

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>	§	<b>Case No. 15-31278-H2-11</b>
<b>RICHARD PROSKE,</b>	§	
<b>Debtor</b>	§	<b>Chapter 11</b>

**DEBTOR'S THIRD AMENDED DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION**

COMES NOW Richard Proske (the “Debtor”) and proposes this Third Amended Disclosure Statement and Plan of Reorganization (the “Plan”) pursuant to §§ 1121 and 1125 of the Bankruptcy Code.

**I. INFORMATION REGARDING THE DEBTOR**

**A. The Debtor**

The Debtor is an individual with his principal residence at 15122 Red Cedar Bluff, Cypress, Texas 77433. Where appropriate, references to the Debtor shall mean the reorganized debtor.

**B. Brief History of the Debtor and Cause of the Debtor’s Chapter 11 Filing**

The Debtor is an individual who had worked as an account representative at Bimbo Bakeries. The Debtor’s parents died a few years ago. The Debtor incurred a number of unexpected expenses when his parents died, including maintenance and upkeep of his parents’ home before it could be sold. In addition, the Debtor has had to pay a large amount of college expenses for his daughter. Because of the Debtor’s increased expenses during this time, the Debtor got behind on mortgage payments on his home and on payments associated with real property located at 1348 C.R. 323, Lexington, Texas 78947 (the “Lexington Property”). Although the home of the Debtor’s parents was sold and the Debtor no longer had any expenses

that were due to his parents' death remaining, the Debtor was not able to catch up on the payments that fell behind.

The Debtor was in the process of refinancing the loan associated with the Lexington Property, but the original lender threatened to foreclose on the property before the refinancing could close. The Debtor filed a petition for chapter 13 bankruptcy on March 2, 2015 to stay the foreclosure. On April 22, 2015, the case was converted to chapter 11.

### **C. Assets of the Debtor**

The assets of the Debtor at the time of the bankruptcy filing are set forth in detail on the schedules of the Debtor filed with the Court. The Debtor's principal assets are his homestead located at 15122 Red Cedar Bluff, Cypress, Texas 77433 (the "Homestead") and 1348 C.R. 323, Lexington, Lee County, Texas (the "Lexington Property"). The Lexington Property is not income-producing. Otherwise the Debtor owns various personal property items, including a promissory note for \$6,300.00 of which the Debtor is promisee.

### **D. Source of the Information Contained in This Disclosure Statement**

All information in this Plan and Disclosure Statement has been submitted by the Debtor unless otherwise indicated.

### **E. Present Condition and Post-Petition Operations of the Debtor**

After the filing the bankruptcy case, the Debtor's employer restructured its positions and the job of the Debtor was eliminated. All of the expenses associated with the death of the Debtor's parents have subsided. The college expenses for the Debtor's daughter have ended. The Debtor has employment at this time but expects employment with a salary that is commensurate to his prior job. With new employment the Debtor will have the ability to make the payments as proposed in the plan. Even though employment has been eliminated, the Debtor

has been actively pursuing other employment. Opportunities for re-employment may open at his prior employer. The Debtor is hopeful to have new employment very soon. With new employment, the Debtor expects to be able to repay his debts in accordance with this Plan out of his current and future wages.

The post-petition financial operations of the Debtor are set forth in the monthly operating reports filed with the Bankruptcy Court. Attached as Exhibit A are the two most recent of the Debtor's monthly operating reports, which set forth the Debtor's cumulative post-petition operations.

#### **F. Anticipated Future of the Debtor and Management of the Reorganized Debtor and Feasibility**

The Debtor anticipates new employment in the near future. In the Debtor's prior employment, the Debtor had net monthly income of approximately \$5,900. The Debtor anticipates income in a new job of at least the same amount. The Debtor also may restructure intrafamily payments to increase funds from a family receivable so that he will receive above \$718 per month instead of \$175 per month. Because of the reduction in the Debtor's expenses and new employment, the Debtor expects that the wages from his new employment together with the increased funds from the family will be sufficient to make the payments proposed under this Plan.

If the new employment or sufficient sources of income do not occur by May 1, 2016, the Debtor will list and sell the Lexington Property or the Homestead Property. At this time the Lexington Property has a value of at least \$230,000. The equity in the Lexington Property is in excess of \$100,000. The equity in the homestead is approximately \$25,000.

