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General Partnership

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: : Case No. 16-bk-02183-RNO  
B & B Real Estate General Partnership, :  
Debtor-in-Possession : Chapter 11  
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**DEBTOR'S DISCLOSURE STATEMENT  
PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE  
RELATING TO DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

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The Debtor proposes this Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code in connection with the solicitation of acceptance of its Chapter 11 Plan of Reorganization (the "Plan"). The terms in this Disclosure Statement shall have the same meaning as in the Plan.

**I. INTRODUCTORY STATEMENT**

The Debtor, B & B Real Estate General Partnership, is a Pennsylvania partnership which is principally involved in the development and leasing of its real estate. At the time of the filing of its Chapter 11 bankruptcy, it owned a single parcel of real estate located at 117 Rose Street, Scotrun, Monroe County, Pennsylvania. The parcel of land is 2.54 acres and includes a commercial building which is primarily used for a gym and fitness center. However, the

commercial building also has a smaller, separate, rental space which also generates rental income. Currently, that space is leased to a daycare center.

At the time of the filing of the bankruptcy, the financing in connection with the purchase of Debtor's real estate was provided by Newtek Small Business Finance, LLC (Newtek). Unfortunately, because of a rapidly changing economy and increased competition in the gym and fitness industry, B & B Fitness and Barbell, Inc. (B & B Fitness), a related entity, was unable to, properly, adapt to these changing circumstances. These circumstances led to the nonpayment by B & B Fitness of its monthly lease obligation to Debtor. In turn, Debtor was unable to pay the monthly loan payment regarding the commercial loan held by Newtek and was unable to pay the real estate property taxes which were due to the Monroe County Tax Claim Bureau (MCTCB). Eventually, Debtor's failure to pay its property taxes, resulted in the MCTCB listing Debtor's property for the 2016 Judicial Tax Sale. In addition, Newtek moved forward with the acceleration of its loan obligation and confessed judgment against Debtor. As a result, on May 23, 2016, Debtor filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code in the Middle District of Pennsylvania in order to reorganize its financial affairs. Debtor believes that in accordance with this Chapter 11 Plan, it will be able to pay Newtek's commercial loan arrearage, in full, and pay the MCTCB's claim, in full, within a reasonable period of time, while remaining current with its ongoing financial obligations. The Debtor proposes this Chapter 11 Plan of Reorganization in good faith and in accordance with Section 1123 of the Bankruptcy Code.

## **II. PROCEDURAL INFORMATION**

During 2015 and early 2016, Debtor was in default with regard to the payment of its real estate property taxes which were due to the MCTCB. In addition, Debtor was in default with

regard to the payment of its commercial loan with Newtek. As a result, Newtek had provided, inter alia, a Notice of Default and Acceleration and a Notice of Attachment of Rents.

Furthermore, the MCTCB had scheduled Debtor's real estate for the 2016 Judicial Tax Sale. Thereafter, the MCTCB canceled the proposed sale of Debtor's real estate at the Judicial Tax Sale. However, on May 2, 2016, Newtek filed its Complaint in Confession of Judgment against Debtor. The complaint was filed to Case No. 3209 Civil 2016 in the Court of Common Pleas of Monroe County, Pennsylvania.

Thus, on May 23, 2016, the Debtor filed its Petition for Relief under Chapter 11 of the Bankruptcy Code. Debtor filed its case in the Middle District of Pennsylvania, Wilkes-Barre, Pennsylvania. Then, on July 15, 2016, the Meeting of Creditors was held in the case. On August 10, 2016, Debtor filed a Motion to Fix the Claims Bar Date and on August 11, 2016, the Court issued an Order fixing the Bar Date as 60 days from the date of the Notice. Thus, the Claims Bar Date was set for October 11, 2016. Two Proofs of Claims were filed in the case. The MCTCB filed a secured claim in the amount of \$386,440.25 and Newtek filed a secured claim in the amount of \$1,616,713.59 with a loan arrearage of \$98,883.49. The Claims Bar Date has now run and thus, this matter is now ripe to proceed with the filing of Debtor's Chapter 11 Plan and confirmation of same.

A. Disclosure Statement.

The purpose of this Disclosure Statement is to provide the creditors entitled to vote on the Plan with information which will enable them to determine whether or not they should vote in favor of the Plan. Consequently, this Disclosure Statement contains a detailed description of the Plan and important background information.

