

1 JOHN D. MUNDING
2 MUNDING, P.S.
3 1610 W. Riverside Ave.
4 (509) 624-6464
5 John@mundinglaw.com

The Honorable Frederick Corbit

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9 *Attorney for Debtor-in-Possession*

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

Case No. 16-00643-FPC11

Jeannie Kile

Chapter 11

Debtor.

**AMENDED DISCLOSURE
STATEMENT TO ACCOMPANY
DEBTOR'S AMENDED PLAN OF
REORGANIZATION**

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**AMENDED DISCLOSURE STATEMENT TO ACCOMPANY DEBTOR'S
AMENDED PLAN OF REORGANIZATION**

Amended Disclosure Statement- 1

MUNDING, P.S.
1610 W. RIVERSIDE AVE.
SPOKANE, WA 99201
(509) 624-6464

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Amended Disclosure Statement- 8

1 **I. OVERVIEW, IDENTIFICATION OF PROPOSER, AND SUMMARY.**

2 Jeannie L. Kile, an individual debtor and debtor-in-possession in the above
3 captioned case (“Kile” or “Debtor”), submits this Amended Disclosure Statement to
4 Accompany the Debtor’s Amended Plan of Reorganization (this “Disclosure
5 Statement”), which describes the Debtor’s Amended Plan of Reorganization (the
6 “Plan”) filed contemporaneously herewith. The Amended Disclosure Statement has
7 been approved by the Court pursuant to Order entered on September 9, 2016. (ECF. No.
8 75). The Debtor is the proponent of the Plan. A copy of the Plan will be served together
9 with this Disclosure Statement. Capitalized terms in this Disclosure Statement not
10 otherwise defined herein have the meanings given to them in the Plan, the Bankruptcy
11 Code, the Federal Rules of Bankruptcy Procedure, and the local rules.
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16 The Plan and Disclosure Statement are submitted pursuant to Chapter 11 of Title
17 11, United States Code, codified at 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”).
18 The Debtor submits this Disclosure Statement to all of her Creditors in order to comply
19 with provisions of the Bankruptcy Code requiring the submission of information
20 necessary to enable Creditors to arrive at an informed decision in exercising their right
21 to vote for acceptance or rejection of the Plan.
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24 This Plan is a Plan of Reorganization. The Debtor intends to pay each Holder of
25 an Allowed Claim in full, with interest. The Plan will be funded by money held on
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1 deposit, sale of real property, sale of equipment, vehicles, and grain. The Plan also
2 provides for the contingency of additional financing to fund the Plan should the need
3 arise. The Farm Property is valued at \$824,000. The Farm Property has sufficient
4 equity to support financing and complete Plan Funding if necessary. The continued
5 litigation as referenced in this Disclosure Statement under the Debtor's direction, will
6 add significant value and benefit to the Estate by way of resolution of claims, possible
7 claim reduction or elimination, and even potential recovery for the benefit of the Estate.
8 The Debtor anticipates it will take approximately twenty-four (24) to thirty-six (36)
9 months to consummate the Plan.

10

11

12

II. PLAN AND CODE PROVISIONS FOR VOTING.

13

14 **A. Relationship of Disclosure Statement to the Plan**

15 This Disclosure Statement provides relevant information about the Debtor, her
16 financial condition, and the Plan. This Disclosure Statement contains a detailed
17 discussion of the Plan and its implementation; however, the discussion of the Plan in
18 this Disclosure Statement is only a summary of the Plan and should be read in
19 conjunction with the Plan itself, which is a legal document and which, upon
20 Confirmation, will become binding upon the parties. Accordingly, this Disclosure
21 Statement is qualified by the Plan. If there is any inconsistency between the Plan and
22 this Disclosure Statement, the Plan is controlling.

1 The Debtor urges Creditors to consult with independent counsel in evaluating the
2 Plan and deciding whether to accept or reject the Plan.

3 As used herein:

4

- 5 • “Claim” means any right to payment from the Debtor, whether or
6 not such right is reduced to judgment, liquidated, unliquidated, fixed,
7 contingent, matured, unmatured, disputed, undisputed, legal,
8 equitable, secured, unsecured, or any other right to an equitable
9 remedy for breach of performance if such breach gives rise to a right
10 to payment from Debtor, whether or not such right is reduced to
11 judgment, liquidated, unliquidated, fixed, contingent, matured,
12 unmatured, disputed, undisputed, legal, equitable, secured,
13 unsecured, arising by virtue of the rejection of an Executory
14 Contract under the Plan, or otherwise. The term “Claim” includes
15 all “claims” as defined in section 101(5) of the Bankruptcy Code.
- 16 • “Creditor” means every holder of a Claim (whether or not such
17 Claim is or becomes an Allowed Claim) and includes all “creditors”
18 as defined in section 101 (10) of the Bankruptcy Code.

19 Your Claim will be assigned to a Class of Claims, and the treatment of each Class
20 is set forth in this Disclosure Statement and in the Plan. The Debtor has used her best
21 efforts to comply with 11 U.S.C. § 1129 for this treatment. The only representations
22 the Debtor is authorized to make concerning the value of her assets or potential
23 distributions are contained in this Disclosure Statement.

24 **B. Voting and Confirmation Procedures**

25 Accompanying this Disclosure Statement are copies of the following documents:
26 (1) the Plan; (2) a Notice to Voting Classes; and (3) an applicable Ballot. This
Disclosure Statement, the form of Ballot, and the related materials delivered together

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1 herewith (collectively, the “Solicitation Package”), are being furnished to Holders of
2 Claims for the purposes of soliciting votes on the Plan. If you did not receive a Ballot
3 in your Solicitation Package, and believe that you should have received a Ballot, please
4 contact John D. Munding at Munding, P.S., 1610 W. Riverside Avenue, Spokane,
5 Washington 99201; or by telephone at (509) 624-6464, or by e-mail at
6 John@Mundinglaw.com.
7

8 1. Who May Vote

9 Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims that
10 (i) are “Impaired” and (ii) are not deemed, as a matter of law, to have rejected a plan of
11 organization under section 1126(g) of the Bankruptcy Code are entitled to vote to accept
12 or reject the Plan. Under section 1126(g) of the Bankruptcy Code, Classes which are
13 to receive nothing under the Plan are deemed to reject it. Any class that is “Unimpaired”
14 is not entitled to vote to accept or reject the Plan and is conclusively presumed to have
15 accepted the Plan. As set forth in section 1124 of the Bankruptcy Code, a Class is
16 “Impaired” if legal, equitable, or contractual rights attaching to the Claims or Interests
17 of that Class are modified or altered. For purposes of the Plan only, holders of impaired
18 Claims are entitled to vote on the Plan.
19

