

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION

In Re:

Lura Dee Kirkland,
Debtor.

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Case No. 16-70027
Chapter 11 Case

**DEBTOR'S COMBINED DISCLOSURE STATEMENT
AND PLAN OF REORGANIZATION**

October 3, 2016

This *Debtor's Combined Disclosure Statement and Plan of Reorganization* is filed by the above-referenced Debtor.

**ARTICLE I
DEFINITIONS**

Definitions: The following terms, when used in the Plan, shall, unless the context otherwise requires, have the following meanings, respectively:

Allowed Amount shall mean:

- a. with respect to any Administrative Claim, other than a Current Obligation, if the claim is based upon a fee application, the amount of such fee application that has been approved by a Final Order of the Bankruptcy Court; with respect to any current obligation, the amount of such claim that has been agreed to by the Debtor and such creditor, failing which, the amount thereof as fixed by a Final Order of the Bankruptcy Court;
- b. with respect to a Tax Claim, the amount of such claim that has been agreed to by the Debtor and such creditor, failing which, the amount thereof as fixed by a Final Order of the Bankruptcy Court;
- c. with respect to any Priority Claim, Secured Claim, Unsecured Claim, or Subordinated Claim, (i) if the holder of such claim has not filed proof thereof with the Bankruptcy Court within the applicable period of time fixed by the Bankruptcy Court pursuant to Rule 3003(c)(3) of the Bankruptcy Rules and a Final Order issued thereunder, the amount of such claim as listed in the Debtor's Schedules, as amended, as neither disputed, contingent or unliquidated; or (ii) if the holder of such claim has filed proof thereof with the Bankruptcy Court within the applicable period of time fixed by the Bankruptcy Court pursuant to Rule 3003(c)(3) of the Bankruptcy Rules and a Final Order issued thereunder, (1) the amount stated in such proof if no objection to such Proof of Claim was interposed within applicable period of time fixed by the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or (2) the amount thereof as fixed by Final Order of the Bankruptcy Court if an objection to such proof was interposed within the applicable period of time fixed by the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court;
- d. otherwise, an Allowed Amount shall mean any claim for which an allowed amount has been determined.

Ballot Date: shall mean the date set by the Bankruptcy Court as the last date for timely submission by a creditor or interest holder of a ballot accepting or rejecting the Plan.

Chapter 7: Chapter 7 of the United States Bankruptcy Code.

Chapter 11: Chapter 11 of the United States Bankruptcy Code.

Claim: shall mean:

- a. a right to payment from the Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
- b. a right existing or deemed to exist as at the filing date as against the Debtor to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.
- c. The deadline to file proofs of claim was June 29, 2016

Clerk: Clerk shall mean the Clerk of the Bankruptcy Court for the Western District of Texas, Midland Division, who is located at Hipolito F. Garcia Federal Building and United States Courthouse, 615 East Houston Street, Room 597, San Antonio, Texas 78205.

Confirmation of the Plan: The entry by the Court of an Order Confirming the Plan in accordance with Chapter 11 of the United States Bankruptcy Code.

Consummation of the Plan: The commencement of payments provided for in the Plan.

Court: The United States Bankruptcy Court for the Western District of Texas, Midland Division, acting in this case.

Current Obligations: "Current Obligations" shall mean any accounts payable or other claims, liabilities or obligations of the Debtor which arose or accrued in the ordinary course of business between the filing date and the confirmation date (excluding interest, penalties, costs, assessments, or other charges incurred or accruing during the Chapter 11 case on any claim which arose before the filing date) which obligations of the Debtor arose or shall arise in the ordinary course of the Debtor's business between the filing date and the confirmation date and any post-confirmation amounts as referenced in Article X. Means for Execution of Plan and including professional, U.S. Trustee, and Disbursing Agent fees and expenses.

Debtor: Lura Dee Kirkland (sometimes "Kirkland" or the "Debtor").

Disclosure Statement: "Disclosure Statement" shall mean the Disclosure Statement filed on behalf of the Debtor pursuant to § 1125 of the Bankruptcy Code in aid of confirmation of the Plan, as may be amended, modified or supplemented.

Disputed Claim: "Disputed Claim" shall mean any claim or any portion thereof (including any fee claim but excluding all allowed claims):

- a. which is scheduled in the Debtor's Amended Schedules as being disputed, contingent or unliquidated; or
- b. as to which (i) a proof of claim has timely been filed, (ii) an objection has been timely filed by or on behalf of the Debtor or any other party in interest and not withdrawn, and (iii) no Final Order exists allowing or disallowing such claim or portion thereof.

In the event that any part of a claim is disputed, such claim in its entirety shall be deemed a disputed claim for purposes of distribution under the Plan, unless the Debtor and the holder thereof otherwise agree.

Effective Date: The date upon which the Order of Confirmation of the Plan becomes final and non-appealable.

Estate: The estate of the Debtor created in this Reorganization Case by Section 541 of the Bankruptcy Code.

Filing Date: February 25, 2016, the date of filing of the Debtor's Petition for Relief under Chapter 11.

