

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

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In re:

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Bankr. Case #12-40768
Chapter 11

HILLTOP FARMS, L.L.C.,
Tax ID / EIN: 68-0626218,

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Debtor.

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**DISCLOSURE STATEMENT
DATED MAY 2, 2013**

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I. CAVEAT

THE ATTACHED PLAN IS COMPLEX IN AS MUCH AS IT REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT BY THE DEBTOR. CREDITORS ARE URGED TO CONSULT WITH COUNSEL IN ORDER TO FULLY COMPLY WITH THE PLAN.

NO REPRESENTATIONS CONCERNING THE DEBTOR IS AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN SUBJECTED TO A CERTIFIED AUDIT. THE ACCURACY OF INFORMATION IN THIS DISCLOSURE STATEMENT IS DEPENDENT UPON THE RELIABILITY OF DEBTOR'S RECORDS. THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS ABSOLUTELY WITHOUT ANY INACCURACY. ALTHOUGH GREAT EFFORT HAS BEEN MADE TO BE ACCURATE, THE LAW FIRM OF GERRY & KULM ASK, PROF. LLC, COUNSEL FOR THE DEBTOR, HAS NOT VERIFIED THE INFORMATION SET FORTH HEREIN, BUT SUCH FIRM HAS NO ACTUAL KNOWLEDGE OF ANY INACCURACIES.

II. LEGAL REQUIREMENTS FOR ACCEPTANCE OF THE PLAN

The Bankruptcy Code provides that in order for the United States Bankruptcy Court to confirm a Plan, the Court must count the acceptances or rejections filed by creditors of classes whose rights are impaired. In order for a Plan to be deemed accepted by a class, of the ballots cast by the creditors in such class, more than one-half in number and at least two-thirds in amount of the allowed claims in such class must vote to accept the Plan.

III. NATURE & HISTORY

Hilltop Farms, LLC, runs a grain and dairy cattle operation in and around Elkton, South Dakota, and has been in business for over 7 years now. On November 2, 2012, Debtor filed a petition seeking relief under Chapter 11 of the Bankruptcy Code.

Tough economic circumstances in the dairy industry and high commodity prices have challenged Debtor since 2009. In the meantime, Debtor has found problems with herd health due to underground electricity problems and/or stray voltage. This resulted in a higher than usual death loss and cull rate.

Proper risk management, contracting commodity prices, and better milk prices have helped to manage the economic situation. Furthermore, repairs and adjustments have been made to improve the electricity flow issue and resulted in less exposure of the cows to stray voltage. There are more adjustments to be made for an even better herd health, but a lot of progress has been accomplished in this short period of time during restructuring.

In 2009, First Bank & Trust offered Debtor the right to pay interest only on most loans in exchange for a modification of the loans to a much shorter maturity of one year on the notes. In 2011, First Bank & Trust offered a milk-to-feed ratio, with principal payments adjusted to milk and feed prices. According to this ratio there was very little principal to be paid. After 2011, the bank modified the loans again to a one month maturity, thereby resulting in a foreclosure process.

Since filing Debtor has added more cattle for more efficient use of the facilities and labor. This has resulted in a better cash flow for the businesses.

Currently, the income is stable, and is expected to increase as reflected by Debtor's projections. Because of this stability, Debtor expects a restructured plan of reorganization, which results in restructured cash flow, which will allow it to pay its creditors as further outlined in this Disclosure Statement.

IV. ORGANIZATION OF THE PLAN

The Plan divides claims as follows:

- A) **LEASES AND EXECUTORY CONTRACTS**: The only known leases and executory contracts are the livestock lease Bill Landsman; the equipment lease with Hilltop Dairy, LLP; the farm land and facility lease with Hilltop Dairy, LLP; the contract for deed with Tony Wiskur, Scott Wiskur, and Douglas Wiskur; the contract for deed with Bill Landsman; the assignment of the heifer raising contract with Hilltop Dairy, LLP; and the management agreement with Hilltop Dairy, LLP. The Plan provides for assumption of the above-said leases and executory contracts.

At the time of filing, Debtor also had a grower contract with Kerkvliet Enterprises, LLC, of which the Plan provides for rejection of said contract.