20 A Claim must be “Allowed” for purposes of voting in order for the creditor
21 holding such Claim to have the right to vote. Generally, for voting purposes, a Claim
22

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1 is deemed Allowed absent an objection to the Claim if (i) a Proof of Claim was timely
2 filed, or (ii) if no Proof of Claim was filed, but the Claim is identified in the Debtor's
3 Schedules as other than "disputed," "contingent," or "unliquidated," and an amount of
4 the Claim is specified in the Schedules, in which case the Claim will be deemed
5 Allowed for the specified amount for voting purposes. When an objection to a Claim
6 is filed, the creditor holding the Claim cannot vote unless the Court, after notice and
7 hearing, overrules the objection or allows the Claim for voting purpose. The Debtor
8 reserves the right, through the Claim reconciliation process, to object to, or seek to
9 disallow, any Claim for distribution under the Plan, including Claims that are expressly
10 Allowed in the Plan.

11

12

13 2. Voting Instructions and Voting Deadline

14

15 All votes to accept or reject the Plan must be cast by using the Ballot enclosed
16 with this Disclosure Statement. No votes other than ones using such Ballots will be
17 counted, except to the extent the Court orders otherwise. After carefully reviewing the
18 Plan and this Disclosure Statement, including any exhibits, please indicate your
19 acceptance or rejection of the Plan on the Ballot and return such Ballot in the enclosed
20 envelope by the deadline set forth in the Notice served herewith to:

21

22

23

24

25

26

United States Bankruptcy Court for the
Eastern District of Washington
904 W. Riverside Ave., Ste. 304
Spokane, WA 99201

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1 With a copy to the undersigned counsel at:

2 John D. Munding
3 Munding, P.S.
4 1610 W. Riverside Ave.
5 Spokane, WA 99201

6 Ballots must be completed and received by the date specified in the Notice served
7 with the Solicitation Package (the “Voting Deadline”). Any Ballot that is not executed
8 by a duly authorized person shall not be counted. Any Ballot that is executed by the
9 Holder of an Allowed Claim, but that does not indicate an acceptance or rejection of the
10 Plan will be deemed to have accepted the Plan.

11 3. Whom to Contact for More Information

12 If you wish to obtain additional copies of the Plan, Disclosure Statement, or
13 exhibits, at your own expense, unless otherwise specifically required by Bankruptcy
14 Rule 3017(d), please contact John D. Munding at Munding, P.S., 1610 W. Riverside
15 Avenue, Spokane, Washington 99201, or by telephone at (509) 624-6464, or by e-mail
16 at John@Mundinglaw.com.

17 4. Acceptance or Rejection of the Plan

18 The Bankruptcy Code defines “acceptance” of a plan by a Class of Claims as
19 acceptance by Holders of Impaired Claims holding at least two-thirds (2/3) in dollar
20 amount and more than one-half (1/2) in number of the Allowed Claims in that Class
21 that cast Ballots for acceptance or rejection of the Plan. The Code further defines
22

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1 “acceptance” of the Plan by a Class of Interests as acceptance by holders of at least two-
2 thirds (2/3) in dollar amount of the Allowed Interests in that Class that cast Ballots for
3 acceptance or rejection of the Plan. Assuming that at least one Impaired Class votes to
4 accept the Plan, the Plan proponent will seek to confirm the Plan under section 1129(b)
5 of the Bankruptcy Code, which permits the Confirmation of a plan of reorganization,
6 notwithstanding the non-acceptance by one (1) or more Impaired Classes of Claims.
7
8 Under section 1129(b) of the Bankruptcy Code, the Plan may be confirmed if (i) the
9 Plan has been accepted by at least one (1) Impaired Class of Claims that is entitled to
10 vote, and (ii) the Court determines that the Plan does not discriminate unfairly and is
11 “fair and equitable” with respect to the non-accepting Classes.
12
13

14 5. Time and Place of the Confirmation Hearing
15

16 Section 1128(a) of the Bankruptcy Code requires the Court, after notice, to hold
17 a Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides that any
18 party-in-interest may object to confirmation of the Plan. Pursuant to section 1128 of
19 the Bankruptcy Code and Bankruptcy Rule 3017(c), the Court has scheduled the
20 Confirmation Hearing to commence before the Honorable Frederick P. Corbit on
21 December 7, 2016 at 2:30 p.m., at the United States Bankruptcy Court for the Eastern
22 District of Washington, 904 West Riverside Avenue, Spokane, Washington. The
23 Confirmation Hearing may be adjourned from time to time by the Court or the Plan
24
25

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1 proponent without further notice.

2 6. Objections to the Plan

3 Any objection to Confirmation of the Plan must be in writing, must comply with
4 the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of the Court, **must be**
5 **filed with the Court on or before November 28, 2016**, and must be served as
6 described in the Notice served herewith.
7

8 **C. Representations Limited**

9 No representations concerning the Debtor, particularly regarding future
10 operations or the value of the Debtor's assets, have been authorized by the Debtor
11 except as set forth in this Disclosure Statement. You should not rely on any other
12 representations or inducements proffered to secure your acceptance or rejection of the
13 Plan.
14

15 While every effort has been made to provide the most accurate information
16 available, the Debtor is unable to warrant or represent that all information is without
17 inaccuracy, although no known inaccuracies are present in this Disclosure Statement or
18 the Plan. Further, some of the information contained herein consists of projections of
19 future performance in an uncertain economic climate. While every effort has been made
20 to ensure that the assumptions are valid and the projections are as accurate as possible,
21 under the circumstances, the Debtor does not undertake to certify or warrant the
22
23
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25
26

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1 absolute accuracy of the projections and other information contained herein.

2 The Court's approval of the Disclosure Statement does not imply that the Court
3 endorses or approves of the Plan, but only that, if the information is accurate, it is
4 sufficient to provide adequate information for Creditors to make an informed decision
5 to approve or reject the Plan.

6

7 **III. THE DEBTOR**

8

9 **A. History of the Debtor**

10 The Debtor is a long time resident of Spokane County, Washington. Jeannie
11 Kile has been and continues to be employed as an insurance representative by a
12 national insurance company.

