

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE**

IN RE:)	
)	
TIMOTHY D. BINKLEY and)	Case No. 15-04144-RM3-11
(SSN XXX-XX-1372))	(Chapter 11)
)	Judge Randal S. Mashburn
PENNY LEWIS BINKLEY,)	
(SSN XXX-XX-1547))	
)	
Debtors-in-Possession.)	

**DISCLOSURE STATEMENT CONCERNING THE DEBTORS' PLAN OF
REORGANIZATION FOR TIMOTHY D. BINKLEY AND PENNY LEWIS BINKLEY
UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

Dated: July 19, 2016

This Disclosure Statement was approved by the Bankruptcy Court for distribution to creditors on August ____, 2016.

IMPORTANT: THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR ON YOUR DECISION TO ACCEPT OR REJECT THE CHAPTER 11 PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR. PLEASE READ THIS DOCUMENT WITH CARE.

NO REPRESENTATIONS CONCERNING THE DEBTORS' FUTURE BUSINESS OPERATIONS OR PROSPECTS OR THE VALUE OF THE DEBTOR'S ASSETS ARE MADE OTHER THAN AS SET FORTH IN THIS STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OF THE PLAN WHICH ARE OTHER THAN AS CONTAINED IN THIS STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED IMMEDIATELY TO THE BANKRUPTCY COURT.

DISCLOSURE STATEMENT
TIMOTHY D. BINKLEY AND PENNY LEWIS BINKLEY

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EXHIBIT A - Plan of Reorganization

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DISCLOSURE STATEMENT

I. INTRODUCTION

A. Background.

Prior to the petition date, the debtors-in-possession, Timothy D. Binkley and Penny Lewis Binkley (collectively, the “Debtor”) and Philip and Sarah Rainey (collectively, the “Plaintiff”) were parties to litigation pending in the United States District Court, Middle District of Tennessee (Rainey v. Binkley, Case No. 3:14cv0967; Filed April 10, 2014). The litigation arises from the Debtor’s September 19, 2007 sale to the Plaintiff of certain real property located at 1519 Bearallow Road, Ashland City, Tennessee. In the litigation, the Plaintiff contends that after the sale of the property, they discovered various “serious undisclosed deficiencies and defects” and alleges various theories of recovery, including breach of contract, intentional misrepresentation, negligent misrepresentation, fraudulent concealment, and violation of the Tennessee Consumer Protection Act. The Debtor has repeatedly and steadfastly denied all of the Plaintiff’s allegations.

Burdened with the pending litigation and the costs and risks associated with any litigation, the Debtor elected to file this Chapter 11 case on June 17, 2015. In response, the Plaintiff filed an adversary proceeding on September 15, 2015 alleging that its claims against the Debtor should be excepted from discharge pursuant to an unspecified sub-section of Bankruptcy Code section 523(a). The adversary proceeding was filed one day after the September 14, 2015 deadline fixed by Federal Rule of Bankruptcy Procedure 4007(c). The Debtor filed a motion to dismiss the adversary proceeding as untimely and, by an order entered May 6, 2016 at Document No. 35, the Bankruptcy Court subsequently granted the Debtor’s motion.

Since the filing of the bankruptcy case, the Debtor has remained in possession of their property and operated their affairs as a “debtor-in-possession.” No Trustee has been appointed and no committee of unsecured creditors been appointed in the case. By an order entered July 1, 2015 at Document No. 14, the Bankruptcy Court fixed October 16, 2015 as the deadline for filing proofs of claim.

B. Purpose of Disclosure Statement.

The Debtor is providing this Disclosure Statement pursuant to Bankruptcy Code section 1125 to each creditor whose Claim has been scheduled by the Debtor, or who has filed a proof of claim in this matter, to permit each such creditor to make an informed judgment in exercising its right to vote on the Plan, a copy of which is attached hereto.

The purpose of this Disclosure Statement is to provide such information as would enable a hypothetical, reasonable investor typical of the creditors being solicited to make an informed judgment on the Plan. The material contained herein is intended solely for that purpose and solely for the use of known creditors of the Debtor. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan, and nothing contained herein shall constitute an admission of any fact or liability by any party, or be admissible in any proceeding involving the Debtor or any party in interest.