- B) ADMINISTRATIVE EXPENSES: Debtor's Plan provides that expenses of administration shall be paid on the effective date of the Plan. Debtor's counsel fees and expenses, and creditor committee attorney fees and expenses, after approval by the court as reasonable, and any trustee fees or clerk fees owed upon the effective date of the Plan will be paid at that time.
- C) PRIORITY CLAIMS: The Internal Revenue Service holds a priority claim against Debtor in the amount of \$5,426.86, based upon the Proof of Claim on file. The priority claim of the Internal Revenue Service will be paid over a term of five (5) years, with interest at the rate of 3% per annum, for a total of \$5,886.60. The monthly payment will be in the amount of \$98.11, with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter. The unsecured portion of this creditor's claim shall be paid in accordance with the administrative convenience unsecured creditor class, Class 8, of the Plan.
- D) DESIGNATION AND TREATMENT OF CLASSES OF CLAIMS:
1. Class 1 – CLAAS FINANCIAL SERVICES, LLC: Claas Financial Services, LLC holds a security interest in a 2009 Claas 8550 disc mower; a 2009 Claas 3100 FC disc mower attachment; and a 2010 Case IH Puma 225 CVT. The value of the equipment is approximately \$160,000.00, and the debt owed to this creditor is \$127,077.96. Any pre-confirmation adequate protection payments will be applied to this indebtedness. This creditor will be paid interest at the rate of 4.5% per annum, as amortized over a 7-year term. The monthly payment will be in the amount of \$1,782.53, with the first monthly payment beginning 90 days from the effective date of the Plan and continuing monthly thereafter.

Debtor reserves the right to prepay principal at any interval on this debt, without having to pay any penalty.

This creditor shall retain its lien position until paid in accordance with the Plan. Upon final payment, this creditor shall release all liens, mortgages and encumbrances of record. Debtor shall insure, maintain, replace, and repair the asset secured by this creditor, through the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

In the event Debtor defaults in any monthly payment due this creditor, this creditor shall have the right to give Debtor thirty-days' written notice to cure such default. In the event Debtor fails to timely cure a noticed default, then this creditor may accelerate the remaining balance in accordance with this Plan and pursue its state court remedies.

2. Class 2 – CNH CAPITAL AMERICA, LLC: CNH Capital America, LLC holds a security interest in the following equipment, on the following debts:
 - a. A security interest in a Claas 870 forage harvester and a Claas PU380 hay head. The value of the equipment is approximately \$210,000.00, and the debt owed to this creditor is \$28,921.20, as detailed on this creditor's Proof of Claim on record. This creditor will be paid interest at the rate of 4.5% per annum, as amortized over a 7-year term. The monthly payment will be in the amount of \$405.68, with the first monthly payment beginning 90 days from the effective date of the Plan and continuing monthly thereafter.
 - b. A security interest in 3 New Holland L218 skid steers. The value of the equipment is approximately \$60,000.00, and the debt owed to this creditor is \$31,894.53, as detailed on this creditor's Proof of Claim on record. This creditor will be paid interest at the rate of 4.5% per annum, as amortized over a 5-year term. The monthly payment will be in the amount of \$600.04, with the first monthly payment beginning 90 days from the effective date of the Plan and continuing monthly thereafter.
 - c. A security interest in a 2012 Claas Orbis corn head. The value of the equipment is approximately \$113,000.00, and the debt owed to this creditor is \$73,743.50, as detailed on this creditor's Proof of Claim on record. This creditor will be paid interest at the rate of 4.5% per annum, as amortized over a 7-year term. The monthly payment will be in the amount of \$1,034.40, with the first monthly payment beginning 90 days from the effective date of the Plan and continuing monthly thereafter.

This creditor will be paid a total of \$2,040.12 per month under the terms of Debtor's Plan as detailed above.

Any pre-conformation adequate protection payments will be applied to the above indebtedness.

Debtor reserves the right to prepay principal at any interval on this debt, without having to pay any penalty.

This creditor shall retain its lien position until paid in accordance with the Plan. Upon final payment, this creditor shall release all liens, mortgages and encumbrances of record. Debtor shall insure, maintain, replace, and repair the asset secured by this creditor, through the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

In the event Debtor defaults in any monthly payment due this creditor, this creditor shall have the right to give Debtor thirty-days' written notice to cure such default. In the event Debtor fails to timely cure a noticed default, then this

creditor may accelerate the remaining balance in accordance with this Plan and pursue its state court remedies.