14 In addition to being employed in the insurance industry, Jeannie Kile is also
15 actively involved in farming, primarily dryland wheat farming in the "Palouse"
16 Whitman County, Washington. Jeannie Kile owns approximately 317 acres of farm
17 land in Whitman County. Presently, Ms. Kile is not the operator of the farm, but
18 instead farms the ground through a traditional 1/3 – 2/3 share crop arrangement.
19 Present farming operations are not a significant source of revenue due to expenses and
20 yield. In addition to the Farm Property, the Debtor owns a Rental Property located at
21 5816 N. Lincoln St., Spokane, Washington 99210. This Rental Property is also not a
22 significant source of income.

26

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1. Death of Her Father – Lester J. Kile

2 The Debtor was one of four children of Lester J. Kile. The Last Will and
3 Testament of Lester J. Kile (“the Will”), which was executed on March 4, 2010,
4 provides in part:

5 E. I give, devise, and bequeath to Jeannie Kile, as Trustee
6 in trust, all of my interest in Kile Farms, Inc., including any
7 real property included in the assets of that corporation, and any
8 real property and personal property held in my name that is
9 leased or managed, or otherwise utilized by Kile Farms, Inc.
10 (all of which together is referred to below as “the Farm”).

11 The Trustee shall manage the Farm pursuant to common
12 practices of farming, making arrangements or contracts for
13 appropriate payment to persons responsible for farming
14 activity, including persons related to the Trustee. It is my
15 desire that this property be held in trust as long as there are
16 family members willing and able to farm or manage the farming
17 the activity.

18 The income from the trust, after the payment of expenses,
19 including reasonable reserves for taxes, insurance, equipment
20 and improvement needs, and a reasonable period of operating
21 costs shall be distributed on a periodic basis, but at least
22 annually to Jeannie Kile. If however, Cody Kendall operates
23 the farm at any time herein, then he shall be entitled to two-
24 thirds of such income and Jeannie Kile shall be entitled to one-
25 third.

26 (Will of Lester J. Kile, March 4, 2010).

27 During the period of 1988 until 2013, Jeannie Kile operated her Father’s Farm.
28
29 Lester Kile died on May 30, 2012. Pursuant to the terms and conditions of the Will,
30
31 Jeannie Kile continued to operate Kile Farms as Personal Representative of Lester

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1 Kile's Estate and Trustee of the Kile Farm Trust. On April 13, 2015, Jeannie Kile was
2 removed as Personal Representative of Lester Kile's Estate and Trustee of the Kile
3 Farm Trust by the Superior Court as described in greater detail in the section below.
4

5 2. Dissolution of Marriage

6 Jeannie Kile was previously married to Gordon Kendall. On December 13,
7 2011, Jeannie Kile filed for dissolution from Gordon Kendall under Spokane County
8 Superior Court Case No. 11-3-02969-5. Gordon Kendall at the time was performing
9 farm work and services for Kile Farms. The dissolution action was concluded on
10 February 2, 2013, and subsequently appealed by Gordon Kendall. On May 28, 2015,
11 the Court of Appeals remanded the case to the Superior Court.
12

13 The Debtor, prior to filing Chapter 11 had successfully managed her financial
14 affairs, including farming operations. She was able to accumulate significant savings,
15 real property holdings, and successfully manage farming operations at a profit.
16

17 B. **Management of the Debtor**

18 The Debtor is an individual in this Chapter 11 proceeding. The Debtor
19 manages her financial affairs, including living expenses, on a daily basis, as reflected
20 in historical operating reports associated with this case.
21

1 **C. Factors Precipitating Chapter 11**

2 1. Litigation re: Estate of Lester Kile

3 On February 21, 2013, Cody Kendall, the Debtor's adult son, filed a petition in
4 Spokane County Superior Court under TEDRA. An amended petition was filed on May
5 6, 2013. The amended petition sought, among other things, a declaration of the intent
6 of Lester Kile under the Will, the removal of Jeannie Kile as Personal Representative,
7 and the removal of Jeannie Kile as Trustee. The litigation was contested and proceeded
8 to trial on matters on March 2-4, 2015. On April 13, 2015 the Probate Court entered
9 Findings of Facts and Conclusion of Law. On May 21, 2015, the Probate Court entered
10 Judgment. Subsequently, the Court awarded attorney fees and costs totaling
11 \$178,602.40, and damages of \$340,928 against Jeannie Kile. Cody Kendall, through
12 counsel, immediately commenced collection actions on his judgments. Jeannie Kile
13 appealed both judgments, but was unable to post bond during the pendency of her
14 appeal. To preserve assets for the benefit of all creditors pending the appeal, she filed
15 the Chapter 11 proceeding.

21 2. Dissolution Action

22 The remand of the Dissolution Action to the Superior Court was centered around
23 property distribution. According to the Proof of Claim filed in this proceeding by
24 Gordon Kendall, he is seeking a reallocation of assets from Jeannie Kile in the amount
25
26

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1 of \$306,977.00. The pending Dissolution Action impeded Jeannie Kile's ability to
2 obtain a supersedes bond as related to the Appeal of the adverse judgments in the
3 probate case described above.
4

5 3. Legal Fees

6 As a direct result of the defense of both the litigation involving the Estate of
7 Lester Kile and the Dissolution Action, Jeannie Kile incurred substantial legal fees. The
8 legal fees, in part, contributed to the decision to seek bankruptcy protection.
9

10 4. Post-Petition Events

11 The following events and/or relief have been sought or granted post-petition:
12

- 13 • March 3, 2016 – Voluntary Petition Filed (ECF No. 1);
- 14 • March 3, 2016 – Notice of Appearance and Request for Notices by
15 Delian Deltchev of Ewing Anderson, P.S., on behalf of Cody Kendall
16 (ECF No. 2);
- 17 • March 4, 2016 – First Meeting of Creditors scheduled for April 8, 2016
18 (ECF No. 3);
- 19 • March 17, 2016 – Order Approving Application of Agreed Scheduling
20 Order uploaded by U.S. Trustee (ECF No. 11);
- 21 • March 21, 2016 – Order Granting Motion for Approval of Agreed
22 Scheduling Order (ECF No. 13);
- 23 • March 28, 2016 – Notice of Appearance and Request for Notices of
24 David Eash of Ewing Anderson P.S., on behalf of Cody Kendall (ECF
25 No. 21);
- 26 • May 23, 2016 – Order Granting Application to Approve Employment
 of John D. Munding as Attorney for Debtor-in-Possession (ECF No.
 40);
- 27 • May 23, 2016 – Order Granting Application to Approve Employment
 of Daniel Johnson as Accountant for Debtor (ECF No. 41);
- 28 • June 6, 2016 – Adversary Proceeding filed by Cody Kendall, case No.
 16-80044 (ECF No. 44);

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1

- June 16, 2016 – Order Granting Application for Employment of Joseph
- 2 Brown as Special Counsel for Debtor (ECF No. 51); and
- 3 • June 16, 2016 – Order Granting Application for Employment of Martin
- Salinas as Special Counsel for Debtor (ECF No. 52).