This Disclosure Statement is intended to assist each creditor in reviewing the Plan, but is

not intended to be a substitute for a careful and detailed review of the Plan. The description of the Plan provided in this Disclosure Statement is intended only as a summary, and creditors of the Debtor and other interested parties are urged to review the Plan, in detail, preferably with legal counsel. This Disclosure Statement is qualified in its entirety by reference to the more detailed provisions set forth in the Plan. Questions regarding this Disclosure Statement and the Plan may be directed to legal counsel for Debtor:

Philip W. Stock, Esquire  
706 Monroe Street  
Stroudsburg, PA 18360  
(570) 420-0500

B. Voting Procedure.

Accompanying this Disclosure Statement is a Ballot (the "Ballot") which can be used by you to vote to either accept or reject the Plan. The vote of each creditor and interest holder entitled to vote is important. In order for your vote to be counted in the voting process, you must complete the Ballot and mail it in the enclosed envelope to Debtor's attorney, Philip W. Stock, at the address indicated in Paragraph II A, above.

**IN ORDER FOR YOUR BALLOT TO BE COUNTED IN THE VOTING, IT MUST BE COMPLETED AND RECEIVED BY THE DEBTOR'S ATTORNEY NO LATER THAN THE \_\_\_\_\_ day of \_\_\_\_\_, 2017, BY 5:00 P.M.**

Any ballots received which do not indicate either an acceptance or rejection, will be deemed an acceptance of the Plan and voted accordingly.

C. Filing of Claims, Objections to Claims and Applications.

Creditors and interest holders may make claims against the Debtor, and the Debtor's

bankruptcy estate, by filing a Proof of Claim with the Clerk of Courts on or before the date set by the Court as the deadline for filing claims. The last date a Proof of Claim may be filed in this case, other than administrative claims, is October 11, 2016. Under the Federal Rules of Bankruptcy Procedure (the “Rules”) any holder of a claim who does not file a Proof of Claim by this date is barred from participation in the Plan or obtaining a distribution thereunder, unless the claim was listed as not being disputed, contingent or unliquidated on the Schedules and Statement of Financial Affairs of the Debtor, as amended, which has been filed with the Court with respect to this Chapter 11 case.

Any claim that is listed on the Schedules, filed with the Court and is disputed, contingent or unliquidated or that has been objected to in whole or in part, not later than sixty (60) days after the date the Plan is confirmed, shall not be paid unless and until such claim has become an allowed claim (“Allowed Claim”) as defined in the Plan. Objections by the Debtor or any other party to any application for allowance of professional fees and expenses must be filed within twenty-one (21) days after notice of such application has been given.

D. Objections to Confirmation and Confirmation Hearing.

Any creditor who desires to object to the confirmation of the Plan must, on or before 5:00 P.M. on the \_\_\_\_\_ day of \_\_\_\_\_, 2016: (a) File a written Objection, Answer or Request for a Hearing with the Clerk of Courts, United States Bankruptcy Court, Max Rosenn U.S. Courthouse, 197 South Main Street, Wilkes-Barre, Pennsylvania 18701; and (b) Serve Philip W. Stock with a copy of same, at the address indicated in Section II A of this Disclosure Statement, as well as the Office of the United States Trustee at 228 Walnut Street, Suite 1190, Harrisburg, Pennsylvania 17101.

The Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan (the “Confirmation Hearing”) for the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, at \_\_\_\_ o’clock \_\_\_\_ .M., in Courtroom No. 2, United States Bankruptcy Court, 197 South Main Street, Wilkes-Barre, Pennsylvania 18701. The Confirmation Hearing may be continued from time to time by announcement in open Court on the day of the scheduled Hearing or any continuance thereof or by written notice to those who have filed a timely written objection to confirmation of the Plan.

**III. HISTORY OF THE DEBTOR, REASONS FOR THE CHAPTER 11 FILING AND ASSETS AND LIABILITIES OF THE DEBTOR**

**A. Company History.**

The Debtor, B & B Real Estate General Partnership, is a Pennsylvania partnership. The Debtor was created for the purpose of the development and leasing of the real estate located at 117 Rose Street, Scotrun, Monroe County, Pennsylvania.