3. Class 3 – FIRST BANK & TRUST: First Bank & Trust holds a secured first mortgage position in the SW ¼ of Section 20, Brookings County, South Dakota; a secured second mortgage position in the SW ¼ of Section 17, Brookings County, South Dakota; a secured first mortgage position in the Lots and outlots located in Block 16 of the City of Elkton, Brookings County, South Dakota; and holds a security interest in an agricultural business blanket lien. This creditor also is secured with a first mortgage position on the real property owned by t' Werkel, BV, Inc., located in the SW ¼ of Section 20 and is also secured with a first agricultural business blanket lien in the assets owned by Hilltop Dairy, LLP. The combined value of these assets is over approximately \$10.5 million, and therefore, this creditor is oversecured with all of its collateral on the following debts:
 - a. The debt owed to this creditor under the loan ending 625 is approximately \$978,117.52. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$6,244.54 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.
 - b. The debt owed to this creditor under the loan ending 617 is approximately \$394,256.50. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$2,517.03 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.
 - c. The debt owed to this creditor under the loan ending 587 is approximately \$2,427,750.95. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$15,499.36 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.
 - d. The debt owed to this creditor under the loan ending 623 is approximately \$1,351,693.18. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$8,629.54 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.
 - e. The debt owed to this creditor under the loan ending 411 is approximately \$3,729,273.36. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$23,808.60 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.

- f. The debt owed to this creditor under the loan ending 579 is approximately \$517,739.71. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$3,305.38 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.
- g. The debt owed to this creditor under the loan ending 201 is approximately \$37,438.05. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$239.01 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.
- h. The debt owed to this creditor under the loan ending 679 is approximately \$77,856.15. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$497.05 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.
- i. The debt owed to this creditor under the loan ending 069 is approximately \$306,904.10. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$1,959.35 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter.
- j. The debt owed to this creditor on a secured credit card is \$1,915.45. This creditor will be paid interest at a rate of 4.5% per annum, as amortized over a 20-year term. The monthly payment will be in the amount of \$12.23 with the first monthly payment beginning 90 days from the effective date of the plan and continuing monthly thereafter. This creditor may elect to be paid this \$1,915.45 claim as an unsecured claim and be paid under Class 8 100% of its claim within 2 years after the effective date of the Plan, without interest, as detailed below in Class 8.

This creditor will be paid a total of \$62,712.09 per month under the terms of Debtor's Plan as detailed above. However, Debtor is a co-debtor on this debt with Hilltop Dairy, LLP, who also has filed a Chapter 11 bankruptcy and is debt servicing its portion of this total payment through its Chapter 11 Plan, Case #13-40002. Therefore, Debtor will pay \$37,000.09 per month to this creditor and Hilltop Dairy, LLP, will pay \$25,712.00 per month to this creditor under the terms of its Plan.

All pre-confirmation adequate protection and post-confirmation payments will be applied to the above indebtedness.

Debtor reserves the right to prepay principal at any interval on this debt, without having to pay any penalty.

This creditor shall retain its lien position until paid in accordance with the Plan. Upon final payment, this creditor shall release all liens, mortgages and encumbrances of record. Debtor shall insure, maintain, replace, and repair the asset secured by this creditor, through the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

In the event Debtor defaults in any monthly payment due this creditor, this creditor shall have the right to give Debtor thirty-days' written notice to cure such default. In the event Debtor fails to timely cure a noticed default, then this creditor may accelerate the remaining balance in accordance with this Plan and pursue its state court remedies.

4. Class 4 – JOHN DEERE FINANCIAL (aka JOHN DEERE CREDIT, aka DEERE & COMPANY, and aka JOHN DEERE CONSTRUCTION & FORESTRY COMPANY): John Deere Financial holds a security interest in the following equipment, on the following debts:
 - a. A security interest in a JD 9320 tractor and a JD 512 disc ripper. The value of this tractor and ripper is approximately \$115,000.00, and the current debt owed to this creditor is approximately \$78,897.84. Debtor is current with its payments to this creditor and Debtor shall continue to make monthly payments directly to this creditor until its loan is paid in full as per the terms of the contract with this creditor.
 - b. A security interest in a JD 8220 row crop tractor. The value of the tractor is approximately \$90,000.00, and the current debt owed to this creditor is approximately \$34,686.87. Debtor is current with its payments to this creditor and Debtor shall continue to make monthly payments directly to this creditor until its loan is paid in full as per the terms of the contract with this creditor.
 - c. A security interest in a 2012 JD 344J wheel loader with coupler and bucket. The value of this equipment is approximately \$130,000.00, and the current debt owed to this creditor is approximately \$108,222.68. Debtor is current with its payments to this creditor and Debtor shall continue to make monthly payments directly to this creditor until its loan is paid in full as per the terms of the contract with this creditor.
 - d. A security interest in a 2012 JD 524K loader. The value of this loader is approximately \$130,000.00, and the current debt owed to this creditor is approximately \$43,465.90. Debtor is current with its payments to this creditor and Debtor shall continue to make monthly payments directly to this creditor until its loan is paid in full as per the terms of the contract with this creditor.