C. Nature of Chapter 11 Reorganization Proceedings.

Chapter 11 of the Bankruptcy Code is a remedial statute designed to effect the rehabilitation and reorganization of financially distressed individuals and entities. The statutory aims of a reorganization proceeding include the following: (i) preservation of the

debtor's property as a "going concern" and the preservation of any "going concern" value of the debtor's business and property; (ii) avoidance of a forced and destructive liquidation of the debtor's assets; (iii) protection of the interests of creditors, both secured and unsecured; and (iv) restructuring of the debts of the debtor and the finances of the debtor, such as would enable it to retain those assets necessary to rehabilitate its finances and (at the same time) produce the greatest recovery for its creditors.

The formulation and confirmation of a plan of reorganization is the principal function of a Chapter 11 case. Such a plan normally includes provisions: (i) altering and modifying rights of creditors; (ii) dealing with the property of the debtor; (iii) paying costs and expenses of administering the Chapter 11 case; and (iv) execution of the plan. The plan may affect the interests of all parties and creditors, reject executory contracts and provide for prosecution of settlements and claims belonging to the debtor. In order to be confirmed by the Court, the Bankruptcy Code requires that there be a finding that the plan receive the votes of certain requisite classes and that the plan be "fair, equitable, and feasible," as to any dissenting classes of creditors.

In order for a plan to be "fair and equitable" it must comply with the so-called "absolute priority rule." The absolute priority rule requires that, beginning with the most senior rank of claims of creditors against a debtor, each class in descending rank or priority must receive full and complete compensation before inferior or junior classes may participate in the distribution.

The plan must be accepted by the affirmative vote of a majority (in number) of creditors holding two-thirds (in amount) of claims filed and allowed by each class, unless adequate provisions are made for the classes of dissenting creditors. In order to fully

understand how a plan is confirmed, each individual should check with his own attorney and receive full advice on the inter-workings of Bankruptcy Code sections 506(a), 1111, 1122, 1123, 1125, and 1129. THE FOREGOING IS A BRIEF SUMMARY OF THE HIGHLIGHTS OF A PLAN OF REORGANIZATION AND CONFIRMATION OF SUCH, AND THIS SUMMARY SHOULD NOT BE RELIED ON FOR VOTING PURPOSES. CREDITORS ARE URGED TO CONSULT WITH THEIR OWN COUNSEL BEFORE MAKING ANY DECISIONS ON THE PLAN REFERRED TO HEREIN.

D. Source of Information.

The information contained in this Disclosure Statement is derived from documents on file with the Court, unless specifically stated to be derived from other sources. Any representations or inducement made by any person to secure your vote other than those contained herein should not be relied upon.

Great effort has been taken by the Debtor to be accurate in this Disclosure Statement in all material respects, but the Debtor is not able to warrant or represent that the information contained herein is without inaccuracy. The Debtor believes, however, that the contents of this Disclosure Statement are complete and accurate.

E. Manner of Voting on Plan.

Each creditor entitled to vote on the Plan may cast its vote by completing, dating, and signing the Ballot for Classes 1-4 and filing it in person or by mail with Joseph P. Rusnak, Tune, Entekin & White, P.C., UBS Tower, Suite 1700, 315 Deaderick Street, Nashville, Tennessee 37238.

F. Creditors Entitled to Vote on Plan.

Each impaired creditor may vote on the Plan. Subject to the specific provisions of Bankruptcy Code section 1124, a creditor with an impaired Claim or Interest is deemed to include any creditor that will receive less than full cash payment for the allowed amount of its claim on the Effective Date. Classes 1-3 are impaired under this Plan. The Claims of certain creditors may be disputed by the Debtor. Creditors holding disputed Claims may vote on the Plan only to the extent their Claims are allowed by the Court for the purpose of voting. Only those votes that actually accept or reject the Plan will be counted.

G. Acceptances Necessary to Confirm Plan.

At the confirmation hearing set for the Plan by the Court on September ____, 2016, the Court must determine whether the Plan has been accepted by each Class of creditors whose interests are impaired by the Plan. An impaired Class will be deemed to have accepted the Plan if the Class members who have voted to accept the Plan total at least two-thirds in amount and more than one half in number of the Allowed Claims or Interests. Creditors that have several Claims in the same Class are entitled only to one vote.