4 The Debtor anticipates relatively few other post-petition motions or events during
5 the remaining course of this Chapter 11 proceeding.
6

7 **IV. SUMMARY OF THE DEBTOR'S FINANCIAL STATUS**

8 The Debtor's financial status is summarized as follows:

9
10 **A. Operations**

11 The Debtor continues to operate its business affairs and is compliant with U.S.
12 Trustee Reporting requirements. The post-petition operating reports reflect:
13

Month	ECF #	Net Profit/(Loss)
March	27	\$2,424
April	42	\$-108
May	53	\$10,675

14 The Debtor continues to operate her household and continue farming operations
15 utilizing income derived from her employment, farm income, and rental income.
16 Household income is not necessary to fund the Plan. Instead, such income will continue
17 to be utilized to sustain household expenses, farming operations, and general living
18 expenses pending consummation of the Plan, which is premised on the sale of real
19 property, funds on deposit, and sale of personal property.
20
21
22
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26

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1 B. Liabilities

2 The Debtor's liabilities consist of the cost and expense associated with
3 administration of this bankruptcy proceeding, the secured debt obligation owed to
4 secured lenders, prepetition general unsecured debt obligations, and a series of disputed
5 Claims. A complete description of known Claims is attached hereto as Appendix "A."

6
7 C. Assets
8

9 The Debtor's remaining assets are described in detail at Appendix "B" attached
10 hereto. The Debtor's primary assets are real property, consisting of her home, lake
11 cabin, rental property, and farm land. The Debtor also holds personal property
12 consisting of savings, farm equipment, vehicles, and grain in storage.

13
14 **V. PLAN OF REORGANIZATION**

15 A. **Allowed Claims**
16

17 The Court has previously set a Claims Bar Date of July 7, 2016. The Plan
18 contemplates that before a Claim will become an Allowed Claim, unless: (1) such Claim
19 has been listed in the applicable Schedule as disputed, contingent, or unliquidated, in
20 which case such Claim shall be allowed only in such amounts and of such classification
21 as is authorized by a Final Order of the Court; (2) such Claim is Disputed; or (3) such
22 Claim has been paid in full, withdrawn, released, or otherwise deemed satisfied in full.

B. Classification of Claims

Summary

All Claims are classified under the Plan as set forth below. At the time of Confirmation Hearing, any class that does not hold or contain an Allowed Claim (or a Claim temporarily or provisionally Allowed by the Court for voting purposes) will be deleted from the Plan with respect to voting on Confirmation of the Plan. A Claim shall be deemed classified in a particular Class only to the extent the Claim qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim qualifies within the description of such different Class.

1. Administrative Claims

Claims for Administrative Expenses are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code. Claims for Administrative Expenses are Unimpaired, are not classified for purposes of voting on the Plan, and holders of Administrative Expense Claims are not entitled to vote on the Plan. Claims for Administrative Expense are Claims for any expense in the Chapter 11 Case of the type defined in section 503(b) of the Bankruptcy Code and entitled to priority in Section 507(a) of the Bankruptcy Code, including all liabilities incurred by the Debtor in the operation of its business during the Chapter 11 Case, the actual and necessary costs and

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1 expenses of preserving the Estate, and Claims for professional services and
2 reimbursement of expenses awarded under sections 330 and 331 of the Bankruptcy
3 Code.
4

5 *2. Priority Claims*

6 The Debtor does not believe that there are any Priority Claims, and as of the
7 date of this Plain, no such Claims have been filed. To the extent a Priority Claim is
8 filed and allowed, the Holder of the Priority Claim shall receive, in full satisfaction,
9 settlement, release, extinguishment and discharge of such Claims in the amount of
10 their unpaid Allowed Priority Claim in full, with statutory interest within thirty (30)
11 days of the Effective Date with funds available in the Plan Fund. Priority Claims, if
12 any, are Unimpaired and are not entitled to vote on the Plan.
13

14 *3. Class 1 – Secured Claim of Chase Bank with a Secured Interest
15 in Debtor's Primary Residence*

16 Class 1 is comprised of the Secured Claim of Chase Bank, which has a secured
17 interest in the Debtor's primary residence located at 9719 W. Masters Lane, Cheney,
18 WA 99004. Pursuant to the underlying loan documents, Chase Bank holds a valid,
19 undisputed, perfected, first priority security interest in the Debtors' residence. The loan
20 was current as of the Petition Date. However, due to automatic payment and account
21 closure, the Debtor is in arrears post-petition for the April 2016, May 2016, and June
22 2016 payments. The approximate balance on the loan is \$86,680.06. Any defaults not
23
24
25
26

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cured as of the Effective Date shall be cured through the Plan.

4. Class 2 – Real Property and Personal Property Taxes

Class 2 is comprised of Claims associated with real property taxes and personal property taxes owed to Spokane County, Washington and Whitman County, Washington. The real property associated with the real property taxes and personal property taxes is identified in Appendix B to the Disclosure Statement. All allowed real property and personal property tax Claims shall be paid in full, with any penalties and interest with cash available in the Plan Fund within thirty (30) days of the Effective Date.

5. Class 3 – General Unsecured Claims

Class 3 is comprised of the holders of General Unsecured Claims, to the extent allowed. The Debtor estimates Class 3 Claims are approximately \$35,000. All allowed Class 3 Claims shall be paid in full, with interest from cash available in the Plan Fund within thirty (30) days of the Effective Date.

