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ATTORNEYS FOR TIMOTHY O’BRION McNAMARA

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE:

TIMOTHY O’BRION McNAMARA, §  
§ CASE NO. 16-31647-sgj-11  
§ CHAPTER 11  
Debtor-in-Possession. §

**DEBTOR’S CHAPTER 11 DISCLOSURE STATEMENT**

1. INTRODUCTION

1.1. Proponent of the Plan of Reorganization: The proponent of the Plan of Reorganization (“the Plan”) is the Debtor-In-Possession [“DIP”], or Debtor, Timothy O’Brion McNamara, or “McNamara.”

1.2. Purpose of the Disclosure Statement:

This Disclosure Statement is submitted to all creditors pursuant to 11 U.S.C. §1125 of the Bankruptcy code. The purpose of the Disclosure Statement is to give creditors “adequate information” upon which to base their decision to vote for or against the Plan of Reorganization (the “Plan”). Accordingly, this Disclosure Statement is submitted for the purpose of disclosing that information which the Bankruptcy Court has determined is material, important, and necessary for creditors of the Debtors to arrive at a reasonably informed decision in exercising their right to vote for acceptance or rejection of the Plan.

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED THEREIN.**

Along with this Disclosure Statement, the Plan is also being submitted. This Disclosure Statement describes various transactions contemplated

under the Plan. The Plan, however, is not part of this Disclosure Statement and must be reviewed independently. All Exhibits attached to this Disclosure Statement are to be considered as attachments to the Plan and as explanation of the Plan provisions relevant thereto; and to the extent legally required are provisions of the Plan, as attachments thereto. You are urged to study the Plan and to consult with your counsel about the Plan and its impact upon your legal rights. Please read this Disclosure Statement and the accompanying Plan in their entirety carefully before voting.

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED OR REVIEWED INDEPENDENTLY. IT IS THE DEBTOR'S BEST ESTIMATE OF THE CONDITIONS SHOWN HEREIN. DEBTOR'S COUNSEL MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY OR INACCURACY OF ANY INFORMATION CONTAINED HEREIN, SINCE BOTH THE PLAN AND DISCLOSURE STATEMENT ARE COMPILED FROM AND BASED UPON INFORMATION PROVIDED BY THE DEBTOR.**

This is not an extensive case, and therefore cannot afford the cost of the compilation of the data that would normally go into a larger case's disclosure statement, accordingly, this disclosure statement contains the Debtor's best efforts and estimates, given his resources. The Debtor will make his monthly operating reports available to parties in interest upon reasonable request. All monthly Operating Reports or other financial reports are available to the public on the Court's PACER website at: <https://ecf.txnb.uscourts.gov> using the Debtor's name and/or case number as referenced above.

**INCLUDED HERETO IS A DETAILED PROJECTED BUDGET AND PAYMENT SCHEDULE DETAILING THE DEBTOR-IN-POSSESSION'S PAYMENTS OF ALL EXPENSES AND PLAN PAYMENT THROUGH THE CONCLUSION OF HIS PLAN. ATTACHED ARE THE DEBTOR'S SCHEDULES "I" AND "J" AS EXHIBIT "A". ALSO ATTACHED IS THE MONTHLY OPERATING REPORT OF THE DIP FOR JULY 2016 AS EXHIBIT "B".**

- 1.3. Projected Budget and Payment Schedule.
  - A. McNamara has filed his Amended Form 106I and 106J [attached as Exhibit "A" and as incorporated hereby in the Plan, by reference, for all purposes] showing his combined total current monthly income from to be approximately \$20,000.00 and combined monthly expenses showing his estimated monthly expenses at \$14,763.56. This shows that McNamara

has approximately \$5,236.44 monthly net income, as excess of income over monthly expenses with which to fund his Plan of Reorganization. From these funds McNamara has formulated a plan to repay his creditors in whole, or in part, which should directly accrue to the benefit of his creditors and satisfy the requirement of feasibility of his Plan. One of the specified expenses in McNamara's Schedule "J" is an amount of \$3,270.60 as the current Modified Home Note Payment to Wilmington Trust, N.A. as trustee for MFRA Trust 2015-1, formerly JPMorgan chase, N.A., (thereafter: Wilmington Trust). The \$2,000.00 tuition noted in Schedule J would be paid off when the Plan is confirmed and the college cost ends May 2017.

