

**THE STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

In the matter of)	
)	ADMINISTRATIVE CONSENT ORDER
PROMINENCE HOMES, LLC,)	
)	
Respondent.)	NO. CO-<u>2019-0035</u>
)	
_____)	

WHEREAS, Prominence Homes, LLC, an Alabama limited liability company ("Prominence"), is an Alabama homebuilder with a principal place of business at 2084 Valleydale Road Birmingham, Alabama 35244; and

WHEREAS, the Alabama Securities Commission (the "Commission") was notified on or about October 5, 2018 that Prominence had engaged one or more third parties to assist it in offering for sale promissory notes issued by Prominence (the "Notes"), and the Commission commenced an investigation into the facts surrounding such engagement and Prominence's offer and sale of such Notes (the "Investigation"); and

WHEREAS, Prominence has agreed to resolve the Investigation with respect to it and its members and employees on the terms specified herein, and Prominence agrees to comply in all material respects with the undertakings specified herein; and

WHEREAS, Prominence elects to permanently waive any right to a hearing and appeal under Title 8, Chapter 6, *Code of Alabama* (1975) (the "Act") with respect to this Administrative Consent Order (the "Order");

NOW, THEREFORE, the Commission as administrator of the Act, hereby enters this Order:

I. FINDINGS OF FACT

1. Prominence admits to the jurisdiction of the Commission and admits to the Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the Commission.
2. Commencing on or about October 16, 2017, Prominence entered into various oral and written agreements with unregistered agents for the offering and sale of the Notes by such unregistered agents in exchange for the payment of a commission by Prominence in connection therewith. On October 5, 2018, a review of the Commission's registration files disclosed no current filing for securities/exemption registration for Prominence.
3. Commencing as early as June 9, 2017, Prominence offered and sold Notes having an aggregate original principal amount of approximately \$18,122,599, and permitted the renewal of such Notes upon maturity, to a total of approximately 148 persons, some of whom were residents of the state of Alabama.

4. The Notes typically provided for a nine-month term with the payment on a monthly basis of accrued interest thereon at a minimum interest rate of between 7.5% and 8% per annum. Based on information provided by Prominence, the Respondent has kept current with all interest payments due under the Notes but has permitted holders of Notes to renew their Notes upon request for an additional term upon the expiration of their initial term.
5. Prominence has cooperated with the Investigation by the Commission. Following discussions with the Commission, Prominence Homes agreed on or about May 23, 2019, to a voluntary rescission offer for all then-outstanding Notes and to mandatorily redeem and repurchase all such then outstanding Notes on or before July 19, 2019.
6. Prominence has redeemed and repaid Notes prior to the date hereof such that Prominence has remaining outstanding approximately \$8.4 million of original principal amount of Notes.
7. However, subsequent to the completion of such rescission offer, Prominence claims to have suffered financial difficulties and is currently unable to fully redeem and repurchase all remaining outstanding Notes.
8. Following discussions with the Commission, Prominence has proposed a repayment plan for the redemption and repurchase of all remaining outstanding Notes.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Title 8, Chapter 6 Code of Alabama.
2. Pursuant to Section 8-6-2(10) *Code of Alabama* (1975), the definition of a security includes any "note".
3. Pursuant to Section 8-6-2(5) *Code of Alabama* (1975), the definition of an "issuer" includes every person who proposed to issue, or has issued, any security. Prominence, by issuing securities, to wit: promissory notes issued by Prominence, is an "issuer" as defined under the Act.
4. Pursuant to Section 8-6-4 *Code of Alabama* (1975), it is unlawful for any person to offer or sell any security in this state unless said security: (1) is registered under the Act; (2) the security is exempt from registration under Section 8-6-10; or (3) the transaction is exempt under Section 8-6-11. Prominence offered and sold securities, to wit: promissory notes in Prominence, that were neither registered nor subject to a perfected exemption from registration, in violation of the Act.
5. Pursuant to Section 8-6-3(a), *Code of Alabama* (1975), it is unlawful for any person to employ an agent for the solicitation of a security unless such agent is registered with the Commission. Prominence employed various unregistered agents to solicit and sell securities of Prominence, in violation of the Act.

III. ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Prominence's consent to the entry of this Order,

IT IS HEREBY ORDERED:

A. CONCLUSION OF INVESTIGATION

1. This Order concludes the Investigation and any other action that the Commission could commence under applicable Alabama law as it relates to the substance of the Findings of Fact and Conclusions of Law herein, provided however, that excluded from and not covered by this paragraph 1 are any claims by the Commission arising from or relating to the undertakings contained herein or Prominence's failure to comply with the same or other matters not fully disclosed.
2. This Order is entered into solely for the purpose of resolving the Investigation and is not intended to be used for any other purpose. This Order does not resolve or settle any violation or potential violation of Alabama law that the Commission may bring against any person who has not been an equity owner or employee of Prominence, further which shall expressly include, without limitation, all of the third parties who were engaged by Prominence to assist it in the offer and sale of the Notes and who received commissions in connection therewith.
3. Prominence shall CEASE AND DESIST from violating the Sections 8-6-4 and 8-6-3(a), *Code of Alabama* (1975), and will comply with Section 8-6-4, *Code of Alabama* (1975), at all times in the future.

B. PROMISSORY NOTE INVESTOR REMEDIATION

1. No later than December 6, 2019, Prominence shall prepare and distribute to all then current holders of Notes (the "Holders") a summary of the proposal for the repayment of all outstanding Notes consistent with this Order and seek to obtain the consent of such Holders to the amendment of their Notes consistent with the repayment plan outlined in this Order.
2. No later than December 6, 2019, Prominence shall schedule at least two in-person meetings in the state of Alabama that is open to all Holders and two in-person meetings in the state of Tennessee that is open to all Holders, and shall notify such Holders in writing of such meeting and invite them to attend and to ask questions of representatives of Prominence regarding the business of Prominence and its owners, the plan for repayment of all outstanding Notes, and this Order. Prominence shall also invite representatives of the Commission to attend such meeting either in person or via telephone as the Commission may determine to answer any questions that may be posed by the Holders regarding this Order.
3. From the date hereof until July 1, 2020, Prominence shall continue to make payments of accrued interest on a monthly basis on each Note consistent with the terms of each such Note.

4. Commencing on July 1, 2020, Prominence shall commence to pay on a monthly basis principal and interest on each then outstanding Note on a pro rata basis with each such Note being deemed amortized over a 60-month period commencing on such date with a balloon payment on all such Notes being due and payable no later than July 1, 2022. In other words, all principal and accrued interest due on the Notes shall be paid in full on or before July 1, 2022.
5. During the above repayment period, Prominence shall be permitted to accrue and retain a working capital reserve of up to \$3,000,000. Prominence shall calculate its working capital as of the last day of each calendar quarter (the "Quarter End Date") and shall distribute any accumulated working capital in excess of \$3,000,000 on a pro rata basis as an additional reduction of outstanding principal under the Notes on or before the 45th day following the Quarter End Date (the "Applicable Date").
6. Until such time as all principal and accrued interest payments due under the Notes have been paid in full, Prominence shall provide a quarterly report to the Commission and the Holders on or before the Applicable Date to keep the Commission and the Holders informed of Prominence's efforts in implementing the above repayment plan.
7. No later than July 10, 2022, Prominence shall certify to the Commission that all principal and accrued interest due on the Notes has been paid in full on or before July 1, 2022.
8. The Commission shall have the right to conduct on-site audits, inspections, or examinations of Prominence to ensure full compliance with the undertakings herein. The cost of any such audit, inspection, or examination shall be borne exclusively by Prominence.

