monthly from rent actually paid by the tenant or tenants. No commission shall be due if the Real Estate should be sold to a Mortgagee. After consulting in good faith with Eastern, Sarnia, the Creditors' Agent and NHRE, the Debtor may from time to time change the broker, increase or decrease the listing price and the other terms of sale the terms of sale or any other provision in the listing agreement based on market conditions.



2. If the Debtor receives a written purchase and sale agreement for the Real Estate, the broker and Debtor shall disclose the offer to Eastern, Sarnia, the Creditors' Agent and NHRE in confidence and consult with them regarding the acceptance or rejection of the offer and the terms of any counteroffer. The Debtor must accept the offer if the Debtor determines in the exercise of reasonable business judgment after consulting Eastern, Sarnia and NHRE that (a) the price offered represents the fair market value of the Real Estate, (b) the price is payable in cash and (c) the offer does not contain unusual or problematic contingencies that make a closing unlikely in the Debtor's judgment. If the price is too low in the Debtor's judgment, but Eastern, Sarnia, the Creditors' Agent and NHRE agree to accept the payment in full and complete satisfaction of their Allowed Secured Claims, the Debtor shall use its best efforts to negotiate and enter into a purchase and sale agreement that is reasonably acceptable to the buyer, the Debtor and Eastern, Sarnia, the Creditors' Agent and NHRE.

**E. Mortgagee's Purchase Options.**

1. Under the Plan, Sarnia and NHRE will be granted an option to purchase the Real Estate, which is referred to as the "Mortgagee's Purchase Option." The Mortgagee's Purchase Option will give Sarnia the right to purchase the Real Estate for a period of 180 days from the Effective Date. The NHRE Purchase Option will give NHRE the right to buy the Real Estate for a period of 180 days beginning on the expiration date of the Sarnia Option. The Options will expire if not exercised strictly in accordance with the terms of the Plan, time being of the essence. The purchase price will be an amount equal to the Allowed Secured Claims held by the Local Government, Eastern, Sarnia and the Creditors' Agent and 50% of the Allowed Secured Claim held by NHRE. The conveyance shall be made, and be deemed to have been made to the Mortgagee Buyer pursuant to Code Section 363 free and clear of all liens, claims and interests of any and every nature whatsoever to the fullest extent permitted by Code Section 363, except for the Allowed Secured Claims assumed by the Mortgagee Buyer. Subject to the Confirmation Order and with the benefit of the protections afforded the Mortgagee Buyer and the Debtor, the Debtor shall convey the Real Estate to the Mortgagee Buyer subject to the protections afforded by Code Section 363 and the Mortgagee Buyer shall accept such deed.

**F. Exemption from Certain Taxes.** Pursuant to Section 1146(c) of the

Bankruptcy Code, the sale of the Real Estate pursuant to the Plan will be exempt from the payment of the Transfer Tax in order to maximize the price paid by the Buyer for the benefit of the estate and the amount received by the estate.

**X. Executory Contracts and Unexpired Leases.**

The Plan Article captioned *Executory Contracts and Unexpired Leases* governs the assumption, assumption and assignment and rejection of executory contracts and unexpired real estate leases which are referred to collectively as “contracts.” It discloses the fact that the Debtor has no executory contracts or unexpired leases of real estate unless the Empire Lease remains in effect. The Debtor will assume the Empire Lease if and to the extent necessary to protect its rights as a “holdover landlord.” Under the Plan, the entry of the Confirmation Order automatically approves and authorizes the Debtor to implement its decisions regarding the assumption, assumption and assignment and/or rejection of executory contracts and unexpired leases as permitted by the Plan.

Except for unexpired leases and executory contracts specifically assumed pursuant to the Plan, the Debtor will reject any and all other executory contract and unexpired leases on the Effective Date, whether known or unknown to the Debtor. Each non-debtor party or a “counterparty” to a rejected contract shall have a general unsecured, rejection claim against the Debtor in the amount set by the Code. The non-debtor or counterparty to the rejected executory contract or unexpired real estate lease has 30 days from the Effective Date to file a rejection claim with the Bankruptcy Court; failing which such claim will be forfeited and barred forever.