B. Creditors to be paid as provided through the Plan Confirmation and the amount to be paid, include:

a. Class 1 Administrative Claims of his attorney's fees of \$20,000.00, of which attorney has been paid \$15,000.00 to date, and fees to the U.S. Trustee in unknown amount. Allowed.

b. Class 2 Priority Unsecured Claims to the Internal Revenue Service of \$74,668.52 with interest at 3% over a period of 72 months at \$1,131.66 per month for a total plan payment amount of \$81,479.52. Payments upon Confirmation. Allowed.

c. Class 3 Secured Claim of Wilmington Trust, N.A., is allowed only per HAMP as Modified by prior holder JPMorgan Chase, N.A. on the Capitalized Unpaid Principal Balance of \$1,604,146.60 as the sum of the Chase Modification Principal Forebearance amount of \$524,100.00 plus \$1,080,046.66 as Chase Modification Unpaid Principal Balance. This principal balance amount shall be paid at \$3,270.66 per month, upon Plan Confirmation for the first 360 months from the Effective Date and \$4,367.50 per month on the final 120 months principal forbearance balance. These payments will be paid directly, on a monthly basis, over the period of 480 months, and the initial 120 monthly payments at \$3,270.66 are accounted for in McNamara's Expense Schedule "J". Payments upon Confirmation. Wilmington Trust, Claim is Allowed to the extent it complies with the terms of the Class 3, and Disallowed to the extent it varies from these terms in its Proof of Claim filed as Claim number 6 in the Claims Register.

d. Class 4 Claim is Allowed Secured Claim of Dallas County and is for ad valorem taxes on the homestead for Tax Year 2016 in the amount of \$26,648.30 to be paid at 12% interest over a term of 72

months in the monthly amount of \$575.82 for a total of \$37,139.04. Payments on Confirmation. Allowed.

e. Class 5 Claim is the Secured Claim of the Internal Revenue Service as filed per its Proof of Claim #1 in the amount of \$339,553.91. This portion of the IRS claim will be allowed at \$0.00, as there exists no equity in the collateral claimed as security and basis of its claimed tax lien for this \$339,553.91 as the secured claim portion of IRS Claim #1. The amount of \$339,553.91 is provided for payment as treated in McNamara's Plan under Class 9, as a general unsecured deficiency claim as a secured deficiency amount from class 5. Payment on Confirmation. Allowed, as set forth herein.

f. Class 6 Claims are Allowed Secured Claims which include: direct auto payment claim of VW Credit, Inc. d/b/a Audi Financial Services, Claim #3, c/o CLC Consumer Services in the total claimed amount of \$6,158.64 balance of Note and Lien on a 2011 Audi A4 as collateral, and paid at \$406.29 per month per contract directly to VW per Expense Budget with Plan providing for a continuation of direct current payments per contract provisions; and Preston Trail Homeowners Association, Inc. Claim #4, is to be paid directly per McNamara's contract agreement with the Homeowners Association for all further assessments. Claim Allowed.

g. Class 6(a) Claim #4 is an Allowed Secured Claim on an arrearage of \$7,041.35 in payments to Preston Trail Homeowners Association as assessed and unpaid homeowners fees, and will be paid on \$7,041.35 at 5% interest over 24 months at \$307.63 per month. Paid on Confirmation. Allowed

h. Class 7 Claim as Allowed Security Deficiency Claim of Comerica Bank at \$254,949.09 under a second lien claim on McNamara's homestead per Home Equity Loan to be paid the amount of \$10,000.00, without interest, over 24 months at \$416.67 per month. Paid on Confirmation. Allowed, as stated.

i. Class 8 Claims are all General Unsecured Claims to be paid in the total aggregate amount of \$10,000.00, to be paid as pro rata distributions thereof, at \$138.89 per month for 72 months. Payment amounts to each creditor as allowed under Class 8 may be accumulated for each creditor hereunder until a minimum amount of \$100.00 is obtained owing any creditor and funds then paid that creditor. Paid on Confirmation.

Class 8 Creditors include:

(A) Comerica c/o CLC Consumer Services Co. on \$1,095.00 claim;

(B) Dillard's Elite – charged-off receivable sold, on \$2,975.00 claim;

(C) G.E. Capital Corp./Dillards; charged-off account over 10 years old, claim amount reference 098916632, on \$22,800.88 claim;

(D) GMAC claim based on McNamara as guarantor of corporate debt alleged paid in full, on \$18,017.58 claim;

(E) LVNV Funding, LLC, Claim #5 in the amount of \$12,400.98.