The actual income and expenses together with the projections of income and expenses for

the next three years are attached hereto as Exhibit B.

### G. Claims Summary

The Debtor's schedules reflect claims against the Debtor and the respective priorities. The bar date for filing claims was July 16, 2015. The following table summarizes the claims filed against the Debtor:

Claim #	Creditor	Amount	Status*	Collateral
1	Discover Bank	\$5,720.80	Unsecured	-
2	Atlas Acquisitions, L.L.C.	\$3,701.22	Unsecured	-
3	Lee County	\$4,794.98	Secured	1348 C.R. 323
4	Pat Flynn	\$99,068.19*	Secured	1348 C.R. 323 as of January 22, 2016
5	Santander Consumer U.S.A., Inc.	\$23,960.28	Secured	2012 Ford Edge
6	Harris County	\$1,125.73	Secured	Homestead
7	Cypress Fairbanks I.S.D.	\$1,717.66	Secured	Homestead
8	Cavalry SPV I, L.L.C.	\$1,707.49	Unsecured	-
9	Cavalry SPV I, L.L.C.	\$1,110.34	Unsecured	-
10	Wells Fargo Bank, N.A.	\$168,449.31	Secured	Homestead

\*Per the notice from the creditor, the current amount of the claim is \$145,822.61 as of January 22, 2016, which includes a claim for attorneys' fees of \$32,068.29.

The Debtor has paid to Lee County, Texas, the ad valorem taxes for 2014 from claim number 3. The taxes for 2015 for Lee County, Texas, have not been paid at this time. Claims 6 and 7 above are for 2015 ad valorem taxes for the Homestead, which are escrowed with Wells Fargo. The Debtor anticipates disputing claims 8 and 9 and possibly other claims.

Although the Debtor has listed on Schedule F unsecured claims that have not filed proofs of claim, all such amounts on Schedule F have been classified as disputed. If a claim is classified as disputed, unliquidated, or contingent, then the creditor must file a proof of claim. If a claim

was classified as disputed, unliquidated or contingent on Schedule F by the Debtor and no proof of claim is timely filed by the bar date of July 16, 2015, then no payment will be made to such creditor.

Copies of Schedules D (secured creditors), E (priority creditors), and F (unsecured creditors) are available from the Clerk of the Court or counsel for the Debtor.

#### **H. Liquidation as an Alternative to the Proposed Plan**

The Debtor is proposing a Chapter 11 Plan of Reorganization to repay his debts. However, if the Plan is not approved by the Creditors and confirmed by the Court, the primary alternative for the Debtor is liquidation under chapter 7 or dismissal of the case.

In a chapter 7 liquidation, there is likely to be sufficient equity in the Lexington Property to pay all of the Debtor's secured and unsecured creditors in full. However, sale of the Lexington Property in a chapter 7 liquidation would likely be for substantially less than the property's full fair market value, resulting in a loss to the Debtor. In addition, the proposed Plan permits the Debtor to retain the Lexington Property.

The Plan proposes that all creditors—secured, priority, and unsecured—be paid in full to the extent of their filed and allowed claims. Therefore, the creditors will not be paid less through the Plan than through a chapter 7 liquidation. The Debtor believes that his future wages or the sale of assets will provide sufficient income to pay the creditors in accordance with the terms of the proposed Plan.

See Exhibit C for a liquidation analysis.

#### **I. Estimated Administrative Expenses**

The Debtor estimates administrative expenses including professional fees and expenses and pre-confirmation U.S. Trustee quarterly fees for this case to be approximately \$25,000. The

administrative expenses are composed of attorney fees, U.S. Trustee quarterly fees, and a reserve for other possible administrative expenses.

**J. Avoidance and Contested Claims**

At this time, the Debtor has not identified any preferential transfers or claims that should be disputed.

**K. Summary of Litigation.**

The Debtor has been involved in litigation with Pat Flynn regarding the Lexington Property. The Debtor and Flynn have resolved the litigation. The Debtor will refinance or sell the Lexington Property by June 2, 2016.

Cause No. 1042924, *Fairfield Village Community Association, Inc. v. Richard D. Proske and Emily A. Proske* the plaintiff obtained a judgment against the Debtor and his spouse. The judgment is paid in this plan.