Any pre-confirmation adequate protection payments will be applied to the above indebtedness.

Debtor reserves the right to prepay principal at any interval on this debt, without having to pay any penalty.

This creditor shall retain its lien position until paid in accordance with the Plan. Upon final payment, this creditor shall release all liens, mortgages and encumbrances of record. Debtor shall insure, maintain, replace, and repair the asset secured by this creditor, through the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

In the event Debtor defaults in any monthly payment due this creditor, this creditor shall have the right to give Debtor thirty-days' written notice to cure such default. In the event Debtor fails to timely cure a noticed default, then this creditor may accelerate the remaining balance in accordance with this Plan and pursue its state court remedies.

5. Class 5 – KUHN FINANCIAL (aka KUHN NORTH AMERICA, INC.(assigned to Agricredit Acceptance, LLC): Kuhn Financial (aka Kuhn North America, Inc.) has assigned this debt to Agricredit Acceptance, LLC. Agricredit Acceptance, LLC therefore holds a security interest in a Kuhn VB 2190 Opticut round baler. The value of the baler is approximately \$28,000.00, and the current debt owed to this creditor is approximately \$16,866.40. Any pre-confirmation adequate protection payments will be applied to this indebtedness. Debtor is current with its payments to this creditor and Debtor shall continue to make monthly payments directly to this creditor until its loan is paid in full as per the terms of the contract with this creditor.

Debtor reserves the right to prepay principal at any interval on this debt, without having to pay any penalty.

This creditor shall retain its lien position until paid in accordance with the Plan. Upon final payment, this creditor shall release all liens, mortgages and encumbrances of record. Debtor shall insure, maintain, replace, and repair the assets secured by this creditor, through the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

In the event Debtor defaults in any monthly payment due this creditor, this creditor shall be required to give Debtor thirty-days' written notice to cure such default. In the event Debtor fails to timely cure a noticed default, then this creditor may accelerate the remaining balance in accordance with this Plan and pursue its state court remedies.

6. Class 6 – BILL LANDSMAN: Bill Landsman holds a secured first position on real property located at the SE ¼ of Section 19, Brookings County, South Dakota, through a Contract for Deed with Debtor. The value of this real estate is approximately \$592,200.00, and the current debt owed to this creditor is approximately \$335,219.20. Debtor is current with its payments to this creditor

and Debtor shall continue to make annual payments of \$20,117.50 directly to this creditor until its loan is paid in full as per the terms of the contract for deed with this creditor.

Any pre-confirmation adequate protection payments will be applied to the above indebtedness.

Debtor reserves the right to prepay principal at any interval on this debt, without having to pay any penalty.

This creditor shall retain its lien position until paid in accordance with the Plan. Upon final payment, this creditor shall release all liens, mortgages and encumbrances of record. Debtor shall insure, maintain, replace, and repair the assets secured by this creditor, through the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

In the event Debtor defaults in any monthly payment due this creditor, this creditor shall be required to give Debtor thirty-days' written notice to cure such default. In the event Debtor fails to timely cure a noticed default, then this creditor may accelerate the remaining balance in accordance with this Plan and pursue its state court remedies.

7. Class 7– TONY WISKUR, SCOTT WISKUR and DOUGLAS WISKUR: Tony Wiskur, Scott Wiskur, and Douglas Wiskur hold a secured first position on real estate located at the SE ¼ of Section 17, Brookings County, South Dakota, through a Contract for Deed with Debtor. The value of the real estate is approximately \$930,600.00 and the debt owed to this creditor as of May 1, 2013 is \$51,527.92. All individual creditors listed here are part of one Contract for Deed with Debtor. Debtor is current with its payments to these creditors and Debtor shall continue to make monthly payments totaling \$6,440.97 directly to these creditors until its loan is paid in full as per the terms of the contract for deed with these creditors.

Any pre-confirmation adequate protection payments will be applied to the above indebtedness.

Debtor reserves the right to prepay principal at any interval on this debt, without having to pay any penalty.