(F) JPMorgan Chase, N.A. for court costs and fees, unknown amount, claim of \$0.00;

(G) IRS, Claim Number 1, Unsecured General Claim as Penalty on Unsecured priority claims of \$4,822.55 to date of petition.

j. Class 9 All Allowed Unsecured Priority Deficiency Claims, per IRS Claim #1, in the amount of \$339,553.91; and unsecured general claims of IRS in the amount of \$4,822.55, per IRS Claim #1, as penalty to date of petition on unsecured priority claims. The total IRS Claim amount under this Class is \$344,376.46 which will be paid at total of \$10,000.00 over 72 months at \$138.89 per month. Paid on Confirmation. Allowed.

Payment Schedule.

Class 1: \$20,000.00, paid on confirmation.

Class 2: paid at \$1,131.66 per month for 72 months (total of \$81,479.52); paid on Confirmation.

Class 3: paid directly on confirmation per Chase Modification terms at \$3,270.66/mo.

Class 4: paid at \$515.82 per month for 72 months (total of \$37,139.04); paid on Confirmation.

Class 5: \$0.00.

Class 6: direct budget expense payment to VW Credit, Inc. and Preston Trail HOA; paid according to existing contract provisions.

Class 6(a): paid at \$307.63 per month for 24 months (total \$7,383.12); paid on Confirmation.

Class 7: paid at \$416.67 per month for 24 months (total of \$10,000.00); paid on Confirmation.

Class 8: paid at \$138.89 per month for 72 months (total \$10,000.00); paid on Confirmation.

Class 9: paid at \$138.89 per month for 72 months (total \$10,000.00); paid on Confirmation.

McNamara has a projected combined income of \$20,000.00 per month and expenses of \$14,763.56 with approximately \$5,236.44 monthly net income.

The average monthly cost of his Plan funding is \$2,444.46 per month for 72 months, for a total of \$176,001.68; based on Class 1 at \$20,000.00; Class 2 at \$1,131.66 x 72 months (\$81,479.52); Class 3 as monthly budgeted expense of \$3,2709.66; Class 4 at \$515.82 x 72 months (\$37,139.04); Class 5 at \$0; Class 6 paid direct per budget; Class 6(a) at \$307.63 x 24 months (\$7,383.12); Class 7 at \$416.60 x 24 months (\$10,000); Class 8 \$138.89 x 72 months (\$10,000.00); and Class 9 \$138.89 x 72 months (\$10,000.00).

#### 1.4. Explanation of Chapter 11 Cases.

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code, Title 11 U.S.C. Pursuant to Chapter 11, a Debtor is authorized to reorganize its business affairs for its own benefit and that of its creditors and interest holders. A Chapter 11 bankruptcy proceeding allows a Debtor to maintain control of its business during the pendency of the bankruptcy and to present to its creditors, interest holders, and the court, a plan of payment to the creditors and interest holders which will also allow the debtor to continue on-going operations.

Formulation of a plan of reorganization is the principal purpose of a Chapter 11 case. The plan of reorganization sets forth the means for satisfying claims against the debtor. Section 1125 of the Bankruptcy Code requires the Debtor to present

this Disclosure Statement before solicitation of acceptances of a plan of reorganization. This Disclosure Statement is presented to provide sufficient information to creditors and any interest holders to allow them to make an informed decision as to whether to vote for the plan of reorganization.

The Bankruptcy Court does not require that each holder of a claim against or of an interest in the Debtor vote in favor of the plan of reorganization in order for the Plan to be confirmed by the Court. A plan of reorganization, however, must be accepted by at least the holders of one impaired class of claims by a majority in number and two-thirds (2/3) in dollar amount of those claims of such class actually voting.

Even if all classes of claims and interests accept a plan of reorganization, its confirmation may be refused by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and, among other things, requires that a plan of reorganization be in the best interest of the claimants and interest holders. It generally requires that the value to be distributed to claimants and interest holders may not be less than such parties would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

The Court may confirm a plan of reorganization even though less than all of the classes of impaired claims and interests accept it. Confirmation of a plan of reorganization over the objection of one or more classes of impaired claims or interests is generally referred to as “cram-down.” In order for a plan of reorganization to be confirmed over the objection of a class of impaired claims or interests, the proponent of the plan must show *inter alia*, that the plan of reorganization does not discriminate unfairly, and is fair and equitable with respect to each class of impaired claims or interests that is impaired under, and has not accepted, the plan. A plan of reorganization may be confirmed over the objection of an allowed secured claim only if the plan of reorganization provides that the secured claimant retains its lien and receives the present value of its allowed secured claim; or alternatively, receives the indubitable equivalent of its allowed claim.

To impose confirmation over the objection of an unsecured creditor, the unsecured creditor must receive, among other things, the value of its interest in the estate and the holder of any interest or claim junior to that unsecured class must not receive or retain property under the plan until such unsecured class receives the value of its interest.