**L. Risks Posed to Creditors**

The risk to creditors is that the Debtor will not obtain new employment or that he may encounter additional unexpected expenses, for example, medical expenses. In such cases, the Debtor may not be able to pay his household expenses or pay the creditors under the terms of this Plan. The Debtor does not believe that the above factors will adversely affect the ability of the Debtor to fully pay all creditors in full as provided in this plan. The value of the Lexington Property creates a substantial equity amount for all creditors. If the Debtor does not obtain new employment by May 1, 2016, then the Debtor will commit to list for sale either the Lexington Property or the Homestead Property. The significant equity in the Lexington Property and the commitment of the Debtor to list and sell either the Homestead or the Lexington Property after May 1, 2016, will provide the Debtor with the ability to fully fund the plan of reorganization.

The Debtor is also pursuing re-financing of the Lexington Property. The Debtor believes that with the significant equity in the Lexington Property that he may be able to re-finance the Lexington Property. However, if the Debtor is unable to re-finance or sell the Lexington Property, then the lender may sell the Lexington Property at a foreclosure sale on the first Tuesday in June of 2016.

#### **M. Tax Ramifications**

An analysis of the federal income tax consequences of the Plan to creditors requires a review of the Internal Revenue Code of 1986, as amended, the Treasury regulations promulgated thereunder, judicial authority, and current and administrative rulings and practice. The federal income tax consequences to any particular creditor may be affected by the nature of the taxable entity. There may also be state, local, or foreign tax considerations applicable to each creditor. Each creditor is urged to consult his, her, or its accountant or tax lawyer to determine the effect of this Plan upon his, her, or its claim.

#### **N. Affiliate Relationships**

The Debtor no known affiliate relationships.

#### **O. Absolute Priority Rule**

The Bankruptcy Code provides that with respect to each class of creditors, such class must accept the plan or such class is not impaired under the plan. If a class does not accept the plan, then the bankruptcy court may confirm a plan over the failure of a class to vote for the plan, provided that for a class of unsecured claims, the plan must provide that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of the claim of the creditor, or the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan

on account of such junior claim or interest any property. The Debtor believes that its plan of reorganization complies with the absolute priority rule in the Bankruptcy Code that is contained in Section 1129(b).

**P. Definitions**

“Effective Date” shall be the date that is fifteen (15) days after a final and non-appealed order is entered confirming the Debtor’s chapter 11 plan of reorganization.

**II. PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS**

**Plan Concept.** The Debtor’s Plan is reorganizing in nature. It provides for the division of claims into nine (9) classes. Each of the claims in each class shall be treated in the manners and methods described below:

Class 1. Administrative Claims as of the Effective Date

Class 1 consists of the Allowed Claims entitled to priority under § 507(a)(1) of the Bankruptcy Code, including fees for services rendered and expenses incurred through the Effective Date by Debtor’s counsel and other professionals appointed by the Court for the Debtor, the U.S. Trustee’s pre-confirmation quarterly fees, and any other administrative expenses.

The estimated amount of claims in Class 1, including professional fees and U.S. Trustee fees is approximately \$25,000. Except as provided below, each creditor in Class 1 shall be paid in cash on the Effective Date if the creditor’s claim has matured or been approved or allowed by the Court, if such approval or allowance is required. Fees and expenses for counsel for the Debtor will be paid at an agreed amount after confirmation

The budget projects payments of approximately \$500 per month to counsel for the Debtor until the fees and expenses are paid. Counsel for the Debtor has agreed to accept payments over



an extended time period in lieu of payment at confirmation. If counsel for the Debtor is paid over an extended period of time as stated above, the Debtor will execute a promissory note to counsel with interest at a rate of five percent per annum. The promissory note may be secured with liens on the Debtor's real and personal properties.

All fees for services rendered and expenses incurred after the Effective Date by court-appointed counsel and other professionals for the Debtor shall be paid by the Debtor in the ordinary course of business without the necessity of filing fee applications or seeking approval or allowance of the Court. The reorganized debtor shall be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6).

Quarterly fees owed to the U.S. Trustee pre-confirmation will be paid on the Effective Date of the Plan. After confirmation and until this case is closed by the Court, the reorganized Debtor shall pay quarterly fees to the U.S. Trustee as they accrue and serve on the U.S. Trustee a quarterly financial statement or affidavit of quarterly disbursements.