**XI. Proceedings and Causes of Action.**

The Plan Article titled *Proceedings and Causes of Action* governs the settlement, termination and the retention and continued prosecution of pending proceedings and causes of action owned by the Debtor. The Debtor will retain and may prosecute to judgment, compromise, settle or release any one or more of the following Causes of Action:

1. The Empire Proceeding.
2. All Chapter 5 actions in which the Debtor expects to recover more than

\$2,500.

3. Objections to claims filed pursuant to, and as permitted by this Plan and the Confirmation Order.

4. Applications for or pertaining to the payment of fees and reimbursement of costs and expenses, the retention of special counsel or other Professionals, the entry of a Final Decree or any other administrative matter.

5. Any other contested matter or adversary proceeding pending on the date of the Application for Final Decree filed in this Case.

The Plan permits the Debtor to retain counsel on a standard contingent fee basis or modified contingent fee basis. The Debtor's Counsel, who has already been approved by the Bankruptcy Court, may be retained on a standard contingent fee basis without prior Bankruptcy Court approval. Any other attorney selected by the Debtor must be approved by the Bankruptcy Court. No Retained Proceeding or Cause of Action may be settled without prior Bankruptcy Court approval.

## **XII. Claims Objections and Payment of Dividends Generally.**

This Article establishes the procedures for resolving disputes pertaining to claims and the payment of dividends on Allowed Claims. The Class and claims summary attached as Exhibit A lists the claims known to the Debtor on a Class-by-Class basis. It identifies as "disputed" each claim known to be contingent, disputed or unliquidated in amount. Undisputed claims will be allowed in the Estimated Allowed Amount thereof, as shown in Exhibit A, except for accounting disputes and disputes unknown to the Debtor on the Disclosure Date. In this regard, creditors should understand that the Debtor will more probably than not object to any claims marked disputed in Exhibit A.

The Debtor will pay the dividends becoming due under the Plan by mailing a check to the allowed creditor. Dividend checks will be mailed to the addresses given by allowed creditors in (1) their proofs of claim or (2) any written notice of change of address delivered to the Debtor. Since "undeliverable dividends" will become the property of the Debtor, creditors should make

sure that they notify the Bankruptcy Court and the Debtor of any change of address.

## **PART FIVE**

### **THE DEBTOR AND HISTORY RELEVANT TO PLAN**

This Part does not have a Plan counterpart. It provides Plan Parties with pre-petition information regarding the ownership and management of the Debtor and the primary reason or reasons that the Debtor sought protection under the Code and a summary of the significant events that occurred during the Case.

#### **XIII. History of the Debtor, the Real Estate and Primary Causes of Bankruptcy Case.**

In 1978 Richard Rouleau constructed a 5,332 sf brick and aluminum sided duplex professional office building on a 200' x 200' parcel of land located at 362 Route 108, Somersworth, NH 03878. In 1991, NHRE signed a lease for my company, NH Real Estate Management & Brokerage, Inc.(NHRE), to occupy the former Fireside Realty space. In June of 1998 Mr. Atkins as Trustee, purchased the property from Mr. Rouleau under the newly created entity name of 362 Route 108 Realty Trust. In the fall of 2001, Empire came to look at the vacant space available in half of the building. It immediately offered to lease the Real Estate for a ten year period the entire building, inclusive of an additional abutting half acre of vacant land to be for parking. NHRE vacated its space and moved to its still current location at 350 Route 108. The Trust signed a ten year triple net lease with Empire on November 1, 2001, which remained through extensions in effect until they vacated on November 30, 2015. Although the property has been listed for sale or lease, it remains vacant as of this date.

Empire for many years expressed interest in purchasing the property from the Trust, so the parties shared the cost of appraisals to determine value. Over the years 4-5 appraisals were commissioned and they fell within the range of \$575,000 to \$725,000. In the most recent years, Empire wanted to explore the potential of expanding the building size initially an additional 2,400 sf and then in 2014- 2015 an additional 6,000 sf.

The Debtor worked on conceptual site plans for each of these requests, prepared estimated costs for the new construction and related improvements, and received Planning Board approval to make a lot line adjustment and deed transfer of 0.5 acres of land with improved pave

parking to the Debtor property all in anticipation of satisfying Empire's need for expansion, updating their image and consolidating the beauty and cosmetology school with the barber school and corporate offices all to this location. At some point during 2014 control of Empire transitioned within the family from the father, Norman Langlois, to his son, John Langlois. John's management style was very different and difficult. This transition marked the end of the great relationship between the Debtor and Empire and the beginning of an adversarial relationship between the parties punctuated by little to no communication from John and total rejection of agreed upon meeting and expansion decision deadlines, notification of lease extension/termination deadlines, and end of lease vacate dates.