Confirmation makes the plan of reorganization binding upon the debtor, all claimants (including the holders of inchoate or contingent claims or rights), interest holders and other parties in interest, regardless of whether or not it has been accepted by them. If property is transferred to a third party free and clear of liens, claims, and encumbrances pursuant to a plan, then such liens, claims, and

encumbrances shall attach to the proceeds of the sale and shall not attach to or be a claim against the transferee of the property transferred.

1.5. Procedure for Filing Proofs of Claim or Interest.

All proofs of claim or interests must be filed with the U.S. Bankruptcy Clerk, 1100 Commerce St., 12<sup>th</sup> Floor, Dallas, Texas 75202, with copies to Debtor's counsel, by the bar date to be set by the Court. HOWEVER, IF CLAIMANTS HAVE ALREADY FILED A PROOF OF CLAIM WITH THE BANKRUPTCY COURT OR ARE LISTED IN THE DEBTORS' SCHEDULES AS NON-CONTINGENT, LIQUIDATED AND UNDISPUTED, A PROOF OF CLAIM NEED NOT BE FILED. The Schedules and the Statement of Financial Affairs as well as Monthly Operating Reports are on file at the Bankruptcy Clerk's Office and are open for inspection during regular court hours or by email to the Debtor under his case number on the Court's PACER website at: <https://ecf.txnb.uscourts.gov>.

CLAIMS FILED PURSUANT TO ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS MUST BE FILED NO LATER THAN SEVEN (7) DAYS AFTER THE CONFIRMATION HEARING IN THIS CASE.

**FAILURE TO FILE A FORMAL PROOF OF CLAIM, UNLESS EXCUSED, COULD RESULT IN THE DISALLOWANCE OF SUCH CLAIM.**

1.6. Voting.

1.6.1. Procedures.

Each holder of a claim may vote on the Plan by completing, dating and signing the ballot sent to it and filing the ballot as set forth below. If you are the holder of a disputed, contingent or unliquidated claim, you may petition the Bankruptcy Court to allow your claim for voting purposes only by making timely application to the Bankruptcy Court pursuant to Rule 3018 of the Bankruptcy Rules. You should seek the advice of your own counsel as to how to accomplish this.

Ballots are enclosed with the Disclosure Statement sent to each claimant or interest holder eligible to vote for the Plan. For all classes, ballots must be filed by mail with:

Leonard J. Robison II  
3626 N. Hall St., Ste. 507  
Dallas, TX 75219



In order to be counted, ballots must be RECEIVED at the above address no later than 5:00 p.m. (Central Standard time) on the date set forth in the Order Approving Disclosure Statement. Ballots that are signed and returned, but not expressly voted either for acceptance or rejection will be counted as acceptances.

1.6.2. Confirmation Hearing.

The Court will set a hearing on acceptances and confirmation of the Plan. The date and time of the hearing are also set forth in the Order Approving Disclosure Statement.

NO REPRESENTATIONS CONCERNING THE DEBTOR ARE AUTHORIZED BY THE PLAN PROPONENT OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE THE VOTE OF A CLAIMANT OR INTEREST HOLDER WHICH ARE OTHER THAN AS CONTAINED HEREIN SHOULD NOT BE RELIED UPON IN ARRIVING AT A DECISION ABOUT THE PLAN, AND SUCH ADDITIONAL INDUCEMENT SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, WHO IN TURN, SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT OR OTHER APPROPRIATE AUTHORITY FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.

MOST ALL OF THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO AUDIT. FOR THAT REASON, AS WELL AS THE COMPLEXITY OF THE DEBTOR'S AFFAIRS AND THE IMPOSSIBILITY OF MAKING ASSUMPTIONS, ESTIMATES AND PROJECTIONS INTO THE FUTURE WITH COMPLETE ACCURACY, THE PROPONENT IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT INACCURACY.

THE PROPONENT BELIEVES THAT THE PLAN WILL PROVIDE CLAIMANTS WITH AN OPPORTUNITY TO RECEIVE, SIGNIFICANTLY MORE THAN THEY WOULD RECEIVE IN A CHAPTER 7 LIQUIDATION OF THE DEBTOR'S ASSETS; AND, THE PLAN SHOULD BE ACCEPTED. THE PLAN PROPONENT URGES THAT CLAIMANTS VOTE FOR THE PLAN.

