

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**In re:**

**JAMES BRIAN CARROLL,**

**Case No. 16-70766-SCS  
Chapter 11**

**Debtor-in-Possession.**

**Disclosure Statement**

**October 12, 2016**

Kelly M. Barnhart, VSB No. 65246  
Roussos, Glanzer & Barnhart, PLC  
580 E. Main St., Ste. 300  
Norfolk, VA 23510  
Telephone: (757) 622-9005  
Facsimile: (757) 624-9257  
[barnhart@rgblawfirm.com](mailto:barnhart@rgblawfirm.com)

**UNLESS DEFINED HEREIN, CAPITALIZED TERMS SHALL HAVE THE MEANINGS SET FORTH IN THE PLAN.**

**I. Introduction**

The Debtor sets forth this Statement to all of his known creditors, in order to provide them with adequate information about him, his finances and the Plan. A copy of the Plan is attached hereto as **Exhibit A**. As stated above, unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Plan.

Your rights may be affected. You should read the Plan and this Statement carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one. You need to read both the Plan and the Statement. The Plan is the document that establishes your rights.

The proposed distributions under the Plan are discussed herein at Pages 8 – 16. General unsecured creditors are classified in Class 14. Unsecured Creditors are to be paid in full through the Plan. These payments are to be distributed to Unsecured Creditors on a pro-rata basis and will result in a payout of approximately 90.3% unless the Unsecured Creditors accept different treatment. The Debtor will retain his assets, including those identified in his bankruptcy schedules and any property acquired post-petition and post-confirmation.

The purpose of the Disclosure Statement is to:

- Provide information regarding the Debtor and significant events that have occurred in his case;
- Disclose how the Plan proposes to treat Claims of the type you hold (*i.e.*, what you will receive on your claim if the Plan is confirmed);
- To explain who may vote on, or object to, Confirmation of the Plan;
- Identify what factors the Court may consider in determining whether the Plan should be confirmed;
- Explain why the Debtor believes the Plan is feasible and how the treatment of your claim under the Plan compares to what would occur in a chapter 7 liquidation; and
- Disclose the effects that confirmation of the Plan will have.

Be sure to read the Plan as well as this Statement. While the Statement describes the Plan, it is the Plan that will establish your rights, if confirmed.

**NO REPRESENTATIONS CONCERNING THE DEBTOR, PARTICULARLY AS TO HIS FUTURE INCOME, THE VALUE OF HIS PROPERTY OR THE AMOUNT TO BE DISTRIBUTED UNDER THE PLAN IS AUTHORIZED UNLESS IT IS IN THIS STATEMENT. THIS DISCLOSURE STATEMENT IS THE ONLY AUTHORIZED STATEMENT WITH RESPECT TO THE PLAN. NO OTHER REPRESENTATION REGARDING THE DEBTOR, HIS OPERATIONS, OR THE VALUE OF HIS PROPERTY HAS**

**BEEN AUTHORIZED. YOU SHOULD RELY ONLY ON THE REPRESENTATIONS OR INDUCEMENTS CONTAINED HEREIN. YOU SHOULD REPORT ANY ADDITIONAL REPRESENTATIONS AND INDUCEMENTS TO THE COURT, COUNSEL FOR THE DEBTOR, OR THE UNITED STATES TRUSTEE.**

**THE COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN, BUT MERELY CONFIRMS THAT THIS STATEMENT IS ADEQUATE TO PROVIDE THE INFORMATION NECESSARY FOR YOU TO MAKE AN INFORMED JUDGMENT WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.**

**THE INFORMATION CONTAINED IN THIS STATEMENT HAS NOT BEEN SUBJECT TO AUDIT. IT IS BASED ON RECORDS KEPT BY THE DEBTOR AND AVAILABLE TO THE DEBTOR. EVERY REASONABLE EFFORT HAS BEEN MADE TO PRESENT ACCURATE FIGURES. HOWEVER, A CERTIFIED AUDIT OF THE DEBTOR'S FINANCIAL RECORDS HAS NOT BEEN PERFORMED AND ALL CREDITORS PROCEED AT THEIR OWN RISK.**

**THIS DISCLOSURE STATEMENT PROVIDES INFORMATION ABOUT THE PLAN. ALTHOUGH THE DEBTOR BELIEVES THAT THE INFORMATION CONTAINED HEREIN IS ACCURATE, THE PROVISIONS OF THE PLAN CONTROL IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE INFORMATION CONTAINED HEREIN.**

## **II. Background**

### **A. Description and History of Debtor and his Farming Operations and Events Leading to the Filing for Bankruptcy Relief**

The Debtor is a resident of Smithfield, Virginia, who has been farming since 1990. In addition to farming, he also provides part-time handy services to the general public and began working at a funeral home this past year. It is anticipated that he will be a funeral director with Little's Funeral Home & Cremation Service. His non-filing spouse is retired and who is currently raising cattle. The Debtor has grown his farming operations from 100 acres to approximately 2,500 acres as of 2015. He has grown cotton, corn, soybeans, edible soybeans and wheat. At this time, his crops include two different types of soybean.

His income is primarily received from his farming operations and from 2014 to 2015, the farming income dramatically decreased, as a result of the drought experienced in the summer of 2015, combined with 17 days of rain in the fall, which lead to a poor cotton and soybean production and harvest. In addition, a dispute arose with one landlord, resulting in a decrease of acreage from approximately 2,300 acres to the current approximate 1,250 acres, of which is primarily edible soybeans. As a result, the

Debtor fell behind on certain obligations owed to certain vendors and a lawsuit was initiated by one vendor.

In an effort to restructure his debt and to be able to self-fund his farming operation, the Debtor sought chapter 11 bankruptcy relief. This has allowed him to adjust the operations, sell certain equipment, which sale has afforded him the opportunity to pay down certain secured debt and assist in the self-funding of his farming operation.