The Court may confirm the Plan, even if the Plan is not accepted by all of the impaired Classes, provided the Court finds that the Plan was accepted by at least one impaired Class and does not discriminate unfairly and is fair and equitable as to all non-accepting impaired Classes. Under Bankruptcy Code section 1129(b), the "cram-down" provision of the Bankruptcy Code, unless all members of the impaired Classes receive the full value of their respective Claims, no Class with junior liquidation priority may receive

anything. The Debtor intends to rely on these "cram-down" provisions, if necessary, in seeking confirmation of the Plan.

THE DEBTOR BELIEVES THAT THE PLAN IS FEASIBLE AND IN THE BEST INTERESTS OF THE DEBTOR AND EACH CLASS OF CREDITORS. PLEASE COMPLETE AND RETURN YOUR BALLOT PROMPTLY.

H. Investigations.

The Debtor has made an initial investigation of whether transactions entered into by the Debtor and its creditors resulted in the payment of any preferences or fraudulent conveyances that could be recovered. A preference is a payment (or transfer of property) to a creditor for or on account of a pre-existing debt made by a debtor while insolvent that enables the creditor to receive more than it would have received if the debtor's assets were distributed under Chapter 7 of the Bankruptcy Code. With certain exceptions, preferences may be recovered by a debtor if such payments or transfers were made within 90 days (or one year in the case of an insider) prior to the filing of the bankruptcy petition. A fraudulent conveyance is a payment (or transfer of property) to an entity in exchange for less than a reasonably equivalent value made by a debtor who was or is thereby rendered insolvent or unable to pay its debts. The Debtor's initial investigation has revealed a potential preference payment to an insider (Margaret Mobley) totaling \$12,700. The Debtor's initial investigation has revealed no fraudulent conveyances.

II. PLAN OF REORGANIZATION

The following is a brief summary of the principal provisions of the Plan and is qualified in its entirety by the full text of the Plan, attached hereto. Creditors are urged to

read carefully the full text of the Plan. The Plan, if confirmed, will be binding upon the Debtor, his creditors, and any other affected parties. Capitalized terms used but not defined in this Disclosure Statement have the meanings ascribed to them in the Plan.

A. Classes of Claims and Interests.

If you hold collateral for your Claim you are a "secured creditor." If you do not hold collateral for your Claim you are an "unsecured creditor." The Plan divides secured and unsecured creditors and interests into four (4) classes of Claims and Interests. The classes are as follows:

Class 1 - The Allowed Secured Claim of Pinnacle Bank secured by a vehicle.

Class 2 - The Allowed Secured Claim of Sheffield Finance secured by certain personal property.

Class 3 - Any and all general unsecured Allowed Claims.

Class 4 - The Allowed Interest of the Debtor.

B. Treatment of Administrative Expense Claims.

Administrative expense claimants representing approximately \$5,000.00 in attorneys' fees and expenses and any Claims of the U.S. Trustee estimated at \$1,500.00 shall be paid in full on the Confirmation Date, or upon the entry of an order of the Court allowing such claims, or upon the entry of an order of the Court approving the fees and expenses of an administrative expense claimant, or as otherwise deferred by agreement of the Debtor and the administrative expense claimant, whichever is later, except that any Claims of the U.S. Trustee shall be paid in full on the Effective Date. Any other administrative expense claims representing a liability incurred in the ordinary course of

business of the Debtor may be paid in cash by the Debtor in the ordinary course of business. All fees arising under 28 U.S.C. § 1930(a) after confirmation shall be paid after the Confirmation Date as such become due. Any Claims for Costs and Expenses of Administration shall be filed within twenty (20) days of the Confirmation Date.

Pursuant to an “Order Approving First Interim Application of Tune, Entrekin & White, P.C. for Allowance of an Administrative Expense Claim” entered December 12, 2016 at Document No. 40, Tune, Entrekin & White, P.C. was awarded a Claim for Costs and Expenses of Administration in the total amount of \$7,087.00. After the entry of the order, the Debtor paid \$7,087.00 to Tune, Entrekin & White, P.C.