Final Order: An order or judgment of the Court (i) as to which the time for appeal has expired and no appeal was filed timely or if an appeal has been filed no stay has been issued or (ii) from which any appeal has been finally determined or dismissed.

Internal Revenue Code: Title 26 of the United States Code, as last amended.

IRS: The United States Internal Revenue Service.

IRS Priority Claim: Any Tax Priority Claim due and payable to the IRS, specifically excluding IRS Non-Priority Unsecured Claims.

IRS Unsecured Non-Priority Claim: Any Claim of the IRS that is not entitled to priority under Section 507 of the Bankruptcy Code.

Plan: This Plan of Reorganization. Pursuant to 11 U.S.C. § 1121, the Debtor has the exclusive right to file a plan until after 120 days after the date of the order for relief under this chapter. After the 120-day period, any party in interest may file a plan. 11 U.S.C. § 1121(B) establishes June 25, 2016 as the deadline for the Debtor's exclusivity period.

Plan Payment(s): "Plan Payment(s)" shall mean any payment made by the Debtor to a creditor or class of creditors under this Plan, or to a Confirmation Deposit Account.

Priority Claim: Any Claim entitled to priority pursuant to Section 507 of the Bankruptcy Code, except a Claim that is an Administrative Expense.

Pro Rata: The same proportion an Allowed Claim in a particular Class bears to the aggregate amount of all Allowed Claims in such Class.

Reorganized Debtor: Lura Dee Kirkland, as existing subsequent to the Effective Date after reorganization pursuant to the Plan.

Schedules: "Schedules" shall mean the Schedules of Assets and Liabilities filed by the Debtor with the Bankruptcy Court in accordance with Bankruptcy Rule 1007, as they have been or may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009.

Secured Claim: Any Claim secured by a lien or security interest on property of the Debtor, which is valid, perfected, and enforceable under applicable law, is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law, and is duly established in the Reorganization Case, but only to the extent of the value of the property that secures payment of the Claim.

Secured Claimant: The holder of a Secured Claim.

Secured Tax Claim: Any Secured Claim due and payable to a taxing authority.

Tax Priority Claim: Any Priority Claim due and payable to a taxing authority.

Unsecured Claim: Any Claim that is not an Administrative Expense, Secured Claim or a Priority Claim and may also be referred to herein as "General Unsecured Claim."

Unsecured Claimant: The holder of an Unsecured Claim.

With Interest: This term shall mean an annual fixed percentage rate of five percent (5%) unless text indicates a different rate of interest.

ARTICLE II EXPLANATION OF PLAN AND DISCLOSURE STATEMENT

A. Purpose of Disclosure Statement

Lura Dee Kirkland (the "Debtor") submits this Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code in connection with the Debtor's Plan, which is incorporated herein.

The Disclosure Statement component of the pleading is being sent to all Creditors of the Debtor and of her bankruptcy estate, for the purpose of disclosing information which the Bankruptcy Court has determined is material, important and necessary for such Creditors to arrive at a reasonably informed decision in exercising the right to vote for acceptance or rejection of the Debtor's Plan. This Disclosure Statement describes various transactions contemplated under the Plan.

B. Explanation of Chapter 11 and Cases under Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to Chapter 11, a debtor is authorized to reorganize its business for its own benefit and that of its creditors. Chapter 11 also contemplates that a debtor, or a trustee of a debtor, may take advantage of the administrative aspects available in a Chapter 11 case to realize either an orderly liquidation or reorganization of the debtor's estate.

Formulation of a plan of reorganization is the principal purpose of a Chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against a debtor. After a plan of reorganization has been filed, it must be accepted by holders of claims against a debtor. Section 1125 of the Bankruptcy Code requires full disclosure before solicitation of acceptances of a plan of reorganization. This Disclosure Statement is presented to Creditors, and parties in interest, to satisfy the requirements of Section 1125 of the Bankruptcy Code.

There are two methods by which a plan can be confirmed: (1) the "acceptance" method, in which all impaired classes of claims and interests vote in the requisite amounts to accept the plan, or (2) the "nonacceptance" or "cram down" method, in which at least one class of impaired claims or interests votes in the requisite amounts to accept the plan and certain other requirements are met with respect to all other impaired classes of claims and interests, such that the Bankruptcy Court is nonetheless authorized to confirm the Plan.

A claim that will not be repaid in full or as to which the legal rights are altered, or an interest that is adversely affected, is impaired. A holder of a claim or interest that is impaired by a plan is entitled to vote to accept or reject that plan if such claim or interest has been allowed or is deemed allowed under Section 502 of the Bankruptcy Code, or is temporarily allowed for voting purposes under Rule 3018 of the Bankruptcy Rules.

Chapter 11 does not require that each holder of a claim against a debtor vote in favor of a plan of reorganization in order for such plan to be confirmed by the Bankruptcy Court; rather, Chapter 11 provides that acceptance is obtained by aggregating the votes of similarly situated creditors by classes. In order for a class of claims to accept a plan, votes representing at least two-thirds in amount and more than one-half in number of claims that actually vote in that class must be cast for acceptance of the plan. In order for a class of interests to accept a plan, votes of holders of at least two-thirds in amount of the allowed interests in that class must cast a ballot for acceptance of the plan.