The Debtor's 2015 gross income was \$509,233.00, and was \$1,526,783.00 in 2014. As indicated, he is currently growing two main types of soybeans, which he will sell to Montague Farms, pursuant to two contracts he entered into with it prior to the Petition Date. As of the Petition Date, his gross income for 2016 was \$272,039.09.

### **B. Assets as of Petition Date and as of this Statement**

The Debtor owned the following personal property as of the Petition Date, some, but not all, of which he stills owns as of the date of this Statement (for the remaining items, the current value is listed below):

<b>Description of Property</b>	<b>Value as of Petition Date</b>	<b>Current Value</b>
Ford F250	\$5,400.00	\$5,400.00
Chevy Suburban	\$8,725.50	\$8,725.00
Ford F250 Lariat	\$1,190.00	\$1,190.00
Ford F-150 FX4	\$3,514.00	\$3,514.00
Kawasaki 4-wheeler	\$500.00	\$500.00
John Deere Gator Utility	\$500.00	\$500.00
Household Goods	\$872.50	\$872.50
Electronics	\$127.50	\$127.50
Gun	\$300.00	\$300.00
Clothing	\$500.00	\$500.00
Wedding Band	\$100.00	\$100.00
2 dogs	\$100.00	\$100.00
Cash on hand	\$99.00	\$0.00
Bank Accounts	\$829.50	\$1199.00
Trust	\$512,600.00	\$512,600.00
Life insurance policies	\$2,850.00	\$2,850.00
Various Equipment (some of which was sold Post-Petition)	\$934,118.00	\$667,118.00

The total amount of claimed exemptions is \$13,884.98, and the personal property that was owned as of the Petition Date that were not subject to claimed exemptions and had values were: \$1,021,273.25. A sizeable amount of the personal property is various pieces of Equipment the Debtor owns, subject to liens in favor of various parties, including FSA, CFC, John Deere, as well as Northland and TD. Ally likewise has a lien in favor of it, with the collateral being the Suburban. After accounting for the amount for secured creditors' recoveries, less also the fees for a chapter 7 trustee, the exemptions claimed and payment of administrative expenses, the

balance for Allowed Unsecured Claims is \$256,040.01. It is anticipated that in a chapter 7, the holders of Allowed Unsecured Claims would receive 33.36% and the Plan proposes to pay an anticipated/proposed distribution resulting in payment of 90.3%.

### **C. Significant Events During Case**

#### **1. Unsecured Creditors' Committee**

No unsecured creditors' committee has been named in this Case.

#### **2. The Bar Date**

The Bankruptcy Code provides that unless otherwise set by the Court, the last date by which creditors are permitted to file proofs of claim or interest is 90 days after the first meeting of creditors held pursuant to § 341 of the Bankruptcy Code. Pursuant to Rule 3003(c)(2), any creditor whose claim is not scheduled by the Debtor or is scheduled as disputed, contingent or unliquidated, and who fails to file a proof of claim on or before the date so established, will not be treated as a creditor with respect to that claim for purposes of voting or receiving a distribution under the Plan. The deadline to file claims in this Case, for all non-governmental units, was July 5, 2016, and September 6, 2016 for governmental units.

#### **3. Disputed Claims**

Pursuant to Rule 3003(c)(2), any creditor whose claim is not scheduled by the Debtor or is scheduled as disputed, contingent or unliquidated, and who fails to file a proof of claim on or before the date so established, will not be treated as a creditor with respect to that claim for purposes of voting or receiving a distribution under the Plan.

The Debtor identified two disputed claims in his schedules, one with Dawn to Dusk, LLC and one with Time to Harvest, LLC. Both have filed proofs of claim and the Debtor will object to both claims, with the objections to be filed within 120 days from the Effective Date.

#### **4. Exclusivity Period**

The Bankruptcy Code sets forth who may file a plan in a chapter 11 case. Pursuant to § 1121, the Debtor has the exclusive right to file a plan within the first 120 days of the case (the "**Exclusivity Period**"). Any party in interest is allowed to file a plan following the expiration of the Exclusivity Period.

The Exclusivity Period ran on July 5, 2016.

#### **5. Hiring of Professionals**

Pursuant to § 327, a debtor is entitled to employ certain professionals to assist the debtor in carrying out the duties as provided for in the Bankruptcy Code. The

professional may not hold or represent an interest adverse to the estate and must be disinterested. The Court must approve employment of professionals.

The Court authorized the Debtor to employ Roussos, Glanzer & Barnhart, PLC, as his bankruptcy counsel and authorized the employment of E.B. Harris Inc./Auctioneers to sell certain equipment owned by the Debtor as of the Petition Date.

## **6. Sale of Assets**

During the course of his bankruptcy case, the Debtor sold certain equipment during this Case, with the assistance of an auctioneer, E.B. Harris Inc./Auctioneers, whose employment was approved by the Court. On April 30, 2016, E.B. Harris Inc./Auctioneers conducted a public auction, and at this auction, the following items were sold, with the approval of this Court:

<b><u>Asset</u></b>	<b><u>Amount Received</u></b>
2009 Air John Deere Air SeederDriver	\$40,000
2010 John Deere 8420	\$82,000
Picker & parts	\$21,700
330 turbo till	\$26,500
1 KMC rip-strip & parts	\$9,000
John Deere 1720 Row Planter	\$9,000
Total value received:	\$188,200
Auctioneer (payment approved by the Order)	(\$23,525)
Total net proceeds, pending further order of this Court:	\$164,675.00

On July 13, 2016, as more fully identified in the First Stipulation and Order Authorizing Debtor's Interim and Limited Use of Cash Collateral and for Adequate Protection, the Debtor was permitted to use the net proceeds from this sale:

- \$31,266.01 to FSA, to be applied to FSA Loan Nos. 44-21, 43,24 and 43-26;
- \$119,742.01 to JD, paying off certain of its loans owed by the Debtor;
- \$1,375.00 to CFC; and
- the balance was used by the Debtor for his household and farming expenses.