C. Treatment of Claims and Interests Not Impaired by the Plan (Class 4)

1. Treatment of Class 4 Claims: The sole member of Class 4 consists of the interests of the Debtor, Timothy D. Binkley and Penny Lewis Binkley. Upon payment in full to all creditors as proposed in the Plan, ownership of all property of the estate shall re-vest in the Debtor.

D. Treatment of Claims Impaired by the Plan (Classes 1-3).

1. Treatment of Class 1 Claims: At the Petition Date, the Claim of Pinnacle Bank was secured by a title lien on a 2010 Ford F-150 truck. The fair market value of the Debtor's truck is approximately \$15,000.00. The Allowed Claim of Pinnacle Bank shall be amortized over a three (3) year period with interest at the rate of 5.50% per annum and monthly payments of principal and interest of \$516.42. On or before the Effective Date, the Debtor shall execute and deliver to Pinnacle Bank a promissory note in substantially the same form as Exhibit D, attached hereto and incorporated herein by this reference.

The principal amount of the note shall be equal to the Allowed Claim of Pinnacle Bank. Pinnacle Bank shall retain its lien on the vehicle after the Confirmation Date. The Debtor estimates that the following Class 1 claims will be made:

<u>Claimant</u>	<u>Amount</u>
Pinnacle Bank	\$17,102.17

The Debtor reserves the right to object to any Claim in this Class.

2. Treatment of Class 2 Claims: At the Petition Date, the Claim of Sheffield Finance was secured by a purchase money security interest in a Dixon riding lawnmower. The fair market value of the Debtor' lawnmower is approximately \$2,000.00. The Allowed Claim of Sheffield Finance shall be amortized over a three (3) year period with interest at the rate of 3.5% per annum and monthly payments of principal and interest of \$124.66. On or before the Effective Date, the Debtor shall execute and deliver to Sheffield Finance a promissory note in substantially the same form as Exhibit D, attached hereto and incorporated herein by this reference. The principal amount of the note shall be equal to the Allowed Claim of Sheffield Finance. Sheffield Finance shall retain its lien on the lawnmower after the Confirmation Date. The Debtor estimates that the following Class 2 claims will be made:

<u>Claimant</u>	<u>Amount</u>
Sheffield Finance	\$4,254.45

The Debtor reserves the right to object to any Claim in this Class.

3. Treatment of Class 3 Claims: Members of Class 3 consisting of the claim of Philip and Sarah Rainey, shall be disallowed and paid nothing under the terms of the Plan.

In the event the claim of Philip and Sarah Rainey is allowed by the Bankruptcy Court

at some future date, such claim shall be satisfied in its entirety upon the payment of the amount they could expect from the Debtor if the Debtor was instead liquidated under Chapter 7 of the Bankruptcy Code. Such amount shall be paid in equal quarterly installments without interest on January 1, April 1, July 1, and October 1 for the twenty (20) year period following the Confirmation Date or until such amount is paid in full. Payments of any amounts due to members of Class 3 under the Plan will satisfy the Debtor's obligation to make disposable income payments pursuant to Code section 1129(a)(15).

The Debtor reserves the right to object to any Claim in this Class.

E. Executory Contracts.

The Debtor has the right, subject to Bankruptcy Court approval, to assume or reject any executory contracts and unexpired leases entered into before the commencement of this bankruptcy case. Any damages resulting from a rejection shall be treated as an unsecured Claim arising prior to the Petition Date and included in the appropriate Class to the extent such Claim is allowed by the Court. The Debtor possesses no executory contracts or unexpired leases and does not anticipate any damages resulting from the rejection of any such contracts or leases.

F. Funding of Plan.

The funds necessary to pay the Allowed Claims of creditors in Classes 1 through 3 will be derived from the following sources:

- (a) Funds held in reserve by the Debtor; and
- (b) The continued employment of the Debtor.

G. Disputed Claims.

All Claims which are disputed as of the date they would otherwise be paid will be paid within a reasonable time (as determined by the Court) following the resolution of such disputes. All disputes pertaining to Claims will be resolved by the Court. The Debtor reserves the right to object to all Claims.