6. Class 4 – Claim of Gordon Kendall (Disputed)

Class 4 is comprised of the Claim of the Debtor's ex-husband Gordon Kendall. This Claim is referenced as Claim No. 1 on the Court's Claim Register. The Claim is disputed in its entirety. The Claim of Gordon Kendall is stated in the amount of \$306,977.00, and is premised upon and arises from the dissolution action pending

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1 before the Superior Court, County of Spokane, State of Washington, captioned as:

2 *In the Matter of the Marriage of: Jeannie Kile and Gordon B. Kendall*, Case
3 No. 11-3-02969-5.
4

5 This Claim is disputed and deemed not to be an Allowed Claim at this time.
6 The dispute concerning this Claim shall be resolved by the judge presiding over Case
7 No. 11-3-02969-5. To the extent allowed by final order of judgment in the Superior
8 Court, this Claim shall be paid through the Plan.
9

10 7. *Class 5 – Claim of Cody Kendall (Disputed)*
11

12 Class 5 is comprised of the Claim of the Debtor's son, Cody Kendall. The
13 Claim of Cody Kendall is disputed. This Claim is referenced on the Court's Claims
14 Register as Claim No. 3. This Claim is premised upon a judgment obtained in
15 Superior Court, State of Washington, County of Spokane, captioned as:
16

17 *Kendall v. Kile*, Case No. 12-4-00521-6.
18

19 The stated Claim is in the amount of \$345,523.52 and asserted in part as a
20 Secured Claim for \$191,700.00. This judgment has been appealed to the Court of
21 Appeals, State of Washington, Division III. The appeal remains pending and serves as
22 the basis for the dispute of this Claim. The dispute concerning this Claim will
23 ultimately be resolved either by the Superior Court, Court of Appeals, or the
24 Washington Supreme Court by final decisions, orders, and/or judgments. Once
25

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1 entered and deemed final, the Claim will be Allowed. Once Allowed, Class 5 shall be
2 paid in accordance with the Plan.

3 8. *Class 6- Secured Claim of CNH Industrial Capital.*

4
5 Class 6 is comprised of the Secured Claim of CNH Industrial Capital. CNH
6 Capital is secured by a IH Combine and IH header. The Debtor makes payments
7 pursuant to the original contract with CNH Capital. The last payment of \$23,464.21 is
8 scheduled for October 21, 2016. Class 6 shall receive its final payment on October
9 21, 2016 in accordance with the terms of the Plan and the original contract.

10
11 **C. Treatment of Allowed Claims**

12
13 The following is the description of the treatment proposed for the Claims by each
14 Class of Creditors, Interest holders, and holders of Administrative Expense and Priority
15 Claims against the Estate as classified in the Plan.

16
17 **1. Administrative Expense Claims**

18 Allowed Claims for Administrative Expenses shall be paid in full on the later of
19
20 (1) the Effective Date (or as soon thereafter as reasonably practicable, but in no event
21 later than 30 days after the Effective Date), (2) the date on which such Claim becomes
22 an Allowed Claim (or as soon thereafter as reasonably practicable, but in no event later
23 than 30 days after such Claim is Allowed), (3) the date that payment of such Allowed
24 Claim is due under ordinary business terms, or (4) as agreed between the Debtor and

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1 the holder of any Administrative Expense Claim. **Administrative Claims are**
2 **Unimpaired and the holders thereof are not entitled to vote on the Plan.**

3 2. *Treatment of Priority Claims*

4
5 The Debtor does not believe that there are any Priority Claims, and as of the
6 date of this Plain, no such Claims have been filed. To the extent a Priority Claim is
7 filed and allowed, the Holder of the Priority Claim shall receive, in full satisfaction,
8 settlement, release, extinguishment and discharge of such Claims in the amount of
9 their unpaid Allowed Priority Claim in full, with statutory interest within thirty (30)
10 days of the Effective Date with funds available in the Plan Fund. **Priority Claims, if**
11
12 **any, are Unimpaired and are not entitled to vote on the Plan.**

13 3. *Treatment of Class 1 Secured Claim of Chase*

14
15 Chase Bank is the sole holder of a Class 1 Claim. Chase Bank is secured by a
16 valid, undisputed, and perfected deed of trust against the Debtor's residence located at
17 9719 W. Masters Lane, Cheney, WA 99004. The Debtor shall continue to make
18 monthly principal and interest payments of \$1,010.54 in accordance with the terms
19 and conditions of the loan agreement between the parties. The loan agreement shall
20 be reaffirmed as part of the Plan. Any arrears or defaults associated with the Allowed
21 Claim of Chase Bank shall be paid in full within thirty (30) days of the Effective Date.
22
23
24
25
26

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1 Payment shall be made with funds available in the Plan Fund. **Class 1 has been**
2 **impaired and is entitled to vote to accept or reject the Plan.**

3

4 4. *Treatment of Class 2 Real Property Taxes and Personal Property*
5 *Taxes*

6 The holders of all Allowed Class 2 Claims shall receive in full payment,
7 satisfaction, and release of liens associated with said claims, the full amount of their
8 respective Allowed Claims plus any interest and penalties for past due real property
9 and personal property taxes. Payment of such claims shall be made within thirty (30)
10 days of the Effective Date from funds available in the Plan Fund. **Class 2 Claims**
11 **have been impaired and are entitled to vote to accept or reject the Plan.**

12

13 5. *Treatment of Class 3 – General Unsecured Claims*

14

15 The Holders of all Allowed Class 3 Claims shall receive, on account of their
16 Allowed Class 3 Claims, in full satisfaction, release, and discharge of such Claims,
17 payment in full, plus interest at 6% per annum calculated from the date of the Petition
18 until paid. Payment shall be distributed from the Plan Fund and made within thirty
19 (30) days of the date of the Effective Date. **Class 3 is impaired and is entitled to**
20 **vote to accept or reject the Plan.**

21

22 6. *Treatment of Class 4 – Claim of Gordon Kendall*

23

24 Gordon Kendall is the ex-husband of the Debtor and the sole holder of the Class
25 4 Claim. Mr. Kendall's Claim is presently disputed and will not be paid until it
26

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1 becomes an Allowed Claim. Once, and if, Mr. Kendall becomes the holder of an
2 Allowed Claim, Mr. Kendall's Allowed Class 4 Claim shall be paid in full, with
3 interest as determined by the applicable judgment rate to his claim commencing on the
4 date Allowed.

5 Payment of Mr. Kendall's Allowed Claim shall be made as follows:

- 6 • 33 1/3% of the Allowed Claim shall be paid within thirty (30) days of
7 the date upon which the Claim is deemed Allowed.
- 8 • 33 1/3% of the Allowed Claim shall be paid twelve (12) months after
9 the date of the first distribution on his Allowed Claim.
- 10 • The remaining balance of Mr. Kendall's Allowed Claim shall be paid
11 in full, with interest, twenty-four (24) months after the first date of
12 distribution to Mr. Kendall.