## **7. Relief from Automatic Stay**

No party has obtained relief from the automatic stay in this Case.

## **8. Objection to Claims**

Except to the extent that a Claim is already Allowed pursuant to a final non-appealable order, the Debtor reserves his right to object to Claims. Therefore, even if your Claim is allowed for voting purposes, you may not be entitled to any distribution if an objection to your Claim is later sustained.

The Debtor will file any objections to Claims by no later than 1200 days after the Effective Date. To date, the only Claims the Debtor intends to object to are the ones filed by Dawn to Dusk, LLC and Harvest Time, LLC.

## **III. Summary of Plan**

### **A. What is the Purpose of the Plan?**

The Plan places claims in various classes and describes the proposed treatment of each class of claims, as required by the Bankruptcy Code. The Plan also provides whether each class is Impaired, entitling said classes to vote on the Plan. **If the Plan is confirmed, your recovery will be limited to the amounts set forth in the Plan.**

### **B. Unclassified Claims**

Certain claims are entitled to specific treatment under the Bankruptcy Code and are not considered Impaired. Holders of these claims do not vote on the Plan but may object, if, in their view, the proposed treatment under the Plan does not comply with the Bankruptcy Code. As such, the Debtor has not placed the following claims in any class:

#### **1. Priority Claims**

Priority tax claims are for income, employment and other taxes described in 11 U.S.C. § 507(a)(8) of the Bankruptcy Code. Unless the holder of such a priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The Virginia Department of Taxation filed Claim No. 26, claiming that the Debtor owes it \$1,000.00 in priority tax debt associated with the Debtor's income tax return for 2014 and 2015, which was solely based on assessments (not the returns). At the time this claim was filed, the Debtor had filed his tax return for 2014 and 2015 and has since filed an amended return for 2015.

The Debtor does not believe that anything is owed to the Virginia Department of Taxation and if no amended claim is filed by the Virginia Department of Taxation within 90 days of the Effective Date, the Debtor will file an objection to its claim. If the objection to the claim is not sustained, the Debtor will pay \$1,000.00 to the Virginia Department of Taxation, plus interest accruing at a rate of 3% per annum by June 30, 2017.

In his Schedule E/F, the Debtor identified a priority claim in favor of the IRS related to income taxes owed for 2015. Since the Petition Date, the Debtor has prepared an amended tax return for 2015 and has filed the same with the IRS. The amended 2015 federal return reflects no balance owed to the IRS and accordingly, the Debtor does not plan to pay any amounts to the IRS.

The Debtor is unaware of any other Priority Claims.

## 2. Administrative Claims

Administrative expenses are costs or expenses associated with the administration of the Case, which are allowed under § 507(a)(2). Such expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days of the Petition Date. The Bankruptcy Code requires that all administrative expenses be paid on the Effective Date, unless a particular claimant agrees to a different treatment.

The following is a chart identifying the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount as of the filing of the Disclosure Statement	Proposed Treatment
Expenses arising in the ordinary course after the Petition Date	\$0.00	N/A
Professional fees, as approved/to be approved by the Court	\$35,000.00 (estimated)	To be paid in full on the Effective Date of the Plan, following approval by the Bankruptcy Court, or paid pursuant to a separate agreement. The budget anticipates monthly payments over the life of the plan, if the Debtor is unable to pay the fees, following approval of same, from an exempt source of funds.
Office of the U.S. Trustee	\$0.00	Any quarterly fees that come due over the course of the case shall be paid in full and nothing herein shall be interpreted to provide any different treatment.
Post-Petition Real Estate Taxes	\$0.00	Any that come due will be paid in the ordinary course



### **C. Classified Claims**

#### **1. Secured Claim of FSA (Real Estate/ Equipment; Loan No. 44-19)**

This claim is secured by the Real Estate, as well as all equipment owned by Mr. Carroll and was incurred on April 7, 2011 and is evidenced by, among other things a promissory note, which had an original principal balance of \$229,750, with interest accruing at a rate of 2.25%, and called for seven (7) annual payments of \$35,844.00 each, due on March 1<sup>st</sup> of each year.

The value of the Real Estate is estimated at \$932,000 and the total value of the Equipment is believed to be \$667,118.00 and the value of the Equipment not subject to other liens in higher priority is believed to be \$462,961.60.

As of the date of this Plan, the balance owed on this loan, with accrued interest, is believed to be \$106,802.39, as of September 16, 2016. Interest accrues thereon at the annual rate of 2.25%. On the effective date of the plan, accrued interest will be capitalized. The Debtor proposes to re-amortize this loan over nine (9) years, with interest accruing at a rate of 2.25%, to be paid in annual payments of approximately \$13,242.43, to be paid on March 1<sup>st</sup> of each year until the principal and interest are fully paid, with the last payment to be made by no later than March 1, 2026. The annual payment will increase slightly due to interest which accrues after September 16, 2016.

The Debtor may prepay this obligation without penalty.

This class is Impaired and is entitled to vote to accept or reject the Plan.

FSA will retain all liens and deeds of trust against the Real Estate and personal property until its secured claim, plus interest, is paid in full. Upon an uncured default, FSA may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

#### **2. Secured Claim of FSA (Real Estate/Equipment; Loan No. 44-22)**

This claim is secured by the Real Estate, as well as all equipment owned by Mr. Carroll and was incurred on April 7, 2011 and is evidenced by, among other things a promissory note, which had an original principal balance of \$23,827.90, with interest accruing at a rate of 2.25%, and called for sixteen (16) annual payments of \$1,890.00 each, due on March 1<sup>st</sup> of each year.