Regardless of the acceptance of a proposed plan by any or all of the classes of claims, the plan, to be confirmable, must comply with certain designated provisions of the Bankruptcy Code, specifically, Section 1129. Section 1129 sets forth the requirements of confirmation and, among other things, requires

that a plan of reorganization be in the best interests of claimants.

The Bankruptcy Court may confirm a plan of reorganization even though less than all of the classes of claims accept the plan of reorganization. Specifically, the Bankruptcy Court must find that the plan is fair and equitable with respect to each impaired class that does not accept the plan. Confirmation of a plan of reorganization over the objection of one or more classes of claims or interests is generally referred to as a "cram-down." With respect to a class of secured creditors, the fair and equitable test requires that a secured creditor (i) retain its lien(s) and receive cash payments equal to the allowed amount of its claims, (ii) receive the proceeds from the sale of its collateral, or (iii) realize the indubitable equivalent of its claim. With respect to a class of unsecured claims, subject to certain exceptions, the fair and equitable test, also referred to as the "Absolute Priority Rule," requires that if the creditors in such class do not receive property with a value equal to the alleged amount of their claims, no junior class can receive anything pursuant to the plan. In other words, if the full present value of unsecured claims is not proposed to be paid in the plan, then the debtor's interest holders cannot retain their stock interests, unless the unsecured classes vote in favor of the plan. This Plan proposes to pay Unsecured Claimants one-hundred percent (100%) of their Allowed Claims, with interest. The Debtor will retain her stock interests in the Kirkland Bros., LLC, an entity wholly owned by the Debtor which is also in Chapter 11 bankruptcy at this time. The Debtor is requesting that the Unsecured Claimants vote in favor of the Plan.

The Plan proposes that the Unsecured Claimants will receive 100%, with interest, of their Allowed Claims. The Debtor believes that her continued ownership and operation of Kirkland Bros., Inc. is critical to the financial success of the Plan, in part because it is the sole source of income by which she will be able to make the required Plan Payments. For this reason, the Debtor urges all Creditors to vote in favor of the Plan as the best opportunity for the full recovery on Claims against the Debtor.

In the event that all impaired Classes do not vote to accept the Plan, the Debtor will nonetheless seek Confirmation of the Plan through a cram-down of the objecting Classes of Creditors.

ARTICLE III HISTORY OF THE DEBTOR AND SUBSEQUENT OPERATIONS

A. Debtor's Background

Ms. Kirkland owns and operates a business which leases and sells trucks and trailers. Her company, Kirkland Bros., Inc. ("Kirkland Bros."), has a fleet of trucks that are leased to various drivers, often with a right to purchase same. In addition, Kirkland Bros. sells trucks and trailers. Ms. Kirkland operates her business primarily from her home in Midland, Texas. She has a location of business in Houston, Texas. The Debtor has every reason to believe that her business will conservatively expand and profits will increase over the next several years which will allow it to pay both the business debts and provide income to service her personal obligations as set forth in this Plan.

B. Summary of Events Leading to the Debtor's Bankruptcy Filing.

The primary reason Ms. Kirkland has accumulated significant personal obligations are a direct result of mismanagement and the actions taken by others with respect to her business interests, to include (1) fraudulent transfers and obligations to another former shareholder, Sheridan Kirkland, (2) oppressive control and actions by Sheridan Kirkland, (3) breaches of contracts and sabotage by a major lessee and insider of Kirkland Bros., MKH Transportation, Inc. ("MKH"), and (4) incurrence of debt and cross-collateralization of the Kirkland Bros.' assets by assuming debts for MKH, Maxsl Karl Humble ("Humble"), and Kirkland Energy Services, Inc. ("KES").

For many years, Kirkland Bros. operated a profitable sales and leasing business. In or around October 2014, as a result of defaults by MKH and Humble, who was Ms. Kirkland's husband, the president of Kirkland Bros. formed KES, an energy services company. Much of the equipment used by KES was also cross-collateralized by Kirkland Bros.' assets. In 2014, Ms. Kirkland filed for divorce against Humble. It was at this time that she discovered that MKH failed to pay Kirkland Bros. for much of the trucks it was using. Ms. Kirkland tried to ensure the financial viability Kirkland Bros. by refinancing the trucks and

trailers through Equify, which would have saved Kirkland Bros. approximately \$60,000 per month. But Sheridan Kirkland would not agree. Humble abandoned his responsibilities to MKH, and MKH shut down its operations leaving many employees without recourse. Upon information and belief, Humble and MKH used a Kirkland Bros. employee, Chris Taskey, to sabotage and defame Kirkland Bros. and its president, Lura Kirkland, the Debtor herein, by running up bills with competitors and telling potential contractors that the Kirkland Bros. does not pay its bills. Instead, Ms. Kirkland, herself, paid many of MKH's obligations to MKH's employees, and also began making payments on collateral that MKH used so that her business would not be in default.