Counsel for the Debtor, Baker & Associates, has or may obtain guarantees for payment to secure payment of the legal fees and expenses to Baker & Associates together with liens and/or security interests on the Debtor's real property. Such actions will not affect payments to creditors as provided herein. The payments to Baker & Associates will start on May 5, 2016.

Class 2. Secured *Ad Valorem* Property Tax Claim of Harris County

Class 2 consists of the secured *ad valorem* property tax claims of Harris County and other taxing entities (collectively, "Harris County"). Harris County has filed a proof of claim asserting an estimated \$1,125.73 owed for the 2015 tax year that is secured by the Homestead.

The Debtor has the ad valorem taxes escrowed with Wells Fargo. The proof of claim of Wells Fargo contains provisions for the escrow of the taxes. As such, these amounts will be paid

by Wells Fargo and not by the Debtor.

Class 2 is impaired.

Class 3. Secured *Ad Valorem* Property Tax Claim of Cypress Fairbanks I.S.D.

Class 3 consists of the secured *ad valorem* property tax claim of Cypress Fairbanks I.S.D. (“Cypress ISD”). Cypress ISD has filed a proof of claim asserting an estimated \$1,717.66 owed for the 2015 tax year that is secured by the Homestead.

The Debtor has the ad valorem taxes escrowed with Wells Fargo. The proof of claim of Wells Fargo contains provisions for the escrow of the taxes. As such, these amounts will be paid by Wells Fargo and not by the Debtor.

Class 4. Secured Claim *Ad Valorem* Property Tax Claim of Lee County and Lexington Independent School District.

Class 4 consists of the secured *ad valorem* property tax claims of Lee County and other taxing entities including Lexington I.S.D. (collectively, “Lee County”). Lee County has filed a proof of claim asserting \$2,500.73 owed for the 2014 tax year and an estimated \$2,452.46 owed for the 2015 tax year, both of which are secured by 1348 C.R. 323.

The Debtor has paid in full the ad valorem taxes to Lee County, Lexington I.S.D. and other taxing authorities for taxes for 2014.

For the 2015 ad valorem taxes, the Debtor will pay the principal amount of \$2,452.46 to Lee on or before May 31, 2016, at 12.0% interest. For tax years after 2015, the Debtor will pay such taxes on a timely basis.

Payments to Class 4 will start on the fifth (5<sup>th</sup>) day of the first full calendar month following the Effective Date of the Plan.

Class 4 is impaired.

Class 5. Secured Claim of Fairfield Inwood Park Neighborhood Association

Class 5 consists of the secured claim of Fairfield Inwood Park Neighborhood Association (“Fairfield NA”). The Debtor has re-scheduled the claim of Fairfield NA for \$3,523. The claim is secured by the Homestead. Fairfield NA has not filed a proof of claim. If a claim is filed, the Debtor reserves the right to contest a claim.

The Debtor will pay the amount plus interest to Fairfield NA at the rate of 3.5% interest over a period of 60 months.

Payments to Class 5 will start on August 5, 2016.

Class 5 is impaired.

Class 6. Secured Claim of Fairfield Village Community Association

Class 6 consists of the secured claim of Fairfield Village Community Association (“Fairfield VCA”). The Debtor has scheduled the claim of Fairfield VCA for \$6,567.17 based on the judgment amount. The claim is secured by the Homestead. Fairfield VCA has not filed a proof of claim. If a claim is filed, the Debtor reserves the right to contest a claim.

The Debtor will pay the judgment amount plus interest to Fairfield VCA at the judgment rate of 5% interest over a period of 60 months.

Payments to Class 6 will start on August 5, 2016.

Class 6 is impaired.

Class 7. Secured Claim of Wells Fargo Bank, N.A.

Class 7 consists of the secured claim of Wells Fargo Bank, N.A. (“Wells Fargo”) represented by a promissory note dated February 16, 2009 executed by Richard Proske and Emily Proske, in the original principal balance of \$137,244.00 (the “Note”). The Note is secured by a Deed of Trust of even date therewith (the “Deed of Trust”) granting the holder and owner of

the Note a lien on the real property described 15122 Red Cedar Bluff Lane, Cypress, Texas 77433 (hereinafter the “Collateral”).