2. Background and Business of the Debtor.

- 2.1. Timothy O'Brion McNamara, date of birth, September 3, 1956, a 60 year old man, is a Real Estate Broker. McNamara is a registered broker for the Dallas based firm of Cantex Realities, LLC and the Austin based firm of

Haverwood Management, LLC. He has been a licensed Real Estate broker in the State of Texas for over 30 years. He graduated in 1978 from Baylor University with a BBA in Marketing and Management. He is married to Denise K. McNamara. They have four children, of whom two have graduated from college. One child, is a Senior in college, and one age 17, live at home.

- 2.2. Mr. McNamara is a partner in Cantex Realities, LLC and Haverwood Management, LLC. He oversees the sales, management and leasing for the Dallas office. These companies are small boutique real estate firms that represent several wealthy families and individuals from the United States and Europe. These businesses were started in 2007 in the middle of the Great Recession. Many of the families that Mr. McNamara represented choose not to reinvest into real estate due to the negative atmosphere from 2007 – 2011. Working 80 hours a week with minimal time off, Mr. McNamara, along with his partners, rebuilt the business. In 2007 the companies grossed around \$600,000.00 per year. By 2013, the companies had started to grow and the gross of both companies exceeded that of 2014 in 2015. The prospects for 2016 are projected to maintain the same gross without any additional revenues from sales or leasing. If the projected sales and leasing opportunities occur, then the companies should exceed \$1,000,000.00 in gross income. Attached hereto are the Profit and Loss Statements and Balance sheets for Haverwood Management, LLC and McNamara Media, LLC for 2015 and 2016, and Cantex Realities, LLC for 2015 as: [Exhibit “C”].

3. Financial Risk Information Concerning the Debtor.

- 3.1. McNamara is a commercial real estate broker, who experienced significant downturn until October 2010. His income has increased and being self-employed his recovery has not been easy. He expanded his business approach and branched-out into management and leasing which has resulted in increased income with results that will now cover his monthly household expenses/debt. The floating interest rate had made it hard to keep up with the increase in his house payments and Chase modified the floating rate to a fixed rate. The fixed monthly payment would remedy that problem. His cash reserves over the last years were depleted in paying off debt and surviving the downturn in the economy. His debt payments were excessive, but with an aggressive pay-down of existing credit cards, and his no longer using credit cards, automobile loans, he has cut back on expenses, has increased his business, and with help from Wilmington aka Chase, McNamara believes he can maintain the fair home note modification and meet all future obligations.
- 3.2. The primary creditor in the case is Wilmington Trust, N.A., a/k/a, JPMorgan Chase, N.A. or (“Chase”), the first lien holder on Debtor’s

residence homestead at 5906 Yardley Court, Dallas, Texas 75248. Subject to HAMP Modification of Chase Note with McNamara.

- 3.3. Debtor is current with his post-petition obligations to the IRS, having provided to pay his 2011, 2013, 2014 and 2015 liabilities through his Plan of Reorganization over six (6) years (see IRS POC Claim #1, Class 2). Debtor has also provided to pay 2016 post-petition *ad valorem* property taxes through his Plan of Reorganization. Debtor expects to remain profitable for 2016 and 2017, and thereafter.

The same date, McNamara received a settlement from the Independent Foreclosure Review Fund and dated that same date he received a letter from Chase modifying his loan. His hardship now is that Chase will not honor the settlement and their letter. Upon review of the letter, he called Chase requesting the documents. After waiting several days, he called again stating he had not received a coupon book and the local branch could not process his payments without a coupon. He asked that Chase honor the agreement to modify that was sent to him. His situation has vastly improved since 2013. He formally requested that he be allowed to move quickly to correct any oversight and allow the modification to go forward to completion. Chase letter of March 4, 2015. Attached hereto, as Exhibit "D" is a copy of the April 19, 2013 letter McNamara received regarding Chase Modification of home note loan account #624907036.

Attached hereto, as Exhibit "E" is a Net Present Value or Eligibility Data Fields and Values document as sent McNamara March 4, 2015.

- 3.4. Debtor has filed his Monthly Operating Reports ("MORs") which are available to interested parties under his case number on the Court's PACER website at: <https://ecf.txnb.uscourts.gov>. These MORs are Debtor's detailed analysis of the results of his business operations since his case filing.
- 3.5. Debtor's case is straightforward: he owes the IRS considerable Form-1040 income tax liability filed per Internal Revenue Service Proof of Claim Number 1 as Class 2 Unsecured Priority Claim amount of \$74,668.52; and, a Class 5 Secured Claim amount of \$339,553.91, treatment being proposed as a Class 9 Unsecured General Claim based on a priority deficiency, as well as an Unsecured General Claim amount of \$4,822.55. His plan provides to satisfy this tax liability claim, including 100% of the IRS Class 2 Unsecured Priority Claim. McNamara's business is profitable and he is, personally, the source of that profitability. His expertise is the basis of his business.