On or around May 2015, Sheridan Kirkland sued Kirkland Bros., Inc., and sought recovery of the stock interest in the company. As a result of the lawsuit, many of the other banks that supported Kirkland Bros. were spooked and began picking up collateral. Ms. Kirkland tried negotiating with the banks and tried seeking take out financing. Ms. Kirkland even borrowed from her life insurance to shore up financing. As a result of Sheridan Kirkland's lawsuit and refusal to negotiate, Kirkland Bros. could not obtain financing. CNB began repossession of trucks and began taking documents from the company. As a result, Ms. Kirkland had no choice but to place Kirkland Bros. into bankruptcy. Since the bankruptcy case started though, Kirkland Bros. has been able to continue to be profitable on the sales and leasing business alone and has emerged from bankruptcy. Ms. Kirkland subsequently was forced to file for bankruptcy herself due in large part to her personal guarantees of certain obligations of her company and other obligations she incurred on behalf of Kirkland Bros.

The goal of the Debtor's Bankruptcy Case is to restructure her debt and allow Ms. Kirkland to pay her Creditors in full over time through the income that she generates through her continued ownership and operation of Kirkland Bros. On August 15, 2016, Kirkland Bros. successfully emerged from Chapter 11 bankruptcy after the Court approved its Chapter 11 Plan which provided for payment in full of all of its creditors, including the creditors whose debts Ms. Kirkland personally guaranteed.

C. Debtor's Operations

1. Post Petition Operations/Current Status

Since filing for Chapter 11 protection, the Debtor has received income of approximately \$5,000 per month which represents her monthly wage paid to her from the revenues of Kirkland Bros. The Debtor attaches her most recent monthly operating report hereto as Exhibit "C". Complete copies of all the Monthly Operating Reports filed by the Debtor are available on the Court's PACER docket <<http://www.txnb.uscourts.gov/pacer/>> or by written request submitted to counsel for the Debtor via facsimile at (806) 762-0214, via e-mail at tjohnston@mcjllp.com or via mail to Todd J. Johnston, McWhorter, Cobb & Johnson, LLP, P.O. Box 2547, Lubbock, Texas 79408.

Attached as Exhibit "B" are Debtor's cash flow projections. As indicated, the Debtor feels that, now that Kirkland Bros.' Chapter 11 Plan is confirmed and the company can now lease and sell truck tractors and trailers without restrictions, it will generate sufficient cash flows to realize monthly profits from which Ms. Kirkland can make her own Plan payments.

2. The Debtor's Assets (as of 02/25/2016) and Current Values

The Debtor has expended considerable time and effort to make the information herein as accurate as possible, however, given the fact that the information contains estimations, valuations and projections, the Debtor cannot represent all of the information herein is precisely correct. The Debtor's assets as of the Petition Date, including, her interest in Kirkland Bros. and her residence, totaled a little more than \$1,647,102.00. More complete information is set forth on the Debtor's Schedules. A complete copy of the Debtor's Schedules are available from the Court's PACER docket <<http://www.txnb.uscourts.gov/pacer/>> or by written request submitted to counsel for the Debtor via facsimile at (806) 762-0214, via e-mail at tjohnston@mcjllp.com or via mail to Todd J. Johnston, McWhorter, Cobb & Johnson, LLP, P.O. Box 2547, Lubbock, Texas 79408.

The Debtor believes that the fair market value of her primary assets, including her interest in Kirkland Bros. and her residence, is as follows:

1. The Debtor's Liquidation Analysis is attached as Exhibit "D." It is the Debtor's intent to pay all claimants, including unsecured creditors, in full with interest.

2. The Debtor's Liabilities (as of 02/25/2016)

The Debtor's liabilities as of the Petition Date, including its secured, unsecured, and disputed debt, but excluding contingent debt totaled approximately \$4,808,674.11. More complete information is set forth on the Debtor's Schedules. A complete copy of the Debtor's Schedules are available from the Court's PACER docket <<http://www.txnb.uscourts.gov/pacer/>> or by written request submitted to counsel for the Debtor via facsimile at (806) 762-0214, via e-mail at tjohnston@mcjllp.com or via mail to Todd J. Johnston, McWhorter, Cobb & Johnson, LLP, P.O. Box 2547, Lubbock, Texas 79408.

D. Significant Events in Chapter 11.

1. Employment of Legal Counsel.

On February 25, 2016, Max Tarbox of Tarbox Law, P.C. filed Ms. Kirkland's bankruptcy. As Max Tarbox was also representing Kirkland Bros. at the time and given a potential conflict of interest, the Debtor sought to substitute counsel and to employ Todd J. Johnston of McWhorter, Cobb & Johnson, LLP [doc. no. 15]. On April 25, 2016, the employment of McWhorter, Cobb & Johnson, LLP was approved by the Bankruptcy Court. [doc. no. 31].

2. Meeting of the Creditors and Bar Date.

On March 31, 2016, the United States Trustee conducted the section 341 meeting of creditors. Ms. Kirkland appeared as the Debtor and the meeting was subsequently conducted and concluded.