Post Petition Mortgage Payments. Debtor shall resume making monthly mortgage payments to Wells Fargo required by the terms of the Note and Deed of Trust effective June 1, 2015 and shall continue making that payment to Wells Fargo on the 1st day of each calendar month thereafter until maturity of the Note. The current monthly mortgage payment is \$1,235.22. Said mortgage payment is subject to future changes pursuant to the terms of the Deed of Trust and Note.

Pre Petition Arrears: Debtor shall pay Wells Fargo the allowed amount of Wells Fargo’ pre-petition mortgage arrears in sixty (60) equal monthly payments of \$507.49 each, with the first such payment due on the 1st day of June 2016, and a like payment on the 1st day of each calendar month thereafter until the arrearage is paid in full. The Proof of Claim filed by Wells Fargo has an arrearage of \$30,449.31. Debtor shall utilize that arrearage amount to calculate the monthly payment required to retire this arrearage claim over sixty (60) equal monthly payments. In the event Debtor objects to such claim, Debtor shall continue to pay this monthly amount until a final order is entered by the court with respect to the allowed amount of this claim. If an order is entered by this court that modifies the allowed amount of this arrearage claim, the monthly payments shall be re-calculated at that time to conform to the terms of the court’s order.

Post-Petition Arrears: Debtor shall pay Wells Fargo the post-petition for the monthly mortgage payment that came due May 1, 2015 in the amount of \$1,235.22. Debtor shall pay Wells Fargo this amount in sixty (60) equal monthly payments of \$20.59 each, with the first such payment due on the 1st day of July 2016, and a like payment on the 1st day of each calendar month thereafter until the post-petition arrearage is paid in full.

Survival of Lien: Notwithstanding anything contained in this Plan to the contrary, the lien granted to Wells Fargo shall survive entry of the order of confirmation and the subsequent discharge entered by the court.

No further modification: Subject to the repayment terms set forth above, all other terms of the Note and Deed of Trust are not modified by this Plan and those terms shall survive confirmation of the Plan.

Default: In the event Wells Fargo does not receive timely tender of the payments set forth above, Wells Fargo shall send written notice by Regular Mail and by Certified Return Receipt Requested Mail, postage prepaid, to Debtor and Debtor's spouse and Counsel for Debtor, and allow Debtor a 10 day period from the date of such written notice to cure such delinquent payments. Cure payments must be made by certified funds only. Wells Fargo may include a demand for payment of an additional \$50.00 for the attorneys' fee expense incurred by Wells Fargo in connection with the default demand. In the event Debtor and his spouse fail to cure such delinquent payment and pay the \$50.00 attorneys fees within such 10 day period, Wells Fargo shall be allowed to take any and all steps necessary to exercise any and all rights it may have pursuant to the Note and Deed of Trust or under the laws of the State of Texas in the Collateral described above. Upon conclusion of the sixty (60) month repayment term for the pre-petition arrearages set forth above, this notice requirement shall terminate and the parties shall thereafter be governed by the notice provisions set forth in the Note and Deed of Trust or under the laws of the State of Texas.

Specific Terms of Treatment. The specific terms of the treatment of this claim set forth above shall control over any general terms set forth in the Plan.

Class 7 is impaired.

Class 8. Secured Claim of Santander Consumer U.S.A., Inc.

Class 8 consists of the secured claim of Santander Consumer U.S.A., Inc. (“Santander”). Santander has filed a proof of claim in the amount of \$23,960.28. Santander’s claim is secured by a lien on the Debtor’s 2012 Ford Edge.

The Debtor will pay the unpaid principal amount estimated at approximately \$23,960 to Santander at 5.25% interest in 60 payments (less the amounts paid to Santander post petition). The Debtor has been paying Santander the amount of \$350 since June of 2015. The payments made by the Debtor to Santander post petition will be applied to the principal amount owed by the Debtor. Payments to Class 8 will start on the fifth (5<sup>th</sup>) day of the first full calendar month following the Effective Date of the Plan.

Class 8 is impaired.

Class 9. Secured Claim of Pat Flynn

Class 9 consists of the secured claim of Pat Flynn. Pat Flynn has submitted a statement on his claim in the amount of \$113,754.32 as of January 22, 2016. The claim contains amounts for attorneys’ fees in an additional amount of \$32,068.29.