At the Petition Date, there was pending a lawsuit filed by Philip and Sarah Rainey concerning allegations of breach of contract, intentional misrepresentation, negligent misrepresentation, fraudulent concealment, and violation of the Tennessee Consumer Protection Act. The Debtor has repeatedly and steadfastly denied all of the Plaintiff's allegations and contends that Philip and Sarah Rainey are owed nothing. By an order entered July 1, 2015 at Document No. 14, the Bankruptcy Court fixed October 16, 2015 as the deadline for filing proofs of claim. To date, neither Philip Rainey nor Sarah Rainey have filed a Claim. As a result, the Plan proposes to disallow their claim in its entirety.

H. Estimate of Claims.

After a careful examination of the Bankruptcy Court claims file, the Debtor estimates Claims against the Debtor's estate, as of the Effective Date, in the following approximate amounts:

<u>Claim</u>	<u>Amount</u>
Administrative	\$ 5,000.00
Class 1 (Pinnacle Bank)	17,102.17
Class 2 (Sheffield Finance)	4,254.45
Class 3 (Unsecured Creditors)	\$ <u>0.00</u>
TOTAL:	\$ <u>26,356.62</u>

III. FINANCIAL INFORMATION PERTAINING TO THE DEBTOR

A. Post-Petition Operations of the Debtor.

The Debtor, acting as a "debtor-in-possession" under the Bankruptcy Code, has managed their assets and conducted the business of the Debtor since June 17, 2015. The Debtor is of the firm opinion that the longer they remain in this Chapter 11 case without a confirmed plan of reorganization, the less likely it is that the Debtor will be able to reorganize their financial affairs.

In preparing the financial information contained herein, the Debtor has utilized a cash basis and relied on accounting compilations produced by the Debtor.

B. Analysis of Debtor's Assets.

Based upon the information available to the Debtor, it appears that the highest and best overall recovery to creditors can be achieved through a continuation of the Debtor's employment. At the Petition Date, the Debtor's unencumbered and non-exempt assets consisted of approximately \$170,000.00 in two parcels of real estate.

IV. LIQUIDATION ANALYSIS

A. Introduction.

The Bankruptcy Code requires as a condition of confirmation that each holder of a Claim or Interest accept the Plan or that the Plan be in the "best interests" of such non-accepting holder. The "best interests" test requires that the Bankruptcy Court find that the Plan provides to each member of an impaired class of Claims or Interests a recovery which has a present value at least equal to the value of the distribution which such member would receive from the Debtor if the Debtor was instead liquidated under Chapter 7 of the

Bankruptcy Code. The estimates contained herein are based upon the Debtor's investigation of current fair market prices for residential real estate.

B. Forced Liquidation of the Debtor's Property.

The Debtor firmly believes that a forced liquidation of its property will not result in the highest sale prices and will not result in the maximum benefit to unsecured creditors. A "Liquidation Analysis" is attached hereto as Exhibit F. As evidenced by the "Liquidation Analysis," the Debtor believes the Plan to be in the "best interests" of all creditors.

V. FEDERAL TAX CONSEQUENCES OF CONSUMMATION OF THE PLAN

It is not practical nor is it intended by this general discussion to present herein a detailed explanation of the federal income tax aspects of the Plan. The scope of this discussion is limited to certain enumerated tax aspects of the Plan affecting the Debtor. Creditors are advised that no rule has been requested or obtained by the Debtor with respect to the tax aspects of the Plan. For all of the foregoing reasons and because the federal income tax consequences of the Plan will depend in part upon certain factual matters unknown to the Debtor relating to each particular creditor, EACH CREDITOR IS URGED TO SEEK ADVICE FROM HIS OR HER OWN TAX ADVISOR WITH RESPECT TO THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND, IF APPLICABLE, STATE AND LOCAL TAX CONSEQUENCES.

VI. CONCLUSION

The Debtor believes that the Plan is feasible and in the best interests of the Debtor and creditors and, therefore, recommends acceptance of the Plan. The Debtor urges all creditors to vote to accept the Plan and to evidence such acceptance by returning the Ballot immediately.

Dated: July 19, 2016.

/s/ Joseph P. Rusnak

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