**B. Reasons for Chapter 11 Filing.**

At the time of the filing of its Chapter 11 bankruptcy, Debtor owned a single parcel of real estate located at 117 Rose Street, Scotrun, Pennsylvania. The parcel of land is 2.54 acres and includes a commercial building which is primarily used for a gym and fitness center. In addition, there is a smaller rental space which is currently used as a daycare center. At the time of the filing of the bankruptcy, the financing in connection with the purchase of Debtor’s real estate was provided by Newtek. Unfortunately, because of a rapidly changing economy and increased competition in the gym and fitness industry, B & B Fitness and Barbell, Inc. (B & B Fitness), a related entity, was unable to, properly, adapt to these changing circumstances. These

circumstances led to the nonpayment by B & B Fitness of its monthly lease obligation to Debtor. In turn, Debtor was unable to pay the monthly loan payment regarding the commercial loan held by Newtek and was unable to pay the real estate property taxes which were due to the MCTCB. Eventually, Debtor's failure to pay its property taxes, resulted in the MCTCB listing Debtor's property for the 2016 Judicial Tax Sale. In addition, Newtek moved forward with the acceleration of its loan obligation and confessed judgment against Debtor. As a result, on May 23, 2016, Debtor filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code in the Middle District of Pennsylvania in order to reorganize its financial affairs. This Disclosure Statement has been prepared and filed under Section 1125 of the Bankruptcy Code. The accompanying Chapter 11 Plan of Reorganization has been prepared and filed pursuant to Section 1123 of the Bankruptcy Code. The Debtor requests that you carefully review this Disclosure Statement and the Plan and that you vote in favor of the Plan.

The purpose of the Chapter 11 bankruptcy is to reorganize its financial affairs in order to permit Debtor to better manage its real estate. This will enable Debtor to pay the outstanding arrearages with regard to the claims of Newtek and the MCTCB, in full. Moreover, Debtor does not have any other claims and thus, this is a 100% Plan.

C. Liabilities of Debtor.

Debtor has two secured claims. The secured claimants are Newtek, which has a secured claim in the amount of \$1,616,713.59 and a loan arrearage of \$98,883.49 and the MCTCB, which has a secured claim in the amount of \$386,440.25. Debtor does not have any other claims.

D. Debtor's Assets.

As noted above, Debtor owns a single parcel of real estate located at

117 Rose Street, Scotrun, Monroe County, Pennsylvania. The parcel of land is 2.54 acres and includes a commercial building which is primarily used for a gym and fitness center. In addition, there is a separate, smaller, commercial space which is, currently, leased to a daycare center. The total value of the real estate is, approximately, \$1,400,000.00. In addition, Debtor has accounts receivables in connection with those lease payments that B & B Fitness failed to pay to Debtor. The approximate amount of those receivables is \$335,000.00. Finally, at the time of filing, Debtor had \$1,252.00 in its Wayne Bank Business Checking Account. Consequently, the total of assets at the time that Debtor filed its bankruptcy was, \$1,736,252.00.

**IV. THE DEBTOR'S FINANCIAL CONDITION, THE CHAPTER 11 LIQUIDATION ANALYSIS OR RETENTION OF PROPERTY**

A. Financial Condition. Any accurate liquidation analysis in connection with this bankruptcy must be considered in light of the quality and liquidity of the assets in relation to the nature and extent of the financial obligations of the Debtor and its concomitant assets. In the present case, the total asset value of Debtor is \$1,736,252.00. The total value of secured claims against Debtor's property is \$2,003,153.70. Consequently, the secured debt to value ratio is, approximately, eighty-seven (87%) percent. As such, the vast majority of the secured creditor's claims are supported by collateral. This is especially true since, a large portion of the secured claim of Newtek is also secured by other assets which are owned by the related entity, B & B Fitness. Furthermore, Debtor only has two secured creditors and does not have any other debt. Moreover, the total of the arrearages in connection with those secured claims is \$485,323.74. In this regard, Debtor believes that it can pay Newtek's arrearage in less than 36 months from the Effective Date of the Plan and will be able to pay MCTCB's claim within 96 months of the Effective Date of the Plan.

Moreover, Debtor's case is unusual in that it does not have any unsecured claims of any



class of claims. This fact enables Debtor to maintain its focus and energy on resolving the two secured claims and enables the Debtor to proceed with a simple and succinct plan of action.