Empire and the Debtor set a deadline date for February 2015 to discuss and make decisions on the latest conceptual site plan for a 6,000 sf addition and preliminary cost projection equated to a new base lease rate. Timing for this meeting was critical as it provided adequate information to Empire for the six month notice of termination or extension required by the lease. John kept pushing the planned meetings and decisions off until the middle of the summer of 2015. At which time he still could not remain focused on these decisions. It was not until the first week of September 2015 that John indicated in writing that it was his decision to have Empire vacate on October 31, 2015 at the end of the current lease period. Realistically, this was an impractical task as Empire had a new Class starting in late September and construction on their new location for Empire had not yet begun.

None-the-less, Debtor through NH Real Estate began advertising the Trust property for lease in addition to it also being listed for sale. Within a couple of weeks negotiations started with a martial arts academy who were coming up on the end of their 15 year lease locally and needed to re-locate in order to expand their growing business. They were looking to find a new location and enter into a lease by December of 2015, or else they would need to commit to a new long-term lease extension with their current landlord for their existing space.

On October 28, 2015 Empire informed the Debtor that they were not able to vacate and offered a Holdover Agreement to cover November and possibly December 2015. Their Holdover Agreement was accepted by the Debtor. Empire continued to run the school through Friday 27<sup>th</sup> of November. Over the weekend of November 28-29 Empire removed all personal

property from the building and left the floors broom swept. On November 30, 2015 Empire notified Debtor that they had vacated and the parties scheduled and conducted a final walkthrough of the building during the first week of December. Debtor was very disappointed with the condition of the building and grounds being turned back as during the course of their lease, Empire was responsible for all maintenance and repairs for the building interior/exterior, other improvements and grounds, excepting for structural elements. Upon vacating Empire was to return property back to landlord in good repair. This was not the case and in-fact the property was found to be damaged and in a significant state of disrepair with many instances of deferred maintenance. When Trustee confronted this situation and the requirement detailed in the lease Empire said they could not do the work as they did not have anyone to accomplish it due to the holiday time of the year and other factors. The Trustee was able to start a small portion of the work, but the scope was large and could not find contractors to make estimates and place on a schedule until the end of February 2016. Ultimately, Empire was completely uncooperative and the Debtor brought suit against Empire for damages in excess of \$50,000.

The opportunity to lease the property to the martial arts academy evaporated in early January and they renewed their lease. From January – August of 2016 NHRE, continued to market the property and showed the property to a small team of phycologists and related natural medicine group of doctors, a breakfast/lunch restaurant, a used construction equipment and truck sales business, an oil and propane tank farm home fuel distributor, and used car annex to a local new car dealership, all of which failed to move forward with a purchase or lease. In late July and throughout August of 2016 a behavioral healthcare substance abuse group clinic expressed significant interest in the property and wanted to have the Debtor prepare a floor plan with proposed tenant improvements, cost estimates and cost sharing of the tenant improvements, construction timeline to obtain a certificate of occupancy, and a draft 10 year lease to be signed in September for a lease start date as early as October 1<sup>st</sup>, but no later than November 1<sup>st</sup>, 2016. On August 31<sup>st</sup> Eastern Bank published a foreclosure notice. Within two weeks of being published Achieve Behavior Healthcare decided to drop the Debtor's property as their primary lease choice due primarily to the undermining foreclosure factor, and they immediately moved on to sign a Letter of Intent with their 2<sup>nd</sup> choice. The Debtor filed a Chapter 11 Bankruptcy on October 3, 2016 one day before the scheduled foreclosure auction.



There were several other personal factors that contributed to the Debtor's decision to file for bankruptcy. None of which alone would have triggered this decision, but the combined effect was nearly devastating and definitely a significant cause. These factors were 1) the deep and prolonged recession starting in 2007 and its still current effect on the local real estate market and mortgage lending, 2) the Debtor's protracted divorce starting in 2010, finalized in 2014, and still painfully encumbered by the terms of the Decree, 3) having a son in college 2010-2014 and a daughter 2013-2018, 4) suffering from a heart incident in 2012, undergoing surgery and downsizing my business to reduce stress on the advice of my cardiac physician, and 5) the adverse effects a) and b) above have had on Debtor's personal credit and ability to borrow.