The value of the Real Estate is estimated at \$932,000 and the total value of the Equipment is believed to be \$667,118.00 and the value of the Equipment not subject to other liens in higher priority is believed to be \$462,961.60.

As of the date of this Plan, the balance owed on this loan, with accrued interest, is believed to be \$18,856.85. On the Effective Date, the Debtor will remit \$1,890.00, which represents the payment that came due to the FSA on this obligation on March 1, 2016. The Debtor will continue to remit the annual payments of \$1,890.00 on March 1 of every year until the principal and interest are fully paid, with the last payment to be made by no later than March 1, 2026.

The Debtor may prepay this obligation without penalty.

This class is Impaired and is entitled to vote to accept or reject the Plan.

FSA will retain all liens and deeds of trust against the Real Estate and personal property until its secured claim, plus interest, is paid in full. Upon an uncured default, FSA may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

**3. Secured Claim of FSA (Real Estate/Equipment; Loan No. 44-23)**

This claim is secured by the Real Estate, as well as all equipment owned by Mr. Carroll and was incurred on April 7, 2011 and is evidenced by, among other things a promissory note, which had an original principal balance of \$29,614.72, with interest accruing at a rate of 2.25%, and called for sixteen (16) annual payments of \$2,349.00 each, due on March 1<sup>st</sup> of each year.

The value of the Real Estate is estimated at \$932,000 and the total value of the Equipment is believed to be \$667,118.00 and the value of the Equipment not subject to other liens in higher priority is believed to be \$462,891.60.

As of the date of this Plan, the balance owed on this loan, with accrued interest, is believed to be \$23,432.42. On the Effective Date, the Debtor will remit \$2,349.00, which represents the payment that came due to the FSA on this obligation on March 1, 2016. The Debtor will continue to remit the annual payments of \$2,349.00 on March 1 of every year until the principal and interest are fully paid, with the last payment to be made by no later than March 1, 2026.

The Debtor may prepay this obligation without penalty.

This class is Impaired and is entitled to vote to accept or reject the Plan.

FSA will retain all liens and deeds of trust against the Real Estate and personal property until its secured claim, plus interest, is paid in full. Upon an uncured default, FSA may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

**4. Secured Claim of FSA (Real Estate/Equipment; Loan No. 44-25)**

This claim is secured by the Real Estate, as well as all equipment owned by Mr. Carroll and was incurred on April 7, 2011 and is evidenced by, among other things a promissory note, which had an original principal balance of \$36,320.74, with interest accruing at a rate of 2.25%, and called for sixteen (16) annual payments of \$3,210.00 each, due on March 1<sup>st</sup> of each year.

The value of the Real Estate is estimated at \$932,000 and the value of the Equipment (not subject to other liens in higher priority) is believed to be \$462,891.60.

As of the date of this Plan, the balance owed on this loan, with accrued interest, is believed to be \$30,141.47. On the Effective Date, the Debtor will remit \$3,210.00, which represents the payment that came due to the FSA on this obligation on March 1, 2016. The Debtor will continue to remit the annual payments of \$3,210.00 on March 1 of every year until the principal and interest are fully paid, with the last payment to be made by no later than March 1, 2026.

The Debtor may prepay this obligation without penalty.

This class is Impaired and is entitled to vote to accept or reject the Plan.

FSA will retain all liens and deeds of trust against the Real Estate and personal property until its secured claim, plus interest, is paid in full. Upon an uncured default, FSA may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

**5. Secured Claim of CFC (Residence; Loan No. 6805)**

This claim is secured by the Residence and by real estate designated as Tax Map Parcel No. 10-01-11, which debt was incurred in April of 2012 and CFC's real estate lien rights are prior to FSA with respect to the real estate designated as Tax Map Parcel No. 10-01-11 by virtue of a March 1, 2012 Subordination by the Government with respect to this loan. The Residence, which is the security for the claim, has been owned by the Trust since October of 2011, and was owned as tenants by the entirety by the Debtor and his non-filing spouse immediately prior to the transfer of the Residence to the Trust. This obligation had an original principal amount of \$175,000 and is evidenced by, among other things, a fixed rate note dated April 23, 2012. The fixed rate note calls for fourteen (14) fixed annual payments of \$17,153.86 due on January 1 of each year with the final installment of the unpaid principal balances and all accrued interest to be paid by January 1, 2027.

As of the Petition Date, the balance on this obligation was \$140,360.72, with interest accruing at a rate of 5.55%. Upon information and belief, the balance on this obligation, as of September 12, 2016, according to CFC, is \$149,560.98.

Annual payments of \$17,153.86 will be made for eleven (11) years, with each payment being due on January 1 of each year, with interest accruing at a rate of 5.5%. A final installment of the unpaid principal balance and all accrued interest will be paid on January 1, 2027.

The Debtor may prepay this obligation without penalty and the Debtor anticipates that certain timber located on the Real Estate at Tax Map Parcel No. 10-01-11 may be sold in 2019, which timber is located on 40 +/- acres owned by the Trust. It is anticipated that the sale of the timber should result in gross proceeds of approximately \$61,000, and it is further anticipated that the sale will be handled by a forestry company, with an anticipated cost of commission to be paid of 5%, resulting in anticipated net proceeds of approximately \$57,940. The net sales proceeds from the sale of timber should result in this loan being paid off approximately 3 years earlier than the scheduled maturity date of January 1, 2027.

This class is Unimpaired and is not entitled to vote to accept or reject the Plan.