In addition to the assets of Debtor, Debtor receives regular income from both of its tenants. Debtor's principal tenant is B & B Fitness which has reorganized its financial affairs and has made substantial changes with regard to the management of its business. These changes have enabled this tenant to consistently pay all of its post-petition lease payments to Debtor. These regular lease payments have, in turn, enabled Debtor to make all of its post-petition commercial loan payments to Newtek. Also, Debtor has acquired a tenant for the smaller commercial space which has been vacant for several years. The Bankruptcy Court has approved the lease in connection with this commercial space which has enabled Debtor to generate an additional \$2,500.00 per month. It is Debtor's intention, as part of its Plan and by agreement with claimant, to ensure that this payment of \$2,500.00 is paid directly to Newtek in order to assist in reducing Debtor's loan arrearage. The payment of those lease proceeds shall continue to be paid to Newtek, thereafter, since Newtek has a perfected security interest in those rent proceeds. In short, Debtor has sufficient collateral to support the claims of the creditors and sufficient income to pay the arrearages of the claimants, in full.

B. Liquidation Analysis. The liquidation analysis is very similar to the financial condition analysis in this case. However, it is also appropriate to consider liquidating under the Plan versus liquidation under Chapter 7 of the Bankruptcy Code. A summary of this comparison is set forth below:

Liquidation under Chapter 11 Plan

Sale proceeds of 2.54 acres: \$1,400,000.00

Liquidation under Chapter 7

Liquidation proceeds from sale of  
2.54 acres: \$980,000.00

(Assumed 70% of market value of property as per a Chapter 7 sale\*)

Accounts Receivables Value: \$0.00

Accounts Receivables Value: \$0.00

**TOTAL ASSETS: \$1,400,000.00**

**TOTAL ASSETS: \$980,000.00**

Liabilities under Plan

Liabilities under Chapter 7

1. Administrative fees, legal fees, and brokerage fees (10%)
2. Priority claims \$0.00
3. Secured claims: \$2,003,153.70
4. Unsecured claims: \$0.00

1. Administrative fees, legal fees, and brokerage fees (12%)
2. Priority claims: \$0.00
3. Secured claims: \$2,003,153.70
4. Unsecured claims: \$0.00

\*Historically, a Liquidation Sale will result in a price substantially less than the price that could be obtained if time was available to acquire the true market value for the piece of property. A reasonable range is between 60% - 80%. A fair average, during a depressed real estate market, is approximately 70%.

Distribution under Chapter 11 Liquidation

Distribution under Chapter 7 Liquidation

100% to administrative fees, legal fees,

100% to administrative fees, legal fees,

brokerage fees: \$140,000.00

brokerage fees: \$117,600.00

Priority claims: (100%) \$0.00

Priority claims: (100%) \$0.00

Secured claims:

Secured claims:

MCTCB: (100%) \$386,440.25

MCTCB: (100%) \$386,440.25

Newtek: (54%) \$873,559.80

Newtek: (29%) \$475,959.75

Unsecured claims: (0.00%) \$0.00

Unsecured claims: (0.00%) \$0.00

General Partners: \$0.00

General Partners: \$0.00

C. Retention of Property. A reorganization under Chapter 11 is typically filed to limit a creditor's contractual rights or legal rights, when the limitation of those rights appears equitable in light of the proposed alternative. In this case, Debtor has demonstrated good faith by remaining current in connection with its post-petition commercial loan/adequate protection payments. It has actively pursued the acquisition of a tenant for the vacant commercial space and has attempted to communicate with its creditors to address their concerns in this process. In addition, Debtor's related entity, B & B Fitness, has also taken multiple steps to reorganize its business so that it can operate more efficiently and compete more effectively. These changes have enabled it to consistently make its post-petition lease payments to Debtor. As long as Debtor is able to continue to make all of its regular monthly payments and obligations and continue to pay the remaining arrearages in a timely and reasonable way, it should be given the opportunity to reorganize its affairs in accordance with Debtor's Chapter 11 Plan. As can be seen from the financial analysis in this matter, the creditors have far more to gain by having their arrearage claims paid in full and permit Debtor to make its regular payments moving forward than they would under either liquidation alternative.

ALL FIGURES IN THIS ANALYSIS ARE PROJECTED AND ESTIMATED AMOUNTS ARE BASED ON CURRENT INFORMATION AVAILABLE TO THE DEBTOR. NO WARRANTIES OR REPRESENTATIONS ARE MADE REGARDING THESE FIGURES AND AMOUNTS.

V. SUMMARY OF PLAN

THE FOLLOWING IS ONLY A SUMMARY OF THE DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION AND SHOULD NOT IN AND OF ITSELF BE RELIED UPON WHEN CONSIDERING VOTING IN FAVOR OF OR AGAINST THE PLAN.

THE CHAPTER 11 PLAN OF REORGANIZATION SHOULD BE READ IN FULL.