The local real estate market can be defined as the Tri-City area, being Dover (Rollinsford), Somersworth, and Rochester, NH. Real estate here has been slow to recover from the recession that started back in 2007. The residential market began recovering in Dover two years ago, but Somersworth and Rochester are only now beginning to see life. The commercial real estate market has been very weak, again with Dover now in motion, but Somersworth commercial properties have seen 1-3 year vacancies and Rochester is still very blighted with entire buildings vacant and commercial/retail spaces in town vacant for 3-5 years. Beginning in the last week of January this year a significant movement began in the real estate market. NHRE has seen a tremendous change in the number of phone calls both in the residential and commercial markets for buyers and tenants.

The Debtor is seeing a potential benefit from this new activity in that a showing for a prospective buyer/tenant social services group was made in early February and two other prospective buyer showings are scheduled. Awakening Church will be touring later this week, and Federal Cigar will tour the property. Both of these prospects are buyers.

#### **XIV. Affiliates; Insiders and Related Entities.**

Under the Code, "affiliate" is a defined term. Mr. Atkins owns all of the equity interests in the Debtor and NHRE. Mr. Atkins and NHRE affiliates of the Debtor by reason of the common and controlling ownership of Mr. Atkins. They are also insiders with respect to the Debtor. Ms. Laatsch is not an insider because of the divorce. Votes accepting the Plan cast by Mr. Atkins and NHRE may not be counted in determining acceptance by a Class. Being an



insider does not by itself permit the subordination of a claim held by an insider.

## **PART SIX**

### **SIGNIFICANT PROPERTY, PLAN USE, VALUE AND HYPOTHETICAL LIQUIDATION**

This Part has no counterpart in the Plan. It describes and values the property of the estate having significant value. In addition, this Part describes a hypothetical liquidation of the property of the estate and projects the amount that each Class would recover from foreclosure sales of the Premises

#### **XV. Significant Property of the Estate, Plan Use and Values.**

##### **A. Scope and Liquidation Analysis and Summary.**

This Article describes for Plan Parties the property of the estate, the proposed use of the property under Plan and the projected reorganization and liquidation values of the property. The values are summarized in the Hypothetical Liquidation and Distribution Summary included in the Appendix as Exhibit C. Property worth less than \$5,000 seemed to be inconsequential in terms of value and immaterial to an evaluation of the merits of the Plan.

##### **B. Remaining Property of the Estate; Retention and Valuation Methodology.**

The Debtor owns the Real Estate and the Empire Proceeding. Under the Plan, the Debtor will retain the Real Estate valued at \$550,000 subject to the Allowed Secured Claims and Secured Claims to be held by Eastern, Sarnia, the Debtor's Counsel, the Creditors' Agent and NHRE. There will be no equity in the Real Estate. With respect to the value of the Empire Proceeding and the Retained Causes of Action, which are general intangibles and inherently difficult to value because of factual issues regarding liability, the Debtor relied on the opinions of Debtor and his Professionals.

##### **C. Significant Property Reorganization Values.**

1. The Real Estate is a vacant building located at 362 Route 108 in Somersworth, New Hampshire. The Eastern Appraisal valued the Real Estate at \$650,000, but Eastern subsequently requested a second appraisal, which came in at \$575,000. Sarnia insisted on

being given an agreement for the purchase and sale of the Real Estate at a price of \$500,000 subject to a number of contingencies. Somersworth values the Real Estate at \$464,100 for real estate tax purposes. After considering the information, the Debtor proposes a reorganization value of the Real Estate, which is the average of the three valuations at \$550,000.

2. The Empire Proceeding is difficult to value. The Retained Empire Cause of Action is worth at least \$45,000 given the nature and extent of repairs that Empire is obligated to make. The unpaid "holdover rent" adds more than \$100,000 in value to the Cause of Action if it is calculated at the rate of \$12,500 per month as provided for in the parties' Holdover Agreement; tens of thousands of dollars if calculated at the Empire Lease rate. The Debtor doubts that the counterclaim asserted by Empire has any value, a conclusion that Empire will vigorously dispute. In the opinion of Special Counsel, the Retained Empire Cause of Action is worth between \$35,000 and \$100,000.