C. PENALTY

1. Prominence shall pay as a civil penalty to the state of Alabama following the conclusion of the redemption and repurchase of all outstanding promissory notes a reasonable amount to be agreed upon by the Commission and Prominence as an administrative assessment and an additional amount as partial reimbursement for the Commission's cost of investigating this matter, all such funds to be tendered in certified funds. Prominence shall pay as a civil penalty to the state of Alabama within sixty (60) business days following the conclusion of the redemption and repurchase of all outstanding promissory notes as required by Section III.B. of this Order, the sum of One Hundred Thousand Dollars (\$100,000), with such amount to be paid in the following manner:
 - a. That in accordance with Section 8-6-19(j)(1), *Code of Alabama* (1975), Prominence shall pay the state of Alabama an administrative assessment in the total sum of Seventy Thousand Dollars (\$70,000), said funds to be tendered in certified funds.
 - b. That in accordance with Section 8-6-19(k)(1), *Code of Alabama* (1975), Prominence shall pay the Commission, as partial reimbursement for the Commission's cost of investigating this matter, in the total sum of Thirty Thousand Dollars (\$30,000), said funds to be tendered in certified funds.

D. CONSTRUCTION AND DEFAULT

1. This Order is not intended to form the basis for any disqualification from registration as issuer under the laws, rules, and regulations of Alabama, and waives any disqualification from relying upon the securities registration exemptions or safe harbor provisions to which Prominence or any of its affiliates may be subject under the laws, rules, and regulations of Alabama.
2. This Order is not intended to be a final order based upon violations of any Alabama statute, rule, or regulation that prohibits fraudulent, manipulative or deceptive conduct.
3. Except in an action by the Commission to enforce the obligations in this Order, this Order is not intended to be deemed or used, and cannot be used, as (a) an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b) an admission of, or evidence of, any such alleged fault or omission of Prominence in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or other tribunal.
4. If payment is not made by Prominence or if Prominence defaults in any of its obligations set forth in this Order, the Commission may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order, after a fair hearing, the Commission may reinstitute the action or investigation related to the substance of the Findings of Fact and Conclusions of Law herein.
5. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the State of Alabama without regard to any choice of law principles.
6. This Order is not intended to state or imply willful, reckless, or fraudulent conduct by Prominence, or its affiliates, directors, officers, employees, associated persons, or agents.
7. Prominence, through its execution of this Order, voluntarily waives the right to a hearing on this matter and to judicial review of this Consent Order under Section 8-6-32, *Code of Alabama* (1975).
8. Prominence enters into this Consent Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Prominence to enter into this Consent Order.
9. This Order shall be binding upon Prominence and its successors and assigns, as well as to successors and assigns of relevant affiliates, with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

Dated this 18th day of October, 2019.



BY ORDER OF ALABAMA SECURITIES COMMISSION



Joseph P. Borg
Director
Alabama Securities Commission

CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY PROMINENCE

Prominence Homes, LLC, hereby acknowledges that it has been served with a copy of this Administrative Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

Prominence admits the jurisdiction of the Alabama Securities Commission, and admits the Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the Alabama Securities Commission as settlement of the issues contained in this Order with respect to Prominence and its members and employees.

Prominence agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any administrative monetary penalty that Prominence shall pay pursuant to this Order. Prominence understands and acknowledges that these provisions are not intended to imply that the Alabama Securities Commission would agree that any other amounts Prominence shall pay pursuant to this Order may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

Prominence states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

Michael McMullen represents that he is the Chief Executive Officer of Prominence and that, as such, has been authorized by Prominence to enter into this Order on behalf of Prominence.

Dated this 18th day of October, 2019.

Prominence Homes, LLC

By: _____



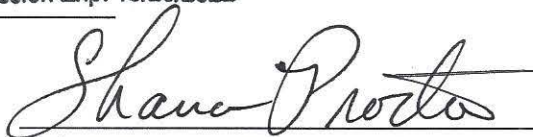
Michael McMullen
Chief Executive Officer

SUBSCRIBED AND SWORN TO before me this 18th day of October, 2019.

My commission expires: _____

My Commission Exp. 10/20/2022

SEAL



Notary