3. Lawsuits.

On May 24, 2016, Community National Bank ("CNB" or "Bank") initiated an adversary proceeding against the Debtor objecting to the dischargeability of certain indebtedness. This lawsuit is identified as Adversary Proceeding No. 16-07008. Among the allegations set forth in the Complaint, CNB claimed that Kirkland Bros., acting through its president, Ms. Kirkland, the Debtor, failed to secure the written consent of CNB before selling a certain Peterbilt tractor and Kenworth trailer to a third-party purchaser. CNB further alleged that Kirkland Bros. received \$90,000.00 for the sale of the Peterbilt tractor and Kenworth trailer and failed to turn such proceeds over to CNB. For her part, Ms. Kirkland disputed the allegations of CNB and asserted that she had permission from the Bank to sell the Peterbilt tractor and Kenworth trailer and that prior payments to the Bank during the course of Kirkland Bros.'s bankruptcy proceeding were more than sufficient to cause the release of the associated titles to the tractor and trailer under the floorplan with the Bank. On August 17, 2016, the Court entered a judgment whereby the parties agreed that, among other things, CNB would be awarded judgment in the amount of \$72,000.00 to be paid through the retirement of the indebtedness owing by Kirkland Bros. to CNB.

On or about July 11, 2016, Big B Crane, LLC initiated a lawsuit against Kirkland Energy Services and Ms. Kirkland, individually on her personal guarantee, in the County Court at Law #1 in Ector County, Texas. This proceeding was stayed as to Ms. Kirkland due to this bankruptcy proceeding and the debt in the amount of \$55,492.50 to Big B Crane is fully accounted for in this Chapter 11 Plan.

4. Attempted Sale of Residence.

On April 25, 2016, the Court entered its Order approving the employment of the realtor, Permian Homes Real Estate, for the Bankruptcy Estate as the Debtor needed to immediately move forward with the listing and sale of her residence located at 1 La Paz Circle, Odessa, Texas 79765 ("Residence"). As of the Petition Date, the Residence secured approximately \$1,206,807.89 of Ms. Kirkland's indebtedness to the

Christiana Trust, a Division of Wilmington Savings Fund Society, by and through its servicing agent Cenlar FSB. The amount of the Debtor's monthly installments on her mortgage note for the Residence were excessive given her estimated future income and Plan payments required herein; however, the Debtor believed that there was equity in the Residence that could be realized upon sale. Unfortunately, at the time of filing this pleading, the Debtor has been unable to secure a purchaser for her home and, pursuant to the terms of this Plan, Ms. Kirkland will surrender the Residence to the lender in exchange for full satisfaction of the mortgage indebtedness.

5. Sale of Vehicle.

On June 29, 2016, the Court entered its Order approving the sale of Ms. Kirkland's vehicle, a 2015 Mercedes-Benz CLS400 (VIN xxx4341) ("Vehicle"), to Sewell Ford. The sale of this vehicle was part of an overall transaction whereby the Debtor's personal friend purchased another vehicle for himself from Sewell. As a result of the above, the creditor whose indebtedness is secured by the Vehicle, Mercedes-Benz Financial Services USA, LLC ("Mercedes-Benz Financial"), was be paid in full in the amount of its indebtedness, or \$69,495.52

E. Source Of Information

The financial information contained herein was prepared by the Debtor. The estimated Claims set forth in this Disclosure Statement were determined from the Kirkland Bros.'s bankruptcy proceeding, the Debtor's books and records, the Schedules and discussions with various Creditors.

**ARTICLE IV.
SUMMARY OF THE PLAN**

A. Overview of the Plan

The Plan contemplates the payment in full to all its Creditors within a ten year period. It is anticipated that the Plan will be fully consummated ten years from the Effective Date. The Debtor expressly reserves the right to pay Creditors earlier than the ten year time period if cash flow permits.

B. Funding of the Plan

The Plan will be funded by the Debtor's income received from Kirkland Bros. through its continued operations and funds received from leasing and selling its trucks and trailers.

C. Classification and Treatment of Claims Against and Interests in the Debtor

The Plan classifies and treats various Classes of Creditors of the Estate. The following is a summary of classification and treatment of Creditors' Claims under the Plan:

**ARTICLE V
CLASSIFICATION OF CLAIMS AND INTERESTS**

The Bankruptcy Code requires the debtor to divide creditors into classes. That is, creditors with similar legal rights are put into the same class. For purposes of proposing plan payment treatment, the secured creditors are put into separate classes, unless more than one creditor is secured by the same collateral. Administrative claimants are also put in separate classes. The classes claims and interests shall be classified as follows:

Administrative Expenses

Professionals Fees

Class 1: Priority Claimants

Class 1A: Internal Revenue Service

Class 1B: County and City Taxing Authorities

a. Ector CAD

Class 2: Unsecured Creditors

Class 2A: Unsecured Creditors of Lura Kirkland, Individually, and Paid in Full Through this Plan

Class 2B: Unsecured Creditors of Lura Kirkland, Individually, Being Paid in Full by Kirkland Bros.