13 All distribution made to the Class 4 Allowed Claim shall be made from funds
14 available in the Plan Fund at the date of each distribution. **Class 4 has been impaired**
15 and is entitled to vote to accept or reject the Plan.

17 *7. Treatment of Class 5 – Claim of Cody Kendall*

18 Cody Kendall is the son of the Debtor and the sole holder of the Class 5 Claim.
19 Mr. Kendall is an “insider” of the Debtor. Mr. Kendall’s Claim is presently disputed,
20 and deemed not an Allowed Claim.

22 Once disputes concerning Mr. Kendall’s Claim are resolved by either final
23 court decision or agreement, the Allowed Claim shall be paid in full, with interest at
24 the judgment rate determined as of the date of the Allowed Claim, as follows:
25

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1

- 2 • 33 1/3% of the total amount of the Allowed Claim shall be paid within
- 3 thirty (30) days of the date of Allowance of Claim 5.
- 4 • 33 1/3% of the total amount of the Allowed Claim shall be paid within
- 5 twelve (12) months of the date of the first disbursement of payment to
- 6 Class 5.
- 7 • The remaining balance of the Allowed Class 5 Claim shall be paid in
- 8 full, with interest, twenty-four (24) months after the first disbursement
- 9 of payment to Class 5.

10 **Class 5 is impaired and is entitled to vote to accept or reject the Plan.**

11 The stated Claim is in the amount of \$345,523.52 and asserted in part as a

12 Secured Claim for \$191,700.00. The secured nature of this Claim is by way of

13 judgment lien. The judgment lien was perfected within one year of the date upon

14 which the Debtor filed bankruptcy. The underlying judgment has been appealed to the

15 Court of Appeals, State of Washington, Division III. The appeal remains pending and

16 serves as the basis for the dispute of this Claim. The judgment lien of Class 5, if any,

17 shall be released from the Rental Property at the time of sale. However, such

18 judgment lien shall be attached to the net proceeds of sale and shall be deposited into

19 the Plan Fund. Said lien shall remain on said net proceeds until the amount of net

20 proceeds for the sale of rental property have been distributed to Class 5 or the

21 judgment lien has been removed by Court Order.

22

23 8. *Treatment of Class 6- Secured Claim of CNH Industrial*

24 *Capital*

25 Class 6 is comprised of the Secured Claim of CNH Industrial Capital. CNH

1 Capital is secured by a IH Combine and IH header. The Debtor makes payments
2 pursuant to the original contract with CNH Capital. The last payment of \$23,464.21 is
3 scheduled for October 21, 2016. Class 6 shall receive its final payment on October
4 21, 2016 in accordance with the terms of the Plan and the original contract. **Class 6 is**
5 **unimpaired and not entitled to vote to accept or reject the Plan.**

6

7 **D. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**

8

9 The Debtor will request Confirmation of the Plan, as it may be modified from
10 time to time, under section 1129(b) of the Bankruptcy Code with respect to any Class
11 of Claims or Interests that rejects, or is deemed to have rejected, the Plan.

12

13 **E. Effective Date of the Plan**

14 The **Effective Date** of the Plan, means fourteen (14) days after the Confirmation
15 Date as may be designated by the Debtor.

16

17 **F. Binding Effect**

18 On the Effective Date, the provisions of the Plan shall be binding on the Debtor,
19 the Reorganized Debtor, the Estate, all holders of Claims against the Estate, and all
20 other parties-in-interest whether or not such parties hold Impaired and whether or not
21 such parties have accepted the Plan.

1

G. Effect on Automatic Stay

2 Except as provided otherwise in the Plan, on the Effective Date, the automatic
3 stay imposed by section 362(a) of the Bankruptcy Code shall terminate. This includes,
4 but is not limited to termination of the automatic stay with respect to pending causes of
5 action identified as:

6

- 7 • *In the Matter of the Estate of Lester J. Kile, Deceased, Kendall*
8 *v. Kile*, Court of Appeals, State of Washington, Division III, Case
9 No. 33613-1.
- 10 • *In the Matter of the Marriage of: Jeannie Kile and Gordon B.*
11 *Kendall*, Superior Court, State of Washington, County of
12 Spokane, Case No. 11-3-02969-5.

13 However, collection on any judgments awarded in either proceeding are enjoined
14 by the Holding Injunction of the Plan.

15

H. Filing of Reports

16 The Reorganized Debtor shall file all reports and pay all fees required by the
17 Bankruptcy Code, Bankruptcy Rules, U.S. Trustee guidelines, and the rules and orders
18 of the Court.

19

I. Administration of the Plan

20 The Plan provides for the appointment of the Debtors as the “Plan Disbursing
21 Agent” through counsel John D. Munding of Munding, P.S. to collect, administer, and
22 distribute assets in accordance with the terms of the Plan. The Plan Disbursing Agent
23 will be authorized to employ legal and accounting professionals necessary to carry out
24

25

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1 the provisions of the Plan. Unless terminated sooner, the Plan Disbursing Agent shall
2 serve until the Plan is fully consummated.

3 **J. Delivery of Distributions**

4 The distribution to any holder of an Allowed Claim shall be made by the
5 Disbursement Agent: (i) at the address set forth on the proof of claim filed by such
6 holder; (ii) at the address set forth in any written notices of address change delivered to
7 the Debtor or Reorganized Debtor after the date of any related proof of claim; (iii) at
8 the address reflected in the Schedules if no proof of claim has been filed and the Debtor
9 or Reorganized Debtor has not received a written notice of change of address; (iv) if the
10 holder's address is not listed in the Schedules, at the last known address of such holder
11 according to the Debtor's books and records; or (v) if any holder's distribution is
12 returned as undeliverable, no further distributions to such holder shall be made unless
13 and until the Reorganized Debtor is notified of such holder's current address, at which
14 time all missed distributions will be made to such holder without interest. All
15 distributions returned to the Reorganized Debtor and not claimed within two (2) months
16 of return shall be treated as Unclaimed Funds. Upon such reversion, the Claim of any
17 holder or such holder's successors, with respect to such property, shall be discharged
18 and forever barred notwithstanding any federal or state escheat laws to the contrary.