The Debtor will pay the amount of \$1,107.55 to Pat Flynn on January 29, 2016, February 19, 2016, March 11, 2016, April 8, 2016, and May 17, 2016. Such amounts shall be the monthly principal and interest payments due under the note. Payments will be made to counsel for Pat Flynn in accordance with the order entered in this case at docket #108.

The Debtor will pay in full the amounts owed to Pat Flynn on or before June 3, 2016. The amount will include attorneys’ fees not to exceed \$35,442.79. Unless the Debtor contests the attorneys’ fees, an order confirming this plan shall be an order approving the attorneys’ fees

payable by the Debtor for the Class 9 claims of Pat Flynn. However, if Debtor contests any portion of the attorneys' fees, Flynn may recover additional attorney fees for such contest if the fees are held reasonable by the Bankruptcy Court.

The terms of the Agreed Order at docket #108 shall apply and be deemed a part of this chapter 11 plan.

Class 9 is impaired.

Class 10. Unsecured Claims

Class 10 consists of all unpaid, pre-petition, allowed, unsecured, non-priority claims against the Debtor. Based on the proofs of claim currently filed with the bankruptcy court, the total amount of claims in this class is \$12,282. There are no additional undisputed amounts listed on the Debtor's Schedule F for unsecured, non-priority claims.

The Debtor will pay 100% of the claims in Class 10. The Debtor will pay an estimated \$128 per month for 96 months towards the claims in Class 10. The payments will be allocated pro-rata among all creditors in Class 10.

Payments to Class 10 will start on August 5, 2016.

The Debtor may contest or object to the claims of Atlas Acquisitions (Claim #2), and Calvary SPVI, LLC (Claims #8 and 9).

Class 10 is impaired.

**ACCEPTANCE OR REJECTION OF PLAN**

Each impaired class of Claims shall be entitled to vote separately to accept or reject this Plan unless that class receives no distribution under the Plan. Any class receiving no distribution is deemed to have rejected the Plan. Any unimpaired class of Claims shall not be entitled to vote

either to accept or to reject this Plan and is deemed to have accepted the Plan. Each creditor should read this plan and disclosure statement, then complete and return the attached ballot.

Your acceptance of the Plan is important. In order for the Plan to be deemed “accepted” by Creditors and holders of interests, at least sixty-six and two-thirds percent (66-2/3%) in amount of Allowed Claims voting and fifty-one percent (51%) in number of Allowed Claims voting in each Class of Claims must accept the Plan. Whether or not you expect to be present at the hearing, you are urged to fill in, date, sign, and properly mail the Ballot for Accepting or Rejecting Plan of Reorganization to Mr. Reese W. Baker, Attorney for Debtor, 5151 Katy Freeway, Ste 200, Houston, Texas 77007.

**IF ANY CLASS REJECTS THE PLAN, THE DEBTOR MAY SEEK TO “CRAMDOWN” THE CONFIRMATION OF THE PLAN PURSUANT TO 11 U.S.C. §1129(b). THE BANKRUPTCY CODE ALLOWS THE DEBTOR TO REQUEST THE COURT TO CONFIRM THE PLAN NOTWITHSTANDING THE REJECTION OF ANY CLASS OR CLASSES OF CREDITORS IF THE DEBTOR CAN DEMONSTRATE THE (i) THE PLAN DOES NOT DISCRIMINATE UNFAIRLY AND (ii) THE PLAN IS FAIR AND EQUITABLE WITH RESPECT TO EACH CLASS OF CLAIMS OR INTERESTS THAT IS IMPAIRED AND HAS NOT ACCEPTED THE PLAN. IN ORDER TO “CRAMDOWN” THE PLAN, THE DEBTOR WILL HAVE TO DEMONSTRATE TO THE BANKRUPTCY COURT AT A HEARING THAT THESE TWO STANDARDS HAVE BEEN SATISFIED. SUCH HEARING WOULD BE PART OF THE CONFIRMATION HEARING ON THE PLAN AND ALL CREDITORS MAY BE PRESENT AND WOULD HAVE AN OPPORTUNITY TO PARTICIPATE IN SUCH HEARING.**

#### **EXECUTORY CONTRACTS**

Upon confirmation of this Plan, the Debtor shall be deemed to have assumed the



following executory contracts:

1. None.

All other executory contracts and leases are deemed rejected by the Debtor as of the Effective Date.