This creditor shall retain its lien position until paid in accordance with the Plan. Upon final payment, this creditor shall release all liens, mortgages and encumbrances of record. Debtor shall insure, maintain, replace, and repair the assets secured by this creditor, through the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

In the event Debtor defaults in any monthly payment due this creditor, this creditor shall be required to give Debtor thirty-days' written notice to cure such default. In the event Debtor fails to timely cure a noticed default, then this creditor may accelerate the remaining balance in accordance with this Plan and pursue its state court remedies.

8. Class 8 – UNSECURED CREDITORS: This Class shall consist of all unsecured creditors, except affiliated entities, who have timely filed a Proof of Claim which is not properly objected to or listed on Debtor's Schedules, or Amendments, that are not listed by Debtor as disputed, contingent or unliquidated, or those creditors who obtained a Court Order allowing their claim.

Debtor estimates this Class of creditors to consist of approximately 5 creditors and is owed approximately \$20,000.00. The affiliated entities' unsecured claims will be offset and will receive no payment under the Plan. In addition, the unsecured claim of Kerkvliet Enterprises, LLC, has been dismissed and this creditor is owed \$0 under such claim and will not be paid anything by Debtor. The remaining unsecured creditors of this Class will be paid 100% of their allowed claim with 50% being paid within 1 year after the effective date of the Plan and the other 50% being paid within 2 years after the effective date of the Plan, all without interest on their claims.

Debtor reserves the right to prepay at any interval, without having to pay any penalty.

Once a Plan is confirmed, it becomes the new contract between Debtor and creditors.

In the event Debtor defaults in a Plan payment, a creditor shall give Debtor thirty days written notice to cure. If Debtor fails to timely cure, then a defaulted creditor may sue for judgment in state court and proceed with state court remedies.

- E) SUMMARY OF PAYMENTS UNDER THE PLAN: Under the terms of the Plan, Debtor will pay \$98.11 per month to the priority creditor as detailed in VI above, \$40,822.74 per month to impaired secured creditors as detailed in Classes 1 through 3 above, and an estimated \$835.00 per month to unsecured creditors as detailed in Class 8 above for the first year of the Plan, for a total of approximately \$41,755.85 per month. The approximate total monthly payment of \$41,755.85 will be paid from the net cash flow each month as projected. For example, for the month of November 2013, Debtor will pay the total payments detailed under the Plan of \$41,755.85, leaving a final net amount of \$5,549.71 for the month. Each month thereafter will be similar to the amounts based upon the net cash flow projected.

V. OBJECTIONS TO CLAIMS

Debtor has not had the opportunity to determine if credit has been given appropriately for all payments made to creditors, nor to review proof of claims. This Plan reserves the right for Debtor to object to proofs of claims, post-confirmation, for any reason.

VI. BASIS FOR THE PLAN

Debtor is of the opinion that continuation of the business will result in not only a full payment to all creditors, but an opportunity for Debtor to retain an ongoing business, provide employment to its employees, and to provide an economic stimulus to the local communities.

VII. LIQUIDATION ANALYSIS

Description	Value
All assets:	
1. Real Property	\$6,900,933.00
2. Business assets, livestock, Equipment, accounts receivable, inventory, etc.	\$1,640,000.00
3. Creditors holding secured positions	<u>(10,753,468.97)</u> <\$2,212,535.00>
4. IRS priority claim	(5,886.60)
5. Liquidation expenses & costs	(1,338,655.88)
6. Chapter 7 Trustee's administrative exp.	<u>(284,778.00)</u>
	Net: <-\$3,841,856.45>

The above analysis is based upon if the assets are liquidated. If the grinding and pallet operations are closed, and the assets are sold at an auction, Debtor would estimate that the unsecured creditors would not receive any payment, after costs of sale, administrative expenses, and payments to secured and priority creditors.

VIII. DEBTORS' FINANCIAL HISTORY AND PROJECTIONS

Attached as Exhibit "A" are historical numbers from Debtor's tax returns. Attached as Exhibit "B" are projected Financial Statements for Plan purposes. The projections are intended to be year to year, through the end of the Plan.

IX. FUTURE MANAGEMENT AND COMPENSATION

Debtor will continue to be managed and operated by Wilhelmus and Olga Reuvekamp who will take a combined draw totaling \$7,500.00 per month, as funds are available, increasing nominally for necessary living expenses.

Respectfully submitted this 2nd day of May, 2013.

HILLTOP FARMS, LLC:

BY: /s/ Wilhelmus Reuvekamp, Manager
Wilhelmus Reuvekamp, Manager

Prepared by:
GERRY & KULM ASK, PROF. LLC

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