## **XVI. Hypothetical Liquidation Analysis and Best Interests of Creditors.**

### **A. Purpose and Liquidation Assumptions.**

1. Debtors must provide them with an analysis of the financial consequences of a hypothetical liquidation of the property of the estate to permit creditors to decide whether a plan of reorganization is in their best interests.

2. The Debtor made the following assumptions for the purpose of estimating the liquidation value of the significant property of the estate:

- a. The liquidation would follow the disapproval of the Plan.
- b. This reorganization Case would be converted to a liquidation case under Chapter 7 of the Bankruptcy Code.
- c. Eastern would foreclose its first priority Mortgage of the Real Estate.
- d. Eastern would recover between 50% and 70% of reorganization value of the Real Estate based on the rules of thumb generally used by lenders to project the

liquidation values of unimproved land, which is similar to a vacant building, and improved Real Estate, respectively.

- e. A Chapter 7 Trustee would not pursue the Empire Proceeding aggressively.
- f. NHRE would not subordinate the NHRE Mortgage in a liquidation.

**B. Significant Property Liquidation Values.**

1. The Real Estate would bring between \$255,683.34 and \$357,956.67 at a foreclosure sale. The Real Estate is “improved,” but it has been vacant for a long time. Based on the projected liquidation Eastern might recover its principal and most of its interest, but could lose as much as \$138,000. None of the other Secured or Unsecured Creditors would recover any money through a foreclosure sale.

2. The Retained Empire Cause of Action would probably result in a nuisance nominal settlement. A Trustee would not likely engage in a serious litigation given the counterclaim. From any amount recovered, the estate would have to pay the fees, costs and expenses of Counsel to the Trustee or Special Counsel.

**C. Projected Distributions of Hypothetical Liquidation Proceeds.**

The Hypothetical Liquidation Summary included in the Appendix as Exhibit C projects in a tabular form the projected distributions that would be made to creditors from the liquidation. It can be summarized as follows:

- 1. Only the Local Government would be paid in full from the proceeds of the hypothetical liquidation.
- 2. Eastern would lose between \$27,558 and \$138,000.
- 3. No other Class of creditors would receive any money from the proceeds of the hypothetical liquidation.

## PART SEVEN

### CONFIRMATION GENERALLY, FEASIBILITY, BEST INTERESTS OF CREDITORS AND CRAM DOWN

This Part discusses the requirements for Confirmation generally, the risks inherent in the Plan, its feasibility and explains why the Debtor believes that the Plan satisfies the best interests of creditors test.

#### **XVII. Confirmation Generally.**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Code are met. The requirements for Confirmation of the Plan are that:

1. The Plan is feasible,
2. The Plan is accepted by all impaired Classes of claims and equity interests, and
3. To the extent that any holder of a claim or interest in an impaired Class does not vote for the Plan, it will receive or retain under the Plan property of a value that is not less than the amount that would have been received or retained if the Debtor were liquidated under Chapter 7 of the Code.
4. If one impaired voting Class accepts the Plan, the Bankruptcy Court may confirm the Plan by "cramming it down" on objecting creditors if the Plan satisfies all of the requirements of Code Section 1129(a), except (a)(8), and "does not discriminate unfairly" and is "fair and equitable" as to such Class:

#### **XVIII. Financial Projections, Risk and Feasibility.**

##### **B. Plan Is Feasible.**

Although the successful implementation of the Plan requires leasing or selling the Real Estate and reducing the Empire Proceeding to judgment, the Plan does not require the Debtor and Mr. Atkins to do anything extraordinary. Mr. Atkins is a highly qualified, experience real estate

broker with an enormous incentive to make the Plan work. He has the ability to cause NHRE to subordinate its lien on the Real Estate and forego payments for the benefit of other Classes of creditors and the ability to subsidize the Plan through the working capital loans that will be treated as additional paid-in capital. Since the Plan can be implemented without recovering any money from Empire, the litigation does not affect the feasibility of the Plan.