- a. Community National Bank (POC # 3)
- b. Triumph Savings Bank (POC # 12)
- c. Security Bank (POC # 14)
- d. AimBank (POC # 15)
- e. WTG Fuels, Inc
- f. Stewart & Hurst, LLC
- g. Interstate Billing Service (POC # 8 & 9)

Class 3: Christiana Trust, a Division of Wilmington Savings Fund Society, by and through its servicing agent Cenlar FSB

Ms. Kirkland will retain her interest in Kirkland Bros., Inc. subject to her payment in full of all of her creditors either through this Plan, as proposed, or by payments through Kirkland Bros. All classes are impaired by virtue of 11 U.S.C. § 1124(1) and are entitled to vote.

ARTICLE VI

A. What about Administrative Payments?

Administrative claimants consist of the Debtor's professionals retained to work in this case.

McWhorter, Cobb & Johnson, LLP is the attorney currently representing the Debtor in this case. It was paid a retainer of \$5,404.44 upon substituting as counsel for Debtor. It is anticipated that the fees and expenses will total up to approximately \$25,000.00. All fees and expenses will be submitted to the Court for final approval at the conclusion of the case. Any fees owing above the retainer will be due the later of an order approving claimants fee application or 30 days following confirmation. Parties can object to fee applications if they so desire.

All other payments to allowed administrative claims to professionals will be due and payable within 30 days from the effective date of the Plan, unless other arrangements are agreed between the Debtor and the professional.

B. What about Priority Claimants?

Class 1A is the **Internal Revenue Service** for the amount of \$191,547.15*. This claim will be paid over 60 months at 4.0% interest beginning January 15, 2017, with monthly payments of \$3,527.63. Subsequent payments will be made on the 15th of each month thereafter. Such payments will result in the entire claim being paid in full in 5 years and will be made until the entire claim is paid in full. The IRS reserves and preserves all of its rights to enforce this treatment.

Events of Default. The occurrence of any of the following shall constitute an event of default under the Plan:

- 1) **Failure to Make Payments.** Failure on the part of Debtor to pay fully when due any

payment required to be made in respect of the Plan Debt. However, due to the size and ongoing nature of the IRS's claim, upon a default under the plan, the administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal (or state) tax lien and the powers of levy, seizure, and as provided under the Internal Revenue Code. As to the IRS:

(A) If the Debtor fails to make any plan payment, or deposits of any currently accruing employment or sales tax liability; or fails to make payment of any tax to the Internal Revenue Service within 10 days of the due date of such deposit or payment, or if the Debtor failed to file any required federal or state tax return by the due date of such return, then the United States may declare that the Debtor is in default of the Plan. Failure to declare a default does not constitute a waiver by the United States of the right to declare that the successor in interest or Debtor is in default.

(B) If the United States declares the Debtor or the successor in interest to be in default of the Debtor's obligations under the Plan, then the entire imposed liability, together with any unpaid current liabilities, may become due and payable immediately upon written demand to the Debtor or the successor in interest.

(C) If full payment is not made within 14 days of such demand, then the Internal Revenue Service may collect any unpaid liabilities through the administrative collection provisions of the Internal Revenue Code. The IRS shall only be required to send two notices of default, and upon the third event of Default the IRS may proceed to collect on all amounts owed without recourse to the Bankruptcy Court and without further notice to the Debtor. The collection statute expiration date will be extended from the Petition Date until substantial default under the Plan. All payments will be sent to: IRS, 300 E. 8th St., Mail Stop 5026 AUS, Austin, Texas 78701, attn: Marian Lacy.

(D) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor to the Internal Revenue Service; but the Internal Revenue Service shall not take action to actually collect from such persons unless and until there is a default under the Plan and as set forth above.

Class 1B consisting of the claim of the **County and City Taxing Authorities of Ector CAD** which arises from a pre-petition priority claim which totals \$27,266.61*. This claim will be paid over 60 months a 12.00% interest beginning January 15, 2017, with total monthly payments of \$606.52. The claim will accrue interest from the date of filing; i.e. February 25, 2016. Subsequent payments will be made on the 15th of each month thereafter. Such payments will result in the entire claim being paid in full in 2 years and will be made until the entire claim is paid in full. The taxing authority preserve all of its rights to enforce this treatment.

C. What about Unsecured Creditors?

Class 2A are the **Unsecured Claims** that total \$326,111.95.

A list of unsecured claims* is set forth in the attached Exhibit "A".

The claimants will receive one hundred percent (100.0%) of their respective claims over ten (10) year term (beginning the petition date), to be paid on a monthly basis with monthly payments of \$5,859.79, **beginning January 15, 2022** at 3.0% interest. Subsequent payments will be made on the 15th of each month thereafter. Claimants will receive their pro-rata share of each payment, based upon the percentages set forth in Exhibit "A."

No claimant of this Class shall have or retain any lien against the Debtor upon Confirmation of the Plan.

Class 2B are the Unsecured Claims of Kirkland Bros. Inc which the Debtor has Guaranteed.