Developments Since Filing Bankruptcy.

- 4.0. Prior to this Chapter 11 filing, McNamara continued to work closely with JPMorgan Chase, N.A. to resolve the loan modification. McNamara has demonstrated to Chase that the modification letter he received was valid and accepted. The loan modification specialists have been researching why the modification package was not sent per the letter. Since he needs to submit a plan per the court ordered dates, he is requesting in his Plan that Chase's loan be acknowledged as modified in accordance with the April 19, 2013 letter, as required and agreed to under Chase's court ordered settlement for wrongful foreclosures.
- 4.1. McNamara believes that the value of his assets, as a going concern, is significantly greater than if liquidated. Upon a liquidation basis the assets should be expected to bring nothing more than is shown on Debtor's Schedules A and B. It is not likely that priority unsecured and general unsecured claimants would receive much, if anything. Also, it is to be noted that McNamara is an active "hands on" participant and is largely personally responsible for his good will and name recognition in the communities where he conducts business. The business of McNamara is largely dependent on his continued active participation in his business affairs; which efforts accrue to the benefit of his creditors, and without which those creditors would receive a much diminished opportunity for repayment of debt or stand to recover anything in a liquidation of his non-exempt assets.
- 4.2. The net effect of these business corrections is to reveal Debtor's increased net profit, since filing on April 28, 2016 through July 2016. Debtor has filed his Monthly Operating Reports which may be accessed under his case number in the Court's PACER website at: <https://ecf.txnb.uscourts.gov>.
- 5.0. Designation of Classes of Claims and Treatment:

The following classes of claims are provided for in the Plan of Reorganization:

**Class 1 – Allowed Administrative Claims.** Unimpaired.

**Attorneys fees** – estimated to be \$20,000.00 of which \$15,000.00 has been paid to date; attorney may apply for additional fees.

**Trustee Fees**, as such accrue, as due to the U.S. Trustee. These allowed claims shall be deemed to be paid to the extent allowed and/or approved per local rules.

**Class 2 - Allowed Unsecured Priority Unsecured Creditor Claim of The Internal Revenue Service.** This class is impaired. This Class 2 Claim consists of the Unsecured Priority Claim No. 1; to be paid \$74,668.52 at 3% interest over 72 months at the monthly amount of \$1,131.66.

These allowed claims shall be considered impaired because: although to be paid in full, these claims shall be paid out over time. Specifically, the allowed priority claim of the Internal Revenue Service shall be paid in full bearing interest at 3% per annum, beginning on the 15<sup>th</sup> day of the first (1<sup>st</sup>) month after the Effective Date. The Claim shall be paid in full over seventy-two (72) months, or less, at \$1,131.66 per month.

**Class 3 – Allowed As Modified, Secured Claim As Modified per HAMP and Chase Modification Program and its successor, in fact, Wilmington Trust, N.A. (fdba JPMorgan Chase, N.A.)**

a) The Chase Modification Principal Forebearance Amount of \$524,000.00, without interest, per terms as set forth in (Exhibit “E”) with payments at \$4,367.50 per month beginning on the 361<sup>st</sup> month of the 480 month modified note term until completed directly to creditors; and;

b) \$1,080,046.66, as Chase Modification Unpaid Principal Balance at 2% to be paid at \$3,270.66 (P&I) per month for 360 months beginning within 30 days of the Effective Date directly to Creditor.

This Class is not Impaired.

**Class 4 – Allowed Secured Ad Valorem Tax Creditor Claims. Dallas County Taxing Authority;** Claim No. 2; \$26,648.30, at 12% interest over 72 months, to be paid monthly in the amount of \$515.82. This Class is Impaired, as not paid timely when due.

**Class 5 Claim – Allowed Secured Claim #1 of the IRS.** Class 5 Claim, filed by the IRS as Claim Number 1, has a Secured Claim and allowed as a deficiency general unsecured claim shall be allowed payment as a secured claim at \$0.00; and, paid nothing as secured thereunder, except as such amount as may be included as a deficiency amount as included for distribution under Class 9, as an allowed deficiency general unsecured claim on the amount of \$339,533.91.

**Class 6 –Allowed Secured Claim of VW dba Audi Financial Services; and, Prestonwood Trail HOA (Non-Priority).** Current direct regular payments to be maintained to both creditors of this Class 6. This Class

shall be paid 100% of the allowed claims, as per contract terms, for each creditor, paid monthly, or otherwise as per contract. These claims shall be paid directly, continuing as direct payments from filing date until contract is fully consummated. This Class is not impaired.