K. Unclaimed Funds and Interests

For a period of two (2) months from the date of the disbursement, the Plan Disbursing Agent shall retain any distribution hereunder which remains unclaimed. Thereafter, the Claims giving rise to the right to distribution of such unclaimed funds will be deemed disallowed and any unclaimed funds, net of expenses, will be distributed to the Debtor.

L. Disputed Claims

The Reorganized Debtor shall be entitled to object to Claims, provided however, that the Debtor and Reorganized Debtor shall not be entitled to object to claims (i) that have been Allowed by a Final Order entered by the Court prior to the Effective Date, or (ii) that are Allowed by the express terms of the Plan. Any objections to Claims must be filed by the Effective Date, unless such deadline is extended by the Court for cause (the “Claims Objection Deadline”).

The disputed Class 4 Claim and disputed Class 5 claim shall be resolved by the respective Washington State Courts in which proceedings are already pending. The Claims shall be adjudicated by trial decision by the respective Superior Court, Court of Appeals, or Supreme Court. The Final Order of such Courts shall be deemed an Allowed Claim once the final, non-appealable decision, is filed with this Court and recorded on the docket.

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M. Administrative Claims Bar Date

Unless otherwise agreed by the Debtor, all requests for payment of Administrative Expense Claims other than current obligations must be served and filed with the Court no later than thirty (30) days after the Effective Date. Except as otherwise allowed by the Court, any Administrative Expense Claim that is not served and filed by such date will be forever barred. After approval of the final fee application of the Chapter 11 professionals by the Court for services provided and costs incurred during the course of administration of the Chapter 11 Case, the Chapter 11 professionals will be required to submit further fee applications to the Court pending final consummation of the Plan.

N. Vesting of Property

Except as otherwise expressly provided in the Plan, on the Effective Date the Reorganized Debtors will be vested with all of the property of the Estate, subject to the Allowed Claims of Creditors determined by agreement or Final Order to hold secured Claims against Assets. As of the Effective Date, the Reorganized Debtors may hold, use, dispose, and otherwise deal with such property and conduct their affairs, subject to restrictions imposed by the Bankruptcy Code, the Court, the Plan, the Confirmation Order, or the other documents entered into in connection with the Plan.

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O. Transfer Tax Exemption

Pursuant to Bankruptcy Code section 1146(a), the Plan provides that any transfer or sale of real or personal property, shall not be taxed under applicable state or local law.

P. Discharge of Debtor

Pursuant to section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in this Plan or in the Confirmation Order, the distributions that are provided in this Plan shall be in complete satisfaction, discharge, and release of all Claims, whether known or unknown, against, liabilities of, liens on, obligations of, and rights against the Debtor, the Reorganized Debtor or her Estate that arose prior to the Effective Date. The Discharge of the Debtor shall be granted in the form of and “Order of Discharge” upon notice of the motion to creditors and after completion of the Plan payments pursuant to 11 U.S.C. 1141(d)(5).

Q. Executory Contracts and Unexpired Leases

1. *Pre-Petition Contracts and Leases*

Subject to the terms and conditions provided for in the Plan, the Debtors assume and reaffirm the loan agreements upon consummation of all Plan Payments to Class 1. All other unexpired leases and executory contracts shall be deemed rejected by the Debtors as of the Effective Date, unless affirmed by Court Order.

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2. *Post-Petition Contracts and Leases*

All post-petition leases and Executory Contracts are rejected as of the Effective Date. There are not believed to be any such contracts.

R. Causes of Action

The Debtor or Reorganized Debtor retains her Causes of Action to be enforced post-Confirmation. The Debtor is aware of and intends to fully pursue all rights, remedies, and relief in the following actions:

1. *In the Matter of the Estate of Lester J. Kile, Deceased, Kendall v. Kile*, Court of Appeals, State of Washington, Division III, Case No. 33613-1.
2. *Kendall v. Kile*, Superior Court, State of Washington, County of Spokane, Case No. 12-4-00521-6.
3. *In the Matter of the Marriage of: Jeannie Kile and Gordon B. Kendall*, Superior Court, State of Washington, County of Spokane, Case No. 11-3-02969-5.
4. *Kendall v. Kile*, United States Bankruptcy Court for the Eastern District of Washington, Case No. 16-80044 and all Counter/Cross Claims brought by the Debtor in this action.
5. Anticipated Preferential Transfer.

On or about June 1, 2015, Cody Kendall was an “Insider” as defined by 11 U.S.C.

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1 101 (31). On June 1, 2015, Cody Kendall received approximately \$178,000 in payment
2 by a writ of garnishment of the Debtor's bank account. The Debtor is awaiting the
3 outcome of the pending appeal and decision of the Court of Appeals before commencing
4 proceedings under 11 U.S.C. §§ 544 or 548.
5

6 **VI. CONFIRMATION OF THE PLAN**
7

8 **A. Implementation of the Plan**
9

10 The Debtor intends to implement funding of the Plan and distribution to
11 creditors for payment of their Allowed Claims as follows:
12

13 *I(a). Pursuit of Appeal*
14

15 The Debtor intends to continue to prosecute the appeal of the adverse judgment
16 entered in *Kendall v. Kile*, Superior Court, State of Washington, County of Spokane,
17 Case No. 12-4-00521-6. The appeal is presently pending before the Court of Appeals,
18 State of Washington, Division III, Case No. 33613-1. The appellate briefing is near
19 completion, and oral argument is anticipated in 2016. A decision from the Court of
20 Appeals is anticipated by early 2017. The outcome of this appeal will have a direct
21 impact on Claim No. 5, and its allowance as an Allowed Claim for purposes of
22 distribution under the Plan.
23
24
25
26

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1(b). *Defense of Dissolution Action*

The Debtor intends to defend the pending Dissolution Action described as *In the Matter of the Marriage of: Jeannie Kile and Gordon B. Kendall*, Superior Court, State of Washington, County of Spokane, Case No. 11-3-02969-5. The outcome of this action will have a direct impact on Claim No. 4 and its Allowance as an Allowed Claim for purposes of distribution under the Plan.

1(c). Adversary Counter-Claim/Cross-Claim

The Debtor intends to pursue and prosecute counter-claims and cross-claims in Adversary Proceeding: *Kendall v. Kile*, United States Bankruptcy Court for the Eastern District of Washington, Case No. 16-80044. The Counter-Claims and Cross-Claims are premised upon violations of the Automatic Stay. The Debtor is seeking damages in excess of \$25,000.