The following are creditors of Kirkland Bros. the indebtedness to which Ms. Kirkland has extended personal guarantees and/or is personally liable. The claims of each of these creditors will be paid in full in full by Kirkland Bros.

a. **Community National Bank** which arises from a guaranty by the Debtor of Kirkland Bros.'s indebtedness to this claimant in the approximate amount of \$1,588,397.78.

b. **Triumph Savings Bank** which arises from a guaranty by the Debtor of Kirkland Bros.'s indebtedness to this claimant in the approximate amount of \$536,189.13.

c. **Security Bank** which arises from a guaranty by the Debtor of Kirkland Bros.'s indebtedness to this claimant in the approximate amount of \$449,021.31.

d. **AimBank** which arises from a guaranty by the Debtor of Kirkland Bros.'s indebtedness to this claimant in the approximate amount of \$409,314.40.

e. **WTG Fuels, Inc.** which arises from a guaranty by the Debtor of Kirkland Bros.'s indebtedness to this claimant in the approximate amount of \$63,203.91.

f. **Stewart & Hurst, Inc.** which arises from accounting work for Kirkland Bros. whose indebtedness to this claimant in the approximate amount of \$4,072.12.

g. **Interstate Billing Service** which arises from a guaranty by the Debtor of Kirkland Bros.'s indebtedness to this claimant in the approximate amount of \$6,741.86.

D. What about Mortgage Indebtedness?

Class 3 is the Christiana Trust, a Division of Wilmington Savings Fund Society, by and through its servicing agent Cenlar FSB. The Debtor will surrender her residence, and Christiana Trust's collateral, located at 1 La Paz Circle, Odessa, Texas 79765, to this creditor in full satisfaction of its claim.

PLEASE NOTE THAT THE DEBTOR RESERVES THE RIGHT TO OBJECT TO THE ALLOWANCE OR AMOUNT OF ANY CLAIMS REFERRED TO ABOVE OR IN THE ATTACHED EXHIBITS.

Should claim amount above marked with an asterisk be different from amount stated in treatment, the correct amount will be amortized the same as proposed in treatment.

**ARTICLE VII
HOW DOES LURA KIRKLAND PROPOSE TO PAY HER DEBTS?**

Section 7.1. Creditors Have the Right to Vote on the Plan.

Section 7.2. After reading this plan and disclosure statement, Creditors will have the right to vote on whether the Bankruptcy Court should "confirm" the Debtor's plan. Each creditor should read this combined plan and disclosure statement carefully, discuss it with a lawyer, and then fill out the ballot that will be provided. Lura Kirkland's lawyer will assemble the ballots and report to the Bankruptcy Judge on _____, 2016 at 1:45 p.m. at the U.S. Bankruptcy Courtroom, Midland Room P 126, U.S. Courthouse, 100 E. Wall St., Midland, Texas. At that time the Court will conduct the "Confirmation Hearing" in this case and

decide whether to "confirm" the plan.

Section 7.3. Creditors Have the Right to Object to Confirmation of the Plan. If a Creditor believes that the plan does not meet the requirements of the Bankruptcy Code, the Creditor may file a written objection with the Bankruptcy Court. The deadline for objections to confirmation of the plan has been set by the Court as: _____, 2016.

Section 7.4 The Court May Approve the Debtor's Plan and Limit Creditors' Legal Rights. The Court will consider only the written objections to confirmation of the plan that are timely filed and the ballots that are timely filed. If no objections are filed (or if all objections are overruled by the Court) and if at least one class of creditors accepts the plan, the Court may approve the plan. If the Court approves the plan, all creditors will be bound, even if a Creditor did not vote and even if a Creditor voted against the plan. This means that a Creditor will not be allowed to collect his claim against Lura Kirkland except as provided in this plan.

Section 7.5. How Does a Class "Accept" the Plan? Each class is considered separately. Only the creditors who vote are counted. The Court will conclude that the class "accepts" the plan if two requirements are met:

1. More than 50% of the voting creditors vote in favor of the plan; and
2. Those creditors voting in favor of the plan hold at least 2/3 of the total amount of debt that is voted.

Section 7.6. What if a Creditor is Not Accounted for in this Plan? This Plan and its Exhibits list all creditors who will have an allowed claim. The proof of claim deadline was June 29, 2016. All unsecured claims that the Debtor agrees to pay (or that are not disputed) are listed on Exhibit "A". If an unsecured Creditor's claim is not listed in Exhibit "A", the Debtor will not pay any money to that Creditor.

ARTICLE VIII PLAN IMPLEMENTATION PROCEDURE

Section 8.1. The Debtor will remain in possession of her property and disposition thereof unless otherwise provided in this Plan.

Section 8.2. The Debtor will devote full time and energy to the successful completion of the Plan.

Section 8.3. Funding. Based on current income and expense projections, set out more particularly in Exhibit "B" filed herein, the Debtor reasonably expects to generate enough net income to fund this Plan.

Section 8.4. A copy of the Debtor's latest Monthly Operating Report is attached as Exhibit "C".

ARTICLE IX EXECUTORY CONTRACTS

Section 9.1. Debtor also assumes the lease on the following property: None

Section 9.2. Debtor rejects the lease of the following property:

Lease for Houston apartment 1400 McKinney Houston, TX 77029

ARTICLE X ARE THERE ANY ALTERNATIVES TO THIS PLAN?

Section 10.1 The only alternative is liquidation in a Chapter 7 bankruptcy. The Debtor believes that if all its assets were liquidated, the Creditors would not receive any payment from the Debtor's bankruptcy

estate.

**ARTICLE XI
IS THERE ANY RISK THAT THE PLAN MIGHT NOT SUCCEED?**

Section 11.1 Yes. Ms. Kirkland cannot predict the future, but believes it can make the proposed plan payments.

**ARTICLE XII
ARE THERE ANY TAX EFFECTS OF THIS PLAN?**

Section 12.1 Ms. Kirkland does not believe that this plan creates any special tax consequences.

Section 12.2 Tax Effects to Creditors: Creditors should consult with their own tax advisor.

**ARTICLE XIII
DEBTOR'S OBLIGATION TO THE U.S. TRUSTEE**

Section 13.1 During the pendency of this bankruptcy case, the Debtor will comply with all regulations promulgated by the Office of the U.S. Trustee, including remaining current on all quarterly fees assessed against the estate by the U.S. Trustee.

**ARTICLE XIV
RESERVATION OF CLAIMS**

Section 14.1 Debtor specifically reserves the following claims: None

**ARTICLE XV
RETENTION OF JURISDICTION**

Section 15.1 The Court shall retain jurisdiction of this case pursuant to the provisions of Chapter 11 of the Bankruptcy Code until the final allowance or disallowance of all claims and final determination with respect to all matters including the following:

- a. To enable the Debtor to consummate any and all proceedings that they may bring to set aside liens or encumbrances to determine the validity, extent and enforceability of any lien or to recover any preferences, transfer, assets or damages to which it may be entitled under applicable provisions of the Bankruptcy Code or other federal, state, or local law. Specifically, the Debtor shall be authorized before or after confirmation to bring any action against any party arising before or after confirmation;
- b. To adjudicate all controversies concerning the classification or allowance or reconsideration of allowances of any claim or any security interest, including without limitation, to liquidate claims in connection with any disputed, contingent or unliquidated claims;
- c. To hear and determine all claims arising from the rejection or assumption of any executory contracts, including leases and to consummate the rejection and determination thereof;
- d. To adjudicate all claims to a security or ownership interest in any of the Debtor's property or any proceeds thereof;
- e. To adjudicate all claims or controversies arising out of any purchases, sales, or contracts made or undertaken by the Debtor during the pendency of the proceedings;
- f. To recover all assets and properties of the Debtor wherever located;

- g. To adjudicate all claims pertaining to preferences and fraudulent transfers;
- h. To apply to the Court any time after confirmation for authority to consummate a sale of the estate assets, provided, the Debtor shall not be required to do so, as long as the Debtor is otherwise in compliance with the provisions of the plan;
- i. To determine the reasonableness of and make any award for administrative expenses, including attorney's fees applied for before or after the plan confirmation date, and to provide for payment thereof.
- j. To determine the value of the claimant's collateral, if such value or values are in dispute.
- k. Additionally, the Court shall retain exclusive jurisdiction in the future for the purpose of determining whether or not a default has occurred and for the purpose of granting any remedy to any creditor hereunder which is authorized by the Bankruptcy Code.

ARTICLE XVI
PLEASE VOTE FOR THE DEBTOR'S PLAN!

Section 16.1 Ms. Kirkland asks that Creditors vote in favor of the Debtor's Plan because it will allow her to pay Creditors all of their claims. Ms. Kirkland believes that the Plan will pay the proposed payments to its creditors.

Section 16.2 Acceptances. For there to be an acceptance of the Plan by a Class of Claimants, Claimants who hold at least two-thirds in dollar amount of the Claims voted and constitute more than one-half in the number of holders of such Claims voting must vote to accept the Plan.

Section 16.3 REMEMBER THAT THE DEADLINE FOR BALLOTS IS _____, 2016.
Mail your ballot to:

Todd J. Johnston
MCWHORTER, COBB AND JOHNSON, L.L.P.
P. O. Box 2547
Lubbock, Texas 79408
(806) 762-0214; fax: (806) 762-8014

In order to be counted, Ballots must be received at the foregoing address not later than _____ p.m., _____, 2016.

Dated: October 3, 2016

Approved:

/s/ Lura Kirkland
Lura Kirkland

Respectfully submitted,

MCWHORTER, COBB AND JOHNSON, L.L.P.
1722 Broadway (79401)
P. O. Box 2547
Lubbock, Texas 79408
(806) 762-0214 - Telephone
(806) 762-8014 - Facsimile

Email: tjohnston@mcjllp.com

By: /s/ Todd J. Johnston
Todd J. Johnston
SBN: 24050837
ATTORNEYS FOR THE DEBTOR