### **JURISDICTION OF THE BANKRUPTCY COURT**

The Bankruptcy Court shall retain exclusive jurisdiction of the case after the Confirmation Date with respect to the parties to, and the subject matter, of this Plan and the Claims, applications, orders, damages, and other events as described in the Plan.

### **CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the Plan, without counting the votes of insiders; the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are *not* the only requirements listed in §1129, and they are not the only requirements for confirmation.

#### **A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes; and (2) impaired.

In this case, the Debtor believes that all classes are impaired and that holders of claims in

each of these classes are therefore entitled to vote to accept or reject the Plan.

*1. What Is an Allowed Claim?*

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim was July 17, 2015.

*2. What Is an Impaired Claim?*

As noted above, the holder of an allowed secured claim has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in §1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

*3. Who is **Not** Entitled to Vote?*

The holders of the following types of claims are *not* entitled to vote:

- holders of claims that have been disallowed by an order of the Court;
- holders of other claims that are not "allowed claims" (as discussed above), unless they have been "allowed" for voting purposes;
- holders of claims in unimpaired classes;
- holders of claims entitled to priority pursuant to §§507(a)(2), (a)(3), and (a)(8) of the Code;
- holders of claims in classes that do not receive or retain any value under the Plan; and
- administrative expenses.

***Even if you are not entitled to vote on the Plan, you may have a right to object to the***

***confirmation of the Plan.***

*4. Who Can Vote in More Than One Class?*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise holds claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**B. Votes Necessary to Confirm Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes.

*1. Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

*2. Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by §1129(b) of the Code, including the "absolute priority rule." Under the absolute priority rule, the Court may confirm the Plan over the failure of a class to vote for the Plan provided that for a class of unsecured claims, the Plan must provide each holder of a claim of such class receive or retain on account of such claim property of a value, as of the Effective Date of the Plan, equal to the allowed amount of the claim of the creditor, or the holder of any claim or interest that is junior to

the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property. The Debtor believes that the Plan complies with the absolute priority rule in the Code.

A plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of §1129(a)(8) of the Code, does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

*You should consult your own attorney if a "cram down" confirmation will affect your claim, as the variations on this general rule are numerous and complex.*

#### **EFFECT OF CONFIRMATION**

As provided for in Section 1141 of the Bankruptcy Code, the provisions of Debtor's Plan shall bind the Debtor and any creditor under the Plan, whether or not the claim of the creditor is impaired under the Plan and whether or not the creditor has accepted the Plan. As provided for in Section 1141(b) of the Bankruptcy Code, confirmation of Debtor's Plan vests all of the property of the estate in the Debtor. After confirmation of the Debtor's Plan, all property of the Debtor dealt with by the Plan (which includes all property of the Debtor) is free and clear of all liens, claims, and interests of creditors and equity security holders, except to the extent provided in this Plan. So long as the payments proposed by this plan are made by the Reorganized Debtor, no creditor may seek to collect any amounts from the Debtor that were owed prior to the filing of the chapter 11 case or are provided in this plan.

Upon completion of all payments set forth in this plan, the Debtor may request that his case be re-opened for the purpose of entering an order of discharge. After determination by the court that the payments under the plan have been made the court may enter an order of discharge.

Upon entry of an order of discharge, the Debtor will be discharged from any debt that arose before confirmation of this Plan to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged from any debt: (i) imposed by this Plan; (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or of (iii) of a kind specified in § 1141(d)(6)(B).

The rights afforded in the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all claims of any nature whatsoever occurring on or prior to the confirmation date, including any interest accrued thereon from and after the petition date, against Debtor and Debtor in Possession, or any of its assets or properties. Except as otherwise provided herein, upon the payment of the amounts provided in this plan, in accordance with Section 1141 of the Code, all such claims against Debtor and Debtor in Possession shall be satisfied, discharged, and released in full. Except as otherwise provided herein, all creditors shall be precluded from asserting against Debtor any other or further claim based upon any act or omission, transaction, or other activity of any kind or nature occurring on or prior to the confirmation date.