1(d). Sale of Rental Property

The Debtor is the owner of the real property located at 5816 N. Lincoln, Spokane, WA 99210. This property is currently utilized as a Rental Property. The Rental Property is not encumbered and has an estimated market value of \$117,500. The Rental Property shall be listed with a qualified real estate broker, marketed, and sold. The Rental Property shall be marketed and sold at a fair market price as determined by the Debtor in consultation with the Broker. The Property shall be sold within twelve

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1 (12) months of the Effective Date.

2 *1(e). Sale of Equipment/ Vehicle*

3 The Debtor is the owner of the following farm equipment and vehicles:

4 Vehicles:

6 • Impala	\$2,500
7 • 1974 Truck	\$3,000
8 • K2500 Truck	\$2,750
9 • Peterbuilt Truck	\$65,000
10 • Buick	\$2,500

11 Farm Equipment:

12 • Glencoe 30ft Cultivator	\$1,995
13 • Morris Rod Weeder	\$5,000
14 • Sunflower Disc	\$9,000
15 • 2006 Polaris	\$2,000
16 • Shop Tools	\$15,000
17 • Bob Cat Tractor	\$34,000

18 The foregoing equipment and vehicles shall be sold by the Debtor with the
19 assistance of a qualified equipment dealer of her choosing or by the Debtor directly.

20 The Debtor shall establish all sales prices based upon her business judgment. All sales
21 should be completed within twelve (12) months of the Effective Date. If additional time
22 is required to sell the foregoing property, it shall be sought from the Court.

23 *1(f). Sale of Grain in Storage*

24 The Debtor owns approximately 2,171.29 bushels of wheat in storage with
25 Cooperative Agricultural Producers. The price of wheat fluctuates daily with market

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conditions. The wheat in storage shall be sold at the Debtor's discretion and based upon her business judgment within twelve (12) months of the Effective Date.

1(g). Farm Machinery and Equipment Lease

The Debtor is the owner of a 2003 Case IH 2388 combine and a 30-foot 1010 Case IH header (“Combine”) presently under lease to Ken and Jessica Kile through January 1, 2018. Annual rent for the Combine is paid to the Debtor in the amount of \$23,428.48. Per the Lease Agreement, the annual rent is due on the first day of November each year. The amount of \$23,428.48 will be paid to the Debtor on November 1, 2016 and November 1, 2017. Upon payment of the amount due under the Lease Agreement to the Debtor, the funds will be deposited into the Plan Fund.

1(h). Plan Fund

The Debtor presently holds money on deposit in the Debtor-in-Possession Bank Account ending in 6880. The balance of this account is approximately \$388,316.05 as of the date of this Plan and is expected to increase by the date of Confirmation. Upon the Effective Date, the Debtor-in-Possession Account shall be renamed the Plan Fund. All moneys on deposit in the Plan Fund are dedicated to funding the Plan. Upon sale of the Rental Property, equipment, vehicles, and grain, all net sales shall be deposited into the Plan Fund.

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1 *1(i). Financing of Farm Property*

2 In the event the Plan Fund balance drops below an amount necessary to fund
3 distribution of payment twelve (12) months and twenty-four (24) months from the dates
4 of payment to Classes 4 and 5, the Debtor shall either immediately obtain a loan against
5 the Farm Land in an amount sufficient to fully fund the Plan Fund and make all
6 distributions under the Plan. The Farm Property has a fair market value of
7 approximately \$824,000.00. During the pendency of the Plan and consummation of the
8 Plan, the Farm Land shall not be encumbered or sold, except for the purpose of funding
9 the Plan Fund.

10 2. Income

11 The Debtor shall continue to operate her household and continue farming
12 operations utilizing income derived from her employment, farm income, and rental
13 income. Household income is not necessary to fund the Plan. Instead, such income
14 will continue to be utilized to sustain household expenses, farming operations, and
15 general living expenses pending consummation of the Plan, which is premised on the
16 sale of real property, funds on deposit, and sale of personal property.

17 3. Reporting

18 Every 120 days commencing on the Date of Confirmation, the Debtor shall file a
19 report with the Bankruptcy Court reflecting progress concerning Plan funding,

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1 including sale of assets.

2 4. Exemption from Certain Transfer Taxes and Recording Fees

3 Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from the
4 Debtor to the Reorganized Debtor or to any other person or entity pursuant to the Plan,
5 or any agreement regarding the transfer of title or ownership of any of the Debtor's real
6 or personal property will not be subject to any document recording tax, conveyance fee,
7 sales tax, intangible or similar tax, mortgage tax, stamp tax, real estate transfer tax,
8 mortgage recording tax, Uniform Commercial Code filing, securities regulation, or
9 other similar tax, governmental assessment, or regulation.

10 5. Effectuating Documents; Further Transactions

11 The Debtor and Reorganized Debtor are authorized to execute, deliver, file,
12 and/or record such contracts, instruments, releases, and other agreements or documents,
13 and take any such actions as each of them may deem necessary or appropriate to
14 effectuate and further evidence the terms and conditions of the Plan, or to otherwise
15 comply with applicable law.

16 6. Further Authorization

17 The Reorganized Debtor shall be entitled to seek such orders, judgments,
18 injunctions, and rulings as it deems necessary to carry out the intentions and purposes,
19 and to give full effect to the provisions, of the Plan.

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B. Disbursements Under the Plan

1. Disbursement Agent

The Reorganized Debtor, through counsel John D. Munding, of Munding, P.S., will be the Disbursement Agent under the Plan.

2. Conditions to Disbursement

The Disbursement Agent may, as a condition to distribution of funds, require a holder of a Claim to return and cancel instruments respecting such Claim or to execute separate releases of any Claims provided for under the Plan. Upon receipt of full payment of its Allowed Claim, any Secured Creditor shall release its lien and/or effectuate the cancellation of instruments evidencing such lien, and shall cooperate with reasonable requests that it may receive from an escrow or title insurance company to provide confirmation of the payoff amount of its Allowed Claims and its agreement to release of its lien, is conditioned only upon payment of its Allowed Claim.

3. Administrative / Priority Claims Distribution

All Allowed Administrative Expense Claims and Priority Claims shall be paid in full in accordance with the Plan. To the extent Administrative Expense Claims and Priority Claims are asserted against the Debtor prior to the Effective Date, but have not been Allowed as of the Effective Date, sufficient funds shall be reserved to pay said Claims in