**Class 6(a)**. Claimants under Class 6(a) include Prestonwood Trail HOA contract association arrears which shall be paid as allowed secured claim in the total amount of \$7,041.35 at 5% over 24 months at \$307.63 per month.

Class 6(a) is Impaired.

**Class 7 Claim – a General Deficiency Unsecured Claim of Comerica Bank**. Based on its deficiency as a second lien claim as a home equity secured claim on Debtor's homestead in the amount of \$254,949.09; this claim is treated as contingent, unliquidated and disputed as a valid and subsisting lien on the homestead. The status of limitations for collection has run and no equity value supporting the claim as secured by the homestead exists. Debtor proposes an Allowed sum total claim payment of \$10,000.00 to creditor over 24 months, at no interest, in the amount of \$416.66 per month payment initiation after the Effective Date.

This Class is Impaired.

**Class 8 – All General Unsecured Claims as set forth:**

(a) Comerica at \$1,095.00 (bank fees); (b) Dillards Elite at \$2,975.10; (c) G.E. Capital Corp. (debt charge off) at \$22,800.88; (d) GMAC at \$18,017.58 claimed paid in full as corporate guarantor; (e) LVNV funding, LLC [G.E. Money Bank/Resurgent Capital Services] at \$12,400.98; (f) JPMorgan Chase, N.A. at \$0.00; (g) IRS at \$4,822.55, as Allowed, on penalty on unsecured priority. Unsecured General Claim as set forth in the IRS Proof of Claim, Number 1.

This Class is Impaired.

**Class 9 – All Allowed Unsecured Claims as Priority Deficiency Claims**. Treated herein and paid hereunder, as an Unsecured Deficiency secured claim of \$339,553.91 of the IRS. The total aggregate amount of this Class 9 of claim is \$339,586.96. This Class 9 claim will be paid a total amount of \$10,000.00 without interest over 72 months from the date of Confirmation. This an Impaired Class and will be paid at the rate of \$138.88 per month.

This Class is Impaired.

- 5.1. Any disputes or differences between Debtor and any Claimants shall be resolved, if at all possible, by good faith negotiation. Regardless, all claimants shall be entitled to vote, if impaired. For voting purposes only, Debtor will acquiesce to the Claimant's amount.
- 5.2. Without the requisite approval of an impaired class of claims, the Plan may not be confirmed.
- 6.0. Liquidation Analysis.
- 6.1. If the Debtor were to liquidate, both the priority unsecured and the general unsecured claims would likely receive little, or nothing. The Debtor's best estimate is that a liquidation sale would bring less than the amount scheduled by Debtor on his Amended Schedule A and B. There is no equity available from liquidation of the homestead for any creditor. The first lien holder has previously claimed \$1,788,529.00 as secured by lien as owed on its claim; or, as modified at \$1,080,046.66 unpaid Principal and \$524,100.00 Forbearance Amount for a total of \$1,604,146.60 owed. Additionally, Dallas County claim has \$26,648.30 for tax year 2016 lien, and Comerica Bank has a claim of \$254,949.09 second lien on Home Equity Loan. The HOA has a secured interest, as well. The total of those three (3) creditors is \$1,885,743.90. This secured amount does not even include the IRS secured claim on the homestead property at 5906 Yardley Ct., Dallas, TX 75248, as filed by its Claim #1 at \$339,553.91. This total secured amount of claims is \$2,225,297.80. The first lien holder, Chase, in its modification of its note with the Debtor has showed an estimated fair market value of the collateral property as \$1,350,000.00 on its Net Present Value or Eligibility DATA for this loan #624907036 [see attached Exhibit "E"]. No equity is available to pay any creditors, beyond a partial payment to Chase/Wilmington.
- 6.2. Were Debtor to be liquidated under a Chapter 7 proceeding, creditors would not receive as much as they will under McNamara's Chapter 11 Plan. Debtor's Schedules of Assets shows real property which is exempt property, with IRS tax lien of \$339,553.91, leaving no return for unsecured creditor claims. Debtor has personal property valued at \$37,965.58 with exemptions of \$37,965.58; thus leaving \$0.00 in available equity to pay unsecured creditors.

Upon liquidation, Debtor's creditors would not be paid an amount equal to their return under his Plan – which would pay something to all Classes of Claims.

Risk to Plan.

- 7.0. McNamara's health is good and he is physically fit at 60 years of age. There should be little, if any risk to his creditors during the pendency of this case. All funds to be paid under the plan will be initiated to be paid out in 30 days of the Plan's confirmation date, the Effective Date.

Description of Plan.