CFC will retain all liens and deeds of trust against the Real Estate until its secured claim, plus interest, is paid in full. Upon an uncured default, CFC may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

**6. Secured Claim of CFC (Residence/Equipment; Loan No. 6806)**

This claim is secured, in part, by the Residence, and by equipment, but such lien positions are subject to a first in favor of FSA. The deed of trusts in support of the obligations owed to CFC are subject to caps of \$175,000 and \$97,000, so that, after taking into account Loan No. 6805 and Loan No. 6808, secured by the Residence, this claim is secured up to \$45,322.68, as well as the Equipment, which has a value of \$667,118.00, without deducting amounts owed based upon PMSIs, to be best of the Debtor's knowledge and belief.

As of the Petition Date, the balance on this obligation was \$131,206.91, with interest accruing at a rate of 5.75%. However, this amount does not include a payment made of \$19,847.89, the source of which was a check received from Montague, made payable to the Debtor and CFC. As of September 12, 2016, the balance owed on this obligation is \$113,305.52.

CFC issues a patronage fund/stipend to certain of its customers and upon information and belief, such payment was issued on behalf of Mr. Carroll and Mrs. Carroll related to 2015, but which has not, to date, been applied. Upon information and belief, this payment will be applied to this obligation and it is believed to be \$9,122.95. Upon application, the balance owed on this obligation should be approximately \$108,305.52.

The Debtor proposes to repay this obligation by March 30, 2018, with one payment being made by year-end of 2016, the source of which is payments from the United States based upon his participating in the 2015 ARC/PLC program, which is anticipated to be received in October 2016 in the approximate amount of \$120,000 (the "ARC/PLC Payment"). The Debtor will retain \$45,000 of the ARC/PLC Payment to be used towards his farming operations and will pay the balance of the ARC/PLC Payment to CFC towards Loan No. 6806. The balance due to CFC, following the ARC/PLC Payment will be paid by March 30, 2018.

The Debtor may prepay this obligation without penalty.

This class is Impaired and entitled to vote to accept or reject the Plan.

CFC will retain all liens and deeds of trust against the Real Estate and personal property until its secured claim, plus interest, is paid in full. Upon an uncured default, CFC may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

#### **7. Secured Claim of CFC (Sprayer – Loan No. 6807)**

This class is secured by the Sprayer, which claim is evidenced, among other things, a fixed rate note dated May 5, 2014, with an original principal balance of \$135,946.61, which called for 4 annual installment payments of \$29,850.16 due on February 1 of each year through February 1, 2019. This obligation has interest accruing at a rate of 3.5% per annum.

As of the Petition Date, this obligation had a balance of \$84,008.89 and has a balance, as of September 12, 2016 of \$85,521.37. The value of the Sprayer is believed to be \$125,000.00.

The Debtor will continue to remit the annual installment payments of \$29,850.16, to be made on February 1, 2017 and February 1, 2018, with the final installment to be made on February 1, 2019, comprised of the unpaid principal balance due on this indebtedness.

The Debtor may prepay this obligation without penalty.

This class is Unimpaired and entitled to vote to accept or reject the Plan.

CFC will retain its lien against the Sprayer until this secured claim, plus interest, is paid in full. Upon an uncured default, CFC may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

**8. Secured Claim of CFC (Residence/Equipment; Loan No. 6808)**

This class is comprised of the obligation between the Debtor and CFC which was entered into on or about March 17, 2015 in the original principal amount of \$97,000 and is evidenced by, among other things, a fixed rate note dated March 17, 2015 and a credit line deed of trust, also dated March 17, 2015. This claim is secured by the Residence. The fixed rate note calls for 119 fixed monthly payments of \$1,025.04 beginning on May 1, 2015 and continuing every month until the final installment of the unpaid principal balance and all accrued interest is paid on April 1, 2025.

As of the Petition Date, the balance on this obligation was \$90,199.26, with interest accruing at a rate 4.875%. As of September 12, 2016, the balance on this claim is \$86,316.60.

The Debtor proposes to continue to make monthly payments as contemplated in the fixed rate note associated with this obligation.

The Debtor may prepay this obligation without penalty.

This class is Unimpaired and is not entitled to vote to accept or reject the Plan.

CFC will retain all liens and deeds of trust against the Real Estate and personal property until its secured claim, plus interest, is paid in full. Upon an uncured default, CFC may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

**9. Secured Claim of CFC (Kinze – Loan No. 6809)**

This class is secured by the Kinze, which claim is evidenced, among other things, a fixed rate note dated June 12, 2012, with an original principal balance of \$66,000.00, which called for 4 annual installment payments of \$29,850.16 due on February 1 of each year through February 1, 2019. This obligation has interest accruing at a rate of 2.468% per annum.

Upon information and belief, as of the Petition Date, this obligation had a balance of \$27,421.73, plus any attorney's fees and costs owed associated with this obligation. The value of the Sprayer, as of the Petition Date was believed to be \$45,000.00 and has a current value of \$45,000.00 – the proof of claim by CFC says \$66,000).

The Debtor will continue to remit \$14,000 by June 12, 2017 and by or on June 12, 2018 will make a final installment payment of the unpaid principal balance and all accrued fees and costs, as well as interest.

The Debtor may prepay this obligation without penalty.

This class is Unimpaired and is not entitled to vote to accept or reject the Plan.

CFC will its lien against the Kinze until this secured claim, plus interest, is paid in full. Upon an uncured default, CFC may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

#### **10. Secured Claim of John Deere**

This class is comprised of all claims in favor of John Deere, which are represented by Claims No. 7, 9 and 10, all of which are secured by collateral in the possession of the Debtor, which purchases were financed by John Deere and are evidenced by PMSIs. The collateral includes a 9660 STS Combine and a 630 30FT Flexible Platform. The total value of this equipment is believed to be \$105,000 (\$90,000 for the 9660 STS Combine and \$15,000 for the 630 30FT Flexible platform).