The following is a summary of the significant provisions of the Plan:

A. Significant Dates.

The Plan defines two significant dates, the Confirmation Date and the Effective Date. The Confirmation Date shall be the date on which the Bankruptcy Court enters a Confirmation Order confirming the Plan. The Effective Date shall be the 30<sup>th</sup> calendar day following the Confirmation Date or the next business day if the 30<sup>th</sup> day falls on a weekend or holiday.

B. Classification and Treatment of Claims and Interests.

1. Class 1 - Post-Petition Priority Secured Claims: This class may be created by Court Order and based on such order shall hold a perfected post-petition security interest in all real property of the Debtor to extent of the appraised amount.

This class is impaired only with regard to the timing of payment, since all sums owed to any entity which acquires such a lien shall be paid in full. This class consists of no creditors at this time. In this regard, if the need did arise, the negotiation and creation of same shall be in accordance with 11 U.S.C. Section 364.

2. Class 2 - Administrative Claims: This class is not impaired. Allowed Administrative Claims which are allowed on or before the Confirmation Date shall be paid in full on the Effective Date or on such earlier or later date as the Court may approve. Claims in this class are expected to be attorney fees, accounting fees and real estate brokerage fees, entitled to priority under Section 507(a)(1).

3. Class 3 - Priority Claims: The Debtor has no priority claims. This class is impaired only with regard to the timing of payment. Furthermore, if any, allowed, priority claims

are discovered, Debtor proposes to pay them, in full, immediately after the payment of any claim of a higher class of claims. Please see 11 U.S.C. Section 507.

4. Class 4 - Secured Claims: Debtor has two secured claims. The secured claimants are Newtek, which has a secured claim of \$1,616,713.59 and a loan arrearage of \$98,883.49 and the MCTCB, which has a secured claim of \$386,440.25. These claims are only impaired with regard to timing of payment since, Debtor is proposing to pay these claims, in full. Payment of these claims shall begin 30 days after the effective date of this Plan and shall continue until the arrearages are paid, in full. Furthermore, it is proposed that Newtek's arrearage claim shall be paid within 36 months of the Effective Date of the Plan and the MCTCB's claim shall be paid within 96 months of the Effective Date of the Plan. It is proposed that Debtor pay these claims, on a dollar for dollar basis and on a monthly basis until the claims are paid, in full.

In addition, Debtor has been able to lease the 4,000 square foot space which had been vacant for several years. Debtor proposes that the proceeds from the lease shall be paid to Newtek in order to augment payment of its arrearage. Payment of the lease proceeds to Newtek is appropriate because it has a lien on these proceeds.

5. Class 5 - Equity Security Holders: An Equity Security Holder is a party which has equity or an investment interest in the Debtor. With respect to this Chapter 11 case, the Equity Security Holders are Robert C. Bishop and Barry Klein, since they are the partners who each owns a Fifty (50%) Percent interest in Debtor. It is proposed that Robert C. Bishop and Barry Klein each retain their interest in Debtor and no payments shall be made to them with regard to their interests until all allowed claims are paid, in full. Thus, this class is only impaired with regard to the timing of payment, since no payment is proposed to the equity security holders

during the term of this Plan.

THIS PLAN DOES NOT VIOLATE THE ABSOLUTE PRIORITY RULE BECAUSE NO PAYMENT SHALL BE PAID TO AN EQUITY SECURITY HOLDER PRIOR TO PAYMENT OF ALL CLASSES OF CLAIMS OF CREDITORS, NOR IS AN EQUITY SECURITY HOLDER RECEIVING A GREATER AMOUNT THAN ANY OTHER CREDITOR, SINCE ALL ALLOWED CLAIMANTS SHALL BE PAID 100% OF THEIR CLAIMS PRIOR TO ANY DISTRIBUTION TO AN EQUITY SECURITY HOLDER. Please see 11 U.S.C. Section 1129(b).

6. Class 6 - Unsecured Claims: The Debtor has no unsecured claims. In this regard, Holly R. Corcoran, CPA waived her claim that she had against Debtor and Debtor is not aware of any other unsecured claims.

If any allowed, unsecured claims, are discovered, Debtor proposes to pay them, in full, immediately after the payment of all claims of a higher class of claims. This class would be impaired only with regard to timing of payment.

7. Class 7 - Insider Claims: Debtor is not aware of any insider claims. As a result, no payment is anticipated as part of this Plan.