**B. Risk Factors and Analysis.**

The Plan requires finding a buyer or credit tenant within 12 months. Mr. Atkins will be able to subsidize the payment of the modified Allowed Secured Claims for that period of time. The Tri-City market was dead until mid-January, 2017. Activity has increased substantially in the real estate market recently. Mr. Atkins has shown the Real Estate to buyers with good business reasons to purchase the Real Estate over the last 2 weeks. Although one (1) has decided to purchase another property, two (2) remain interested in buying the Real Estate. As a result, the Debtor believes that the “equity” in the Real Estate and the heightened interest shows that the Plan is feasible.

**XIX. Best Interests of Creditors, Acceptance and Cram Down.**

**A. Plan Is in the Best Interests of Creditors.**

Confirmation of the Plan is in the best interests of creditors within the meaning of the Code. Determining whether or not the Plan satisfies the “best interests test” requires a comparison of the dividends are expected to receive under the Plan to the distributions that impaired creditors would receive in the hypothetical liquidation described earlier in this Disclosure Statement. Exhibit C shows that only the Local Government would be paid in full from the hypothetical liquidation proceeds. All impaired creditors will receive more under the Plan than they would receive through a liquidation. Consequently, the Plan satisfies the “best interests of creditors” test.

Included in the Appendix is Exhibit D, Comparison of Plan Dividends to Projected Liquidation Distributions Based on Estimated Allowed Claims. It compares in a tabular format the dividends projected to be paid to holders of Allowed Claims in each Class pursuant to the Plan to the amount or liquidation distribution that the Class would receive from the hypothetical

liquidation of the Debtor's property, as shown by Exhibit C. All impaired creditors will receive more under the Plan than they would receive through a liquidation. Consequently, the Plan satisfies the "best interests of creditors" test.

**B. Acceptance of Plan.**

Pursuant to Section 1126(c) of the Code, a Class of impaired claims has accepted a plan of reorganization when such plan has been accepted by creditors (other than an entity designated under Section 1126(e) of the Code) that hold at least two-thirds in aggregate dollar amount of Allowed Claims in such Class and more than one-half in number of the Allowed Claims of such Class held by creditors (other than any entity designated under Section 1126(e) of the Code) that have actually voted to accept or reject the plan. Section 1126(e) of the Code allows the Bankruptcy Court to designate the votes of any party that did not vote in good faith or whose vote was not solicited or procured in good faith or in accordance with the Code. Holders of claims who fail to vote are generally not counted as either accepting or rejecting the plan.

**C. Cramdown and Absolute Priority.**

Section 1129(b) of the Code permits a Bankruptcy Court to confirm a plan even if an impaired voting Class rejects the plan or a creditor objects to its Confirmation through a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of claims or Equity Interest Holders that is impaired under, and has not accepted, the plan. The Plan will automatically become a motion asking the Bankruptcy Court to Confirm it over the objection of any Class or Classes entitled to vote to accept or reject the Plan if such Class rejects the Plan.

Nonconsensual Confirmation requires the Bankruptcy Court to find that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each impaired, rejecting Class. The Plan satisfies both requirements. The Plan priority scheme follows the Code. No creditor holding an Allowed Claim in a Class will receive money or property on account of the Allowed Claims unless all Allowed Claims in the senior Classes have been paid in full. If necessary, the Bankruptcy Court will have the power and authority to Confirm the Plan.

**PART EIGHT**

## ADDITIONAL DISCLOSURES

### XX. Tax Returns and Tax Consequences to Creditors.

**A. Status of Federal and State Tax Returns.** The Debtor has filed all of the federal and state tax returns due on or before the Disclosure Date.

**B. Tax Consequences to Creditors.** The Confirmation and implementation of the Plan may result in federal income and/or state tax consequences to creditors. The tax consequences may and more probably than not will vary among the creditors because of their unique business and tax considerations and the claim itself. Consequently, creditors are urged to consult with their tax advisors in order to determine the tax implications of the Plan under federal and state law.

**C. Acquisition of Claims by Insiders.** No claims have been acquired by any insider since the Petition Date.

### **D. Qualifications and Limitations.**

**1. Primary Source of Information.** The information contained in this Disclosure Statement came from the Debtor's management and its books of account and other business and financial records.

**2. Dating of Information and Statements.** All of the statements contained in this Disclosure Statement are being made as of the Disclosure Date unless otherwise stated in the body of this Disclosure Statement.