As of the date of this Plan, the parties have agreed to settle the obligations owed to John Deere for the total amount of \$84,000, which includes the outstanding balance, accrued and accruing interest, fees (including attorney's fees) and costs, with interest to accrue at a rate of 4.5%, to be paid over a period of three (3) years, made in semi-annual payments of \$15,051.38 to be paid by each January 15 and July 15, beginning in July of 2017 and maturing on July 15, 2019.

This class is Impaired and is entitled to vote in favor or against confirmation of the Plan.

John Deere will retain its lien against the personal property identified above until its secured claim, plus interest, is paid in full. Upon an uncured default, John Deere may pursue its remedies without seeking relief from the Court and notwithstanding any injunction provision in the plan.

#### **11. Secured Claim of Ally**

This class is comprised of the claim owed to Alley, related to the financed purchase of the Suburban. As of the Petition Date, the Debtor and his non-filing spouse owed Ally a total of \$12,841.89. The Suburban, which is the collateral for this claim, had a value, as of the Petition Date, of \$17,451.00. This obligation accrues interest at a rate of 3.99% and calls for monthly payments of \$664.69 until the balance is paid in full. The non-filing spouse of the Debtor will make all payments owed to Ally, which are anticipated to be satisfied by December of 2017, at which point this obligation will be satisfied in full.

This class is Unimpaired and is not entitled to vote in favor or against confirmation of the Plan.

#### **12. Secured Claim of Northland**

This class is comprised of the claim of Northland, related to a lease entered into by the Debtor with Northland, for the use of, and later purchase of, the Walinga. As of the Petition Date, the Debtor owed Northland \$7,795.78, and the Walinga had a value of

\$23,218.00. The original agreement between Northland and the Debtor required the Debtor to remit five (5) annual payments of \$5,092.07 to rent the Walinga from Northland, to be paid in February of each year, beginning in February of 2012, plus one payment of \$2,321.80 at the end of the lease term, in order to purchase the Walinga.

As of the Petition Date, the Debtor was behind on one annual payment, which came due in February of 2016. With the approval of the Bankruptcy Court, the Debtor began remitting monthly payments of \$457.00 beginning on July 15, 2016, and continuing every month by the 15<sup>th</sup> until the past due amount of \$5,473.98 is paid. The Debtor proposes to continue with the monthly payments of \$457.00 through January of 2017 and to remit one payment of \$2,321.80 by February 28, 2017, which represents the payment to purchase the Walinga from Northland.

This class is Impaired and is entitled to vote in favor or against confirmation of the Plan.

### **13. Secured Claim of TD**

This class is comprised of the claim of TD, related to the financed purchase of the Mower from TD. As of the Petition Date, the Debtor owed TD \$9,092.56, and the Mower had a value of \$9,000. The contract between TD and the Debtor required the Debtor to remit sixty (60) monthly payments of \$182.17, which payments included an annual interest rate of 2.37%, with the payments scheduled to begin July of 2015.

The Debtor proposes to continue to remit the monthly payments of \$182.17 until the balance owed to TD is paid in full.

This class is Impaired and is entitled to vote in favor or against confirmation of the Plan.

### **14. General Unsecured Claims**

General unsecured claims are not secured by property of the Estate and are not entitled to priority treatment under § 507(a). This class is designated as Class 14 and is Impaired and entitled to vote as to Confirmation. Holders of Unsecured Claims, as identified in the Plan, are scheduled by the Debtor as unsecured creditors or filed a proof of claim, reflecting an unsecured claim against the Estate. If an unsecured creditor files a proof of claim, and the amount listed differs from the amount listed in the Debtor's schedules, and it does not object to the claim, the amount listed in the proof of claim shall govern.

The total balance owed to Unsecured Creditors, as of the Petition Date, was \$767,425.06, not including the Disputed Claims. These claims are not entitled to any interest. All payments contemplated herein will be made on a pro-rata basis and payments will be remitted on a quarterly basis, beginning in year 1 of the Plan (with three quarterly payments in the first year) and going through the end of the term of Plan, with quarterly payments beginning in April of 2017. The months of the quarterly



payments during Years 2 – 7 will be January, April, July and October of each year, excluding the first year of the Plan. The payments will be as follows:

<b><u>Date</u></b>	<b><u>Amount of quarterly payments</u></b>
April 2017, July 2017, October 2017	\$20,981.51
January 2018, April 2018, July 2018, October 2018	\$7,567.11
January 2019, April 2019, July 2019, October 2019	\$23,463.74
January 2020, April 2020, July 2020, October 2020	\$31,625.77
January 2021, April 2021, July 2021, October 2021	\$31,626.02
January 2022, April 2022, July 2022, October 2022	\$31,626.02
January 2023, April 2023, July 2023, October 2023	\$31,626.01

The total amount to be paid to Class 14 is \$693,083.20, which represents 90.3% payout to holders of claims that make up this Class 14. Excluded from this calculation are the two disputed debts, one with Time to Harvest, LLC and the other with Dawn to Dusk, LLC.

This class is Impaired and entitled to vote.

#### **D. Executory Contracts and Unexpired Leases**

In accordance with § 1123(a)(5), the Debtor assumes the two executory contracts he was a party to as of the Petition Date, both of which are with Montague Farms, Inc. Accordingly, there should be no unsecured claim based upon damages from any rejection of either of the contracts with Montague Farms, Inc.