C. Treatment of Executory Contracts.

Executory contracts are agreements whereby the parties to the agreement have not completed their obligations, thereunder. The prime example of an executory contract is a business lease on real property. Currently, the Debtor has one executory contract. The executory contract is with B & B Fitness and Barbell, Inc. Debtor intends to assume this contract. Currently, Debtor also has a lease with a daycare center. However, the lease agreement was executed and approved post-petition and thus, is not relevant with regard to this matter.

D. Pending and Potential Litigation.

At the time of the filing of the bankruptcy, Debtor was in default with regard to its commercial loan with Newtek Small Business Finance, LLC. Newtek confessed judgment in connection with same just prior to the filing of the bankruptcy. The filing of the bankruptcy stayed that legal process. Currently, Debtor is making its post-petition loan payments/adequate protection payments to Newtek. In addition, the MCTCB had scheduled Debtor's property for Judicial Tax Sale just prior to the filing of the bankruptcy. While the MCTCB voluntarily withdrew Debtor's property from the Judicial Tax Sale just prior to the filing of the bankruptcy, its claim remains unpaid. Consequently, it is Debtor's intention to resolve both of the above-referenced claims by paying the outstanding arrearages, in full. Debtor is aware of no other litigation or disputes.

E. Objection to Claims.

Debtor does not intend to object to any claim or Proof of Claim that has been filed in this case.

**VI. MEANS OF IMPLEMENTING THE PLAN**

Since the filing of this Chapter 11 case, the Debtor has made all post-petition loan payments/adequate protection payments to Newtek. Debtor has also been able to pay all of its other monthly obligations. This has been possible because of the reorganization of the related entity, B & B Fitness and Barbell, Inc. The reorganization of that entity has enabled it to make its monthly lease payments to Debtor. In turn, Debtor has been able to pay all of its monthly obligations. Currently, Debtor has only two pre-petition claims:

- a. Newtek \$1,616,713.57 (arrearage of \$98,883.49) and
- b. MCTCB \$386,440.25 (arrearage of \$386,440.25).

Prior to the filing of the bankruptcy, Debtor had been charging its principal tenant, B & B Fitness and Barbell, Inc., a monthly lease amount which was based upon Debtor's financial obligations, only. However, it is Debtor's intention to increase the monthly lease obligation in order to ensure that the lease amount is commensurate with similar leases in the industry. This graduated increase in the monthly lease obligation shall be used to pay the arrearages due to Debtor's two creditors. The increases shall be as follows:

- a. A \$2,000.00 per month increase the First Year, starting 30 days from the Effective Date of the Plan;
- b. A \$3,000.00 per month increase the Second Year;
- c. A \$4,000.00 per month increase the Third Year and;
- d. A \$5,000.00 per month increase the Fourth Year and each year thereafter, until the arrearages are paid, in full.

As a result, Debtor shall pay to each creditor, \$1,000.00 per month the First Year, \$1,500.00 per month the Second Year, \$2,000.00 per month the Third Year and \$5,000.00 per month to the MCTCB (Newtek's arrearage will be paid in full by the end of the third year) during the Fourth Year and each year thereafter until its claim is paid, in full. Thus, Newtek's arrearage shall be paid, in full, within 36 months of the Effective Date of the Plan and MCTCB's arrearage shall be paid, in full, within 96 months of the Effective Date of the Plan.

Debtor also agrees that if the payment strategy referred to above is not accomplished within Eight Years of the Effective Date of this Chapter 11 Plan then, Debtor will convert the case to Chapter 7 for liquidation and/or resolution by the Chapter 7 Trustee.

## **VII. FAILURE OF PLAN**

Finally, if the financial plan referred to above is not accomplished within the time frame



set forth then, Debtor agrees that the case shall automatically convert to Chapter 7 of the Bankruptcy Code for liquidation by the Chapter 7 Trustee.

### **VIII. ANALYSIS OF ALTERNATIVES TO CHAPTER 11 REORGANIZATION**

The theoretical alternatives to the Chapter 11 Reorganization contemplated in this case are a Chapter 7 Liquidation or Sheriff's Sale of the property.