#### **DISPUTED CLAIMS; OBJECTIONS TO CLAIMS**

The Debtor may file an objection to any disputed Claim within sixty (60) days from the Effective Date of the Plan. Objections not filed within the foregoing time period shall be deemed waived, except to the extent that the grounds for the objection could not have been discovered prior to the expiration of the sixty (60) day time period. If an objection is filed to any claim, payments on the claim will not begin until after an Order of the Court allowing the claim has become final.

#### **FEASIBILITY TO PERFORM AND IMPLEMENTATION OF THE PLAN**

The Debtor is seeking other employment to fund the chapter 11 plan on a long term basis.

If the Debtor does not obtain new employment by January 1, 2017, then the Debtor will commit to list for sale either the Lexington Property or the Homestead Property. The significant equity in the Lexington Property and the commitment of the Debtor to list and sell either the Homestead or the Lexington Property after January 1, 2017, will provide the Debtor with the ability to fully fund the plan of reorganization. The equity in the Lexington Property is in excess of \$100,000, which is more than sufficient to provide funding for full payment to all creditors, even if the Debtor does not obtain new employment by January 1, 2017.

As part of this plan, Proske shall reinstate Richard Dean Proske-Lexington, LLC (“Proske LLC”) in the state of Texas as a valid limited liability company. Relative Lending has advised the Debtor that it will make a loan to Proske LLC which shall be personally guaranteed by Proske and Emily Proske.

As part of the terms of the new loan, the order confirming this plan shall provide that Proske and Proske LLC shall not file another bankruptcy case during the time period that Relative Lending is the lender for Proske LLC and for a period of six (6) months after the loan to Relative Lending has been paid.

Further, the order confirming this plan shall also provide that no bankruptcy case may be filed by any person or entity that owns the Lee County Property during the time that Relative Lending is the lender with a deed of trust lien on the Lee County Property and for six (6) months after the loan to Relative Lending has been paid in full, such order being an *in rem* order against any bankruptcy filing in which the Lee County Property is or may be property of a bankruptcy estate.

If a bankruptcy is filed during the time that Relative Lending is the lender with a deed of trust lien on the Lee County Property and for six (6) months after the loan to Relative Lending

has been paid in full by a person or entity that owns or claims ownership of Lee County Property, including Proske LLC, or any part of the Lee County Property then the automatic stay of 11 U.S.C. §362(a) shall not apply to the Lee County Property.

The bankruptcy court shall make a finding that the Lee County Property is not the homestead of the Debtor or his spouse. Such finding may be used by Relative Lending in any other court or other similar type proceeding and it shall be effective after the confirmation and closing of the above case.

The Bankruptcy Court shall determine that the loan documents of Relative Lending will be valid, enforceable and binding and that Relative Lending has taken all actions for making the loan such that the Debtor, his spouse and Proske LLC have no claim against Relative Lending regarding the loan to Proske LLC or the documentation of the loan.

Finally, Proske or Proske LLC may seek to re-open this case to seek additional protections for any future lender regarding a prohibition against future bankruptcy filings, such determinations, if any, to be made by the bankruptcy court at such time based on the information and pleadings filed at such time.

The main source of funding of the Plan will be from the Debtor's wages or the sale of a property. The projections attached as Exhibit B demonstrate the feasibility of the plan.

Further, the Debtor may re-finance the Lexington Property. If the Lexington Property is not re-financed or sold by June 2, 2016, the lender may foreclose on the Lexington Property on the first Tuesday in June of 2016.

**FINANCIAL INFORMATION FILED WITH THE COURT**

- A. Statement of Financial Affairs
- B. Schedules A through H, and Summary of Schedules

C. Monthly Operating Reports

PLEASE BE ADVISED THAT THE FINANCIAL INFORMATION ENUMERATED IN SUBPARAGRAPHS A THROUGH C ABOVE IS AVAILABLE IN THE CLERK'S OFFICE OF THE UNITED STATES BANKRUPTCY COURT, 515 RUSK, HOUSTON, TEXAS.

**EXHIBITS**

- A. **Monthly Operating Reports for the two months prior to the date of this Plan**
- B. **Revenue projections and payments for three (3) years following the Effective Date.**
- C. **Liquidation analysis under Chapter 7**

Dated: June 2, 2016

*/s/ Richard Proske*

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Richard Proske, Debtor

ATTORNEY FOR THE DEBTOR:

*/s/ Reese Baker*

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Counsel for the Debtor has made no independent investigation of the information contained herein.