#### **E. Property Interests of the Debtor**

In the event that confirmation of the Plan is sought pursuant to § 1129(b) of the Bankruptcy Code, then all interests of the Debtor shall remain property of the estate until the sooner of (a) the discharge of the Debtor upon this Court's entry of an Order Granting the Discharge Motion or (b) satisfaction of claims contained in Class 14 as provided therein. If the Debtor has not been discharged and all claims contained in Class 14 have not been satisfied as contemplated in this Statement and Plan on or before the 8<sup>th</sup> anniversary of the Effective Date, then the Debtor will sell, to the extent necessary, Personal Property up to the amounts needed to satisfy the balance owed to the members of Class 14 until such claims are satisfied as provided herein and in the Plan.

In addition, the Debtor will receive contributions, which are new value, from his non-filing spouse, in the annual amount of \$12,000 for seven (7) years, which shall not only provide for the retention of the Personal Property, and any other property owned by the Debtor, but also provide for distributions to the Debtor's creditors, including those holding Class 14 claims. This new value is identified in the Debtor's proposed budget, attached hereto as **Exhibit C**.

## **F. Tax Consequences of the Plan**

### **CREDITORS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.**

#### **1. General**

A description of certain United States federal income tax consequences of the Plan is provided below, based upon, among other things, the Internal Revenue Code and Treasury Regulations issued thereunder as of the date of this Disclosure Statement. Changes in these authorities or their interpretation could alter the United States federal income tax consequences of the Plan in a material way. The Debtor has not independently determined the tax consequences of the Plan to holders of Claims, and has not requested any ruling from the IRS or any other taxing authority with respect to such matters. The income tax consequences of the Plan on any particular holder of a Claim may be affected by matters not discussed in this Statement. In addition, this Statement does not discuss state, local or non-U.S. tax consequences.

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. Thus, no assurance can be given as to the interpretation that the IRS will adopt. **EACH HOLDER OF A CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISORS FOR FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES UNDER THE PLAN.**

#### **2. United States Federal Tax Consequences of Payment of Allowed Claims**

The United States federal income tax consequences to the holders of Allowed Claims under the Plan will depend upon, among other things, the consideration received by the Claimant, whether the Claimant reports income on the accrual or cash method, whether the holder receives Distributions under the Plan in more than one taxable year, and whether the holder has taken a bad debt deduction with respect to its Claim.

Typically, a Claimant should recognize a gain or loss equal to the amount realized under the Plan as to each Claim less the Claimant's basis in the Claim. Any gain or loss may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Claim and Claimant, and the length of time the Claimant held the Claim. If the Claimant realizes a capital loss, its deduction of loss may be limited. A Claimant who receives an amount less than the Claimant's tax basis in the Claim may be entitled to a bad debt deduction in some amount under § 166(a) of the Internal Revenue Code. The applicability of such deduction is fact-specific. Claimants are urged to consult their tax advisors as to their ability to take such a deduction.

### **3. Professional Tax Assistance Recommended**

The foregoing discussion is intended only as a summary of certain United States federal income tax consequences of the Plan and is for informational purposes only. This Statement does not provide any tax advice and the tax consequences for each Claimant may vary depending upon the Claimant's particular circumstances. Accordingly, Claimants are urged to seek advice from their tax advisors regarding all tax consequences of the Plan.

### **IV. Confirmation Requirements and Procedures**

To be confirmable, the Plan must meet the requirements listed in § 1129(a) or (b) of the Bankruptcy Code. These include the requirements that: (a) the Plan be proposed in good faith; (b) at least one impaired class of claims accepts the Plan, without counting votes of insiders; (c) 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 (e) the Plan is feasible. These requirements are not the only requirements listed in §1129, and they are not the only requirements for Confirmation.

The Bankruptcy Code requires the Court, after notice, to hold a hearing to determine whether a plan of reorganization should be confirmed. A hearing on Confirmation of the Plan will be scheduled and notice will be circulated in accordance with the Bankruptcy Code and Rules. The hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the hearing.

All objections to Confirmation of the Plan will be heard at the Confirmation Hearing. Any objection to Confirmation of the Plan must be made in writing, filed with the Bankruptcy Court and served on the following parties not later than seven days before the Confirmation Hearing:

Kelly M. Barnhart  
Roussos, Glanzer & Barnhart, PLC  
580 E. Main St., Ste. 300  
Norfolk, VA 23510

Office of the United States Trustee  
Federal Building, Room 625  
200 Granby Street  
Norfolk, VA 23510

Objections to Confirmation of the Plan are governed by Rule 9014.

**UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY FILED AND SERVED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

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

Any party in interest may object to Confirmation if the party believes that any requirement has not been 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 are Impaired and 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 listed the claim in his schedules, unless the claim has been listed 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 a hearing, either overrules the objection or allows the claim for voting purposes under Rule 3018(a).

The deadline for filing a proof of claim in this case, for all creditors, except governmental units was July 5, 2016. The deadline for filing a proof of claim in this case for all governmental units was September 6, 2016.

### **2. What is an Impaired Claim?**

As noted above, the holder of an Allowed Claim has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124, a class is considered impaired if the Plan alters the legal, equitable or contractual rights of 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”, unless they have been “allowed” for voting purposes;
- Holders of claims in unimpaired classes;
- Holders of claims entitled to priority status pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code;
- Holders of claims in classes that do not receive or retain any value under the Plan; and
- Administrative expenses.

#### **4. Who May Vote in More than One Class?**

A creditor with a Claim that is 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 the Plan**

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, as discussed below in Section B.2.

##### **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 Non-Accepting Class(es)**

Even if one or more Impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by § 1129(b). A plan that binds non-accepting classes is commonly referred to as a “cram down” plan. The Bankruptcy Code allows the Plan to bind non-accepting classes of claims if it meets the requirements for consensual confirmation except the voting requirements of § 1129(a)(8), 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 attorneys to see if a “cram-down” confirmation will affect your claim, as the variations on this general rule are numerous and complex.**

#### **C. Liquidation Analysis & Disposable Income Test**

The Debtor is proposing to pay approximately 90.3% to the holders of Allowed Unsecured Claims. In a chapter 7, the holders of Allowed Unsecured Claims would receive approximately 33.36%. Unsecured Creditors are receiving more than they would in a chapter 7 bankruptcy case and accordingly it is the contention of the Debtor that liquidation is satisfied. A copy of the Liquidation Analysis is attached hereto as **Exhibit B**.