Conversion of the herein Chapter 11 case to a Chapter 7 case would result in liquidation of the assets by the Office of the United States Trustee or its designee. Chapter 7 cases are commonly known as "Liquidations" because it is the intention of the Trustee to sell off the assets of the Debtor as soon as is practicable and distribute any "profit" (sale price minus security interests, judicial liens and sales expenses) to the creditors in accordance with the priorities set forth in the Bankruptcy Code. Most likely, a Chapter 7 Trustee would schedule the property to be sold at auction. In this regard, the sale of any property at auction can result in varying degrees of success in relation to a sale of the same property over time. Typically, the sale of a commercial property at auction will result in a price that is less than what could be recovered if the property was listed with a broker and shown to prospective buyers over an extended period of time. The difference in price varies greatly, but, typically, an auction sale of this type, in such a depressed real estate market, would result in a price which is 60% to 80% of the actual price which could be recovered by listing with a broker and offering for sale over an extended period of time. It is possible to recover a price at auction which equals or exceeds the value which could be recovered by a broker when the demand and interest for the property is great. This is also true of certain commercial properties which are unique in nature. Unfortunately, in this economic environment, an auction of the property would, most likely, be devastating in relation to the real market value of the property. Thus, this property is not well suited for a sale at

auction. The anticipated results if the case was converted to Chapter 7 are discussed more fully in Section IV B. To be sure, the creditors would, most likely, receive substantially less under this alternative.

The second alternative to the Chapter 11 reorganization would be the sale of Debtor's property at Sheriff's Sale. Certainly, this alternative would shorten the time that impaired creditors would need to wait for payment of their claims. However, the results of this type of sale would be very similar to the results of a sale by a United States Trustee. In fact, it appears clear that Newtek would have the most to lose by forcing this to a Sheriff's Sale since, currently, it is receiving its post-petition payments and will receive its full arrearage in less than 36 months. Thus, it appears clear that the Chapter 11 Plan of Reorganization is a better alternative.

In short, the Debtor believes that acceptance of this Chapter 11 Plan and Confirmation thereof, is more advantageous to all classes and equity security holders. Consequently, it appears more equitable and appropriate under the Bankruptcy Code to accept the Plan, in order to permit the Debtor to pay its creditors in accordance with the terms of the Chapter 11 Plan.

**IX. ACCEPTANCE OF THE PLAN BY CLASSES: CONFIRMATION WITHOUT ACCEPTANCE BY IMPAIRED CLASSES**

**A. Acceptance of the Plan by Classes.**

The Plan has divided creditors and interest holders into 7 Classes, Classes 1, 2, 3, 4, 5, 6 and 7. At present, there are no members in Class 1, 3, 6 or Class 7. Class 2 is "unimpaired," meaning that their rights against the Debtor are not being affected, and/or they will be paid in full on the Effective Date of the Plan. Accordingly, Class 2 is conclusively presumed to have accepted the Plan and the Bankruptcy Code does not require that their vote on the Plan be solicited. Only Classes 4 and 5 may vote on the Plan. In this regard, all of those entitled to vote

may vote for or against the Plan. CREDITORS AND INTEREST HOLDERS HAVE ACCEPTED A PLAN IF THOSE HOLDING AT LEAST TWO-THIRDS IN AMOUNT AND MORE THAN ONE-HALF IN NUMBER OF THE ALLOWED CLAIMS OR INTERESTS THAT HAVE ACCEPTED OR REJECTED THE PLAN HAVE VOTED FOR THE PLAN. A copy of the Plan of Reorganization is attached as Exhibit "A" to this Disclosure Statement.

B. Confirmation of the Plan.

In order to confirm any Plan, the Bankruptcy Code requires that the Court make a series of determination concerning the Plan including:

1. That the Plan has classified creditors claims and equity interests in a permissible manner;
2. That the contents of the Plan comply with the technical requirements of Section 1129(a) fo the Bankruptcy Code;
3. That the Plan has been proposed in good faith and not in violation of the law; and
4. That the Debtor's disclosures concerning the Plan have been adequate and have included information concerning all payments made or promised in connection with the Plan and the Chapter 11 proceedings.

Even if creditors of the Debtor accept the Plan by the requisite number of votes, before the Plan can be confirmed, the Court must nevertheless make these independent findings with respect to the plan's feasibility; that is, whether the Plan is in the best interests of the creditors and interest holders of the Debtor, and whether it is fair and equitable to non-accepting classes. A copy of the ballot for voting on the Plan is attached as Exhibit "B".

The Debtor believes that this Plan meets the criteria set forth above, including the "best

interests test” and all other requirements of Section 1129(a) of the Bankruptcy Code.