- 8.0. Funds totaling \$188,610.12, as contributed by Debtor, Timothy O'Brion McNamara and as contributed by Denise McNamara from her post-confirmation personal services income over a 72 month period of time in equal monthly installments at \$2,619.71 per month. McNamara and his wife's ownership interests in Haverwood Management, LLC and Cantex Realities, LLC provide funds sufficient to provide for the performance of Debtor's Plan; as well as for the purpose of paying any unpaid Allowed Administrative Claims and to provide for a dividend to holder of all Allowed Claims. Payments shall be applied consistent with the Plan's priority scheme. The funds referenced above may be supplied at a faster pace or at any one time, if circumstances, as solely determined by the DIP and Denise McNamara's consultation warrant. Any distributions of cash from Haverwood Management, LLC on account of McNamara's Administrative Claim of Debtor's Counsel under applicable order of the Bankruptcy Court and such distributions shall be in accordance with this Plan.

9.0. **RECAP:**

- 9.1. Debtor's plan provides to pay Class 1, Class 2, Class 3, Class 4, Class 6, and Class 6(a) at 100%. These Claims would not be paid as much upon liquidation as they are provided to be paid under McNamara's Plan..

Upon liquidation, Class 2, Class 5, Class 6(a), Class 7, Class 8 and Class 9 would be unlikely to be paid anything, and Class 3 would receive diminished return on its collateral as compared to its HAMP Modified note under this Plan.

9.2. **Debtor's plan provides:**

**Class 1:** \$20,000.00 attorney's fees; and U.S. Trustee's fees;

**Class 2:** IRS priority claim of \$74,668.52 is paid through the Plan at 3% interest over 72 months at \$1,131.66 per month, until Claim is paid in full;



**Class 3:** Allowed claim per HAMP Modification of home note between McNamara and Chase (Wilmington Trust, N.A.); begin monthly payment at \$3,270.66 upon Confirmation of Plan.

**Class 4:** Dallas County to be paid at \$515.82 per month for 72 months, on \$26,648.30 claim at 12% per annum interest;

**Class 5:** \$0.00. IRS secured claim; payments to be provided under Class 9;

**Class 6:** Allowed Secured Claims of VW/Audi at \$6,158.64 and Preston Trail HOA(current assessments) to be paid direct, as budgeted expense;

**Class 6(a):** Prestonwood Trail HOA arrears of \$7,041.35 to be paid at 5% at \$307.63 per month for 24 months.

**Class 7:** Comerica Bank – disallowed secured claim; with Allowed claim at \$10,000.00 to be paid without interest thereon, at \$416.66 per month for 24 months;

**Class 8:** Seven creditors to be paid, pro rata, on allowed claims from total payment amount to this Class 8 of \$10,000.00 paid out over 72 months at \$138.88 per month, without interest.

**Class 9:** Allowed IRS Unsecured Deficiency claim of \$339,553.91 to be paid a total of \$10,000.00, without interest, over 72 months at \$138.88 per month.

9.3. **Debtor to pay monthly:**

- (a) \$515.82 for 72 months includes 12% interest to pay Class 4 at 100%;
- (b) \$1,131.66 for 72 months at 3% interest to pay Class 2 at 100%;
- (c) \$466.67 per month for 24 months at 0% interest to pay Class 7;
- (d) \$307.63 for 24 months at 5% to pay Class 6(a) at 100%.
- (e) \$138.88 for 72 months, at 0% interest, for Class 8;
- (f) \$138.88 for 72 months, at 0% interest, for Class 9.

Debtor will have monthly plan payments totaling \$2,699.54 which amount decreases after 24 months to \$1,925.24 per month. Debtor's performance and financials show as possible based on his projections.

9.4. Pending and Threatening Litigation.

None known.

9.5. Tax Analysis and Priority Claims.

The Debtor believes that he could owe less than claimed by various taxing authorities, but is acceding to the IRS filed Proof of Claims, and to Dallas County Taxing Authority.

9.6. Amendments And Waivers.

Except as otherwise specifically set forth in the Plan, any term of the Plan may be amended by agreement and the observance of any term of the Plan may be waived (either generally or in a particular instance and either retroactively or prospectively).

10. Summary.

The Debtor believes it to be in the clear best interest of each of his creditors, generally, and his estate, to vote your ballot in ACCEPTANCE of the Plan.

Respectfully submitted,

LEONARD J. ROBISON II

/s/Leonard J. Robison II  
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ATTORNEY FOR DEBTOR

Dated: September 24, 2016

By: /s/Timothy O'Brien McNamara  
Timothy O'Brien McNamara