**3. Limited Use of Disclosure Statement.** Only Plan Parties are intended to receive and use the information contained in this Disclosure Statement. It has been prepared by the Debtor to provide Plan Parties with adequate information to permit them to make an informed decision about the merits of the Plan. Although the Bankruptcy Court determined that this Disclosure Statement provides adequate information, its Order approving the Disclosure Statement does not mean and should not be interpreted to mean that the Bankruptcy Court has endorsed or determined that the Plan will or will not be successful or that creditors should vote for it.



4. **No Approval of Securities Regulators.** No benefits offered to Plan Parties under the Plan have been approved or disapproved by the SEC, NASD or any other governmental authority. Neither the SEC, NASD nor any other governmental authority has passed, or will pass upon the merits of the Plan except for the Bankruptcy Court.

5. **No Other Representations.** No representations concerning the Debtor, particularly regarding future business operations or the value of the Debtor's assets, have been authorized by the Debtor, except as set forth in this statement.

6. **Projections.** Much of the information contained herein consists of projections of future performance of a very complicated and uncertain business. The Debtor has made a reasonable effort to insure that the assumptions, estimates, financial projections and predictions have a reasonable basis in fact. The Plan term is 10 years. During that period, factors beyond the control of the Debtor and its management will affect the implementation and success of the Plan. Under no circumstances should any Plan Party view the information as a guaranty, representation or warranty.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I served the foregoing pleading on all persons/entities named on the CM/ECF Electronic Service List by causing it to be filed electronically via the CM/ECF filing system and mailed to the following persons/entities by first-class United States Mail, postage pre-paid, or in such other manner as may be indicated:

All persons and entities named on the CM/ECF Electronic Service List - electronically via the CM/ECF filing system.

All persons and entities named on the attached Service List.

Dated: February 27, 2017

/s/ Beth E. Venuti  
Beth E. Venuti, Paralegal

**Service List – All Creditors,  
Appearances & Interested Parties**

362 Route 108 Realty Trust  
Chapter 11 Case #: 16-11405-BAH

**IRS**

**Special Procedures**  
80 Daniel St., PO Box 9502  
Portsmouth, NH 03802

**Internal Revenue Service  
Centralized Insolvency Operations**

P.O. Box 7346  
Philadelphia, PA 19101-7346

**State of New Hampshire  
Dept. of Employment Security**

Attn: Arnold Rocklin-Weare  
45 So. Fruit Street  
Concord, NH 03301

**City of Somersworth**

Water and Sewer  
1 Government Way  
Somersworth, NH 03878

**Commercial Maintenance &  
Landscaping LLC**

362C Route 108  
Somersworth, NH 03878

**Eastern Bank  
to attorney via CM/ECF**

**Empire Beauty Schools, Inc.**

16 Wakefield Street, Suite Right  
Rochester, NH 03867

**Eversource**

P.O. Box 330  
Manchester, NH 03105-0303

**Janet M. Laatsch**

83 Lovering Road  
North Hampton, NH 03864

**NH Real Estate Management &  
Brokerage**

350 Route 108, Suite #210  
Somersworth, NH 03878

**Raiche & Company CPAs, P.A.**

680 Central Avenue, Suite 101  
Dover, NH 03820

**Sanford Roberts, PA**

117 Bow Street  
Box 4608  
Portsmouth, NH 03802-4608

**Sarnia**

to attorney via CM/ECF

**U.S. Securities and Exchange Comm**

Northeast Regional Office  
233 Broadway  
New York, NY 10279

**Unitil**

Attn: Credit Dept  
5 McGuire Street  
Concord, NH 03301-4622

**Wage and Hour Administrator**

NH Department of Labor  
PO Box 2076  
Concord, NH 03302-2076

**American Express Bank FSB**

c/o Becket and Lee LLP  
PO Box 3001  
Malvern PA 19355-0701

**Capital One Bank (USA), N.A.**

PO Box 71083  
Charlotte, NC 28272-1083

**City of Somersworth**

One Government Way  
Somersworth, NH 03878

**Empire Beauty Schools, Inc.**

c/o Shaines & McEachern, PA  
282 Corporate Drive, Suite #2  
Portsmouth, NH 03801