C. Confirmation of the Plan Without Acceptance by Impaired Classes.

The Code also contains provisions for confirmation of the Plan even if it has not been accepted by the required vote of all impaired classes, as long as at least one impaired class of claims has accepted the Plan by the required vote. The provisions of the Bankruptcy Code, set forth at Sections 1129(b), are commonly known as the “cramdown” provisions.

A Plan may be confirmed under Section 1129(b) if, in addition to satisfying the requirements of Section 1129(a), it:

1. Does not discriminate unfairly; and
2. Is fair and equitable with respect to each impaired class of claims or interests which is not accepted by the required vote. The phrases “discriminate unfairly” and “fair and equitable” as used in the Bankruptcy Code have narrow and specific meaning unique to bankruptcy law.

The requirement that a Plan does not “discriminate unfairly” means that dissenting classes must be treated equitably with respect to other classes of equal rank. The Debtor believes that the Plan does not “discriminate unfairly” with respect to any class of claims or interests.

D. Effect of Confirmation.

In accordance with Section 1141 of the Bankruptcy Code, the provisions of the Plan, if confirmed, bind the Debtor, any entity acquiring property under the Plan, any creditor and any holder of an interest in the Debtor. The Plan binds each creditor of the Debtor whether or not the claim of such creditor is impaired under the Plan and whether or not such creditor has accepted the Plan.

**X. TAX CONSEQUENCES OF THE PLAN**

The Debtor does not believe that it shall suffer any Federal, State, Local or other tax consequences as a result of the Plan, if it is confirmed. However, the individual circumstances of each creditor or interest holder may be affected, and consequently, each such creditor or interest holder is advised to consult his or her own tax adviser to determine what, if any, tax consequences the Plan may have with regard to them.

**XI. SOURCES OF INFORMATION FOR THE DISCLOSURE STATEMENT**

The Debtor is the principal source of factual information which has been used in this Disclosure Statement. Additional information was acquired from the appraisal of the Property and the filed proofs of claim. Counsel for the debtor has been the principal source of information with respect to legal matters.

**XII. DISCLAIMER**

No representation concerning the Debtor, particularly regarding future operations or the value of the Debtor's assets, have been authorized by the Debtor except as set forth in this Disclosure Statement. You are advised not to rely upon other representations or inducements which may be offered to you which are intended to influence your decision as to whether to vote to approve or reject the Plan. Any person making improper or unlawful inducements for acceptance or rejection of the Plan should be reported to Debtor's counsel at the address set forth in Section II. A. hereof, and to the Office of the United States Trustee, 228 Walnut Street, Suite 1190, Harrisburg, Pennsylvania 17101.

For various reasons, the records of the Debtor prior to the preparation of the Plan may not always have been complete and accurate, and the accuracy of the information provided in this Disclosure Statement is dependent upon the accuracy of the information in the files and financial

statements of the Debtor. While every effort has been made to provide the most accurate information available, the Debtor is unable to warrant or represent that all information contained in this Disclosure Statement is without inaccuracy. However, the Debtor knows of no material inaccuracies contained in this Disclosure Statement. While every effort has been made to ensure that these projections are as accurate as possible under the circumstances, neither the Debtor nor its counsel certifies or warrants the absolute accuracy of any such information.

### **XIII. CONCLUSION**

For reasons explained above, Debtor believes that the Chapter 11 Plan is feasible and is the best alternative for payment of the creditors and interest holders. The Plan proposes the payment of One Hundred (100%) Percent of all claims within one year of the Effective Date of the Plan. Certainly, as explained above, if Debtor is able to find a purchaser for just one of the two remaining parcels of property, Debtor believes that it will be possible to pay all claims prior to the one year stated above. The two remaining parcels of property of Debtor are very valuable and very saleable. Consequently, the Plan of Debtor and time frames set forth, therein, appear to be reasonable and viable under the circumstances. Accordingly, the Debtor believes that the Plan is in the best interests of the creditors and equity security holders and thus, should be approved.

Among the materials enclosed with this Disclosure Statement is a Ballot for accepting or rejecting the Plan and an envelope addressed to the Debtor's counsel. Please mark and mail your Ballots as soon as possible. **In order to be counted, your Ballot must be received by Debtor's counsel on or before 5:00 P.M. on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.**

The Debtor sincerely requests that you vote in favor of the Plan.

Date: 10/31/16

/s/Robert C. Bishop

Robert C. Bishop, General Partner of  
B & B Real Estate General Partnership,  
Debtor-in-Possession

Date: 10/31/16

/s/Philip W. Stock

Philip W. Stock, Attorney for  
Debtor-in-Possession