It is the contention of the Debtor that he is providing at least as much as his projected disposable income to be received during the five-year period beginning on the date that the first payment is due under the Plan. A copy of the Debtor’s budget for the

life of the Plan is attached hereto as **Exhibit C**. As evidenced by Exhibit C, the Debtor's projected disposable income, after considering the Debtor's current income and reasonably necessary expenditures, for the first five years of the plan equals \$440,868.88 and the Debtor is proposing to pay \$696,121.72 over the life of the Plan. Thus, even if an unsecured creditor were to object to confirmation of the Plan, the Debtor satisfies § 1129(a)(15), given that although the Debtor is not proposing to repay the unsecured claims in full, the value of the property to be distributed under the Plan is not less than the projected disposable income of the Debtor.

#### **D. Feasibility**

The Court must find that Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, unless such liquidation or reorganization is proposed in the Plan. The Debtor contends that the Plan is feasible.

##### **1. Ability to Fund the Plan**

The Debtor believes that he will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses require to be paid on that date.

##### **2. Ability to Make Future Plan Payments**

The Debtor must also demonstrate that he will have enough cash over the life of the Plan to make the required Plan payments. Accordingly, the Debtor has provided projected financial information, in **Exhibit C** to this Statement.

**You should consult with your accountant or other financial advisor if you have any questions regarding these projections.**

#### **V. Voting Procedures and Requirements**

##### **A. Confirmation Through Voting**

As stated above, the Court will confirm the Plan only if the requirements of § 1129 are satisfied. One of the requirements is that either: (1) each class of Impaired claims has voted to accept the Plan; or (2) if at least one class of Impaired claims has voted to accept the Plan, the Plan does not discriminate unfairly and is fair and equitable to non-accepting classes.

##### **B. Ballots**

Creditors entitled to vote will receive Ballots on which to record their acceptances or rejections of the Plan. You must complete your Ballot and return it to counsel for the Debtor, who will tally the votes and report the results to the Court at the Confirmation Hearing of the Plan. Please complete the Ballot sent to your with this Disclosure Statement, sign the original, and return it to counsel for the Debtor.

### **C. Effects of Failure to Vote**

If you are entitled to vote and do not, the Ballots will be tallied as though you do not exist. **IF NO CREDITORS IN A CLASS VOTE, THE CLASS WILL BE DEEMED TO ACCEPT THE PLAN<sup>1</sup>.**

## **VI. Effect of Confirmation of the Plan**

### **A. Discharge of the Debtor**

Pursuant to § 1141(d)(5), the Debtor will not be discharged of his debts until the Court grants a discharge on completion of all payments proposed under the Plan, unless the Court, after notice and a hearing, grants a discharge to the Debtor before he has completed the Plan payments. The Debtor intends to file a motion with this Court seeking a discharge prior to the completion of all payments due under the Plan, once he has made all payments due to Class 14.

The Debtor may seek to have his case closed early, with leave to reopen the case, and seek the entry of a discharge, upon completion of the payments due to the creditors in Class 14. If he determines to pursue this course of action, he will file a Motion to Close Case Early, with notice of this motion being provided to the appropriate parties in interest, affording these parties the opportunity to object to the relief requested. For additional information regarding this matter, please see Section VI.D. below.

### **B. Modification of Plan/Withdrawal of Plan**

The Debtor may modify the Plan at any time prior to Confirmation. However, the Court may require a new disclosure statement and/or re-voting on the Plan. The Debtor may also seek to modify the Plan at any time after Confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

The Debtor may revoke or withdraw the Plan before the Confirmation Date. If the Plan is revoked or withdrawn prior to Confirmation, the Plan shall be of no force or effect, and shall be deemed null and void. If the Plan is revoked or withdrawn prior to Confirmation, nothing contained herein shall in any way effect or prejudice the rights of the Debtor with regard to the Claims, or any other rights or interests.

### **C. Final Decree**

Once the estate has been fully administered, as provided for in Rule 3022, the Debtor, or such party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court may enter such final decree on its own motion.

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<sup>1</sup> See, e.g., *In re Adelphia Comm. Corp.*, 368 B.R. 140 (Bankr. S.D.N.Y. 2007); *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988); *In re Northeast LA Telephone Co., Inc.*, 2006 Bankr. LEXIS 2589 (Bankr. W.D. LA 2006); *In re Cypresswood Land Partners, I*, 409 B.R. 396 (Bankr. S.D.N.Y. 2009).

#### **D. Closing of Case**

Following confirmation and the Confirmation Order becoming final, the Debtor may file a motion, pursuant to § 350 and Rule 3022, seeking closure of his case, subject to reopening, even if the Debtor has not completed the payments called for herein and prior to the Debtor receiving a discharge. If the Debtor files such a motion, and the Court grants the motion, then upon completion of the payments as proposed for Class 25 Creditors, the Debtor shall file a motion to reopen the Case so that he may file the Discharge Motion. The reason the Debtor wishes to have the Case closed is so that he may minimize expenses by eliminating the quarterly fees that are required to be paid to the U.S. Trustee.

#### **VII. Conclusion**

The Debtor believes that the Plan is in the best interest of all creditors and urges holders of Impaired Claims to vote to accept the Plan and to return their Ballots with all due speed.

Respectfully submitted,

/s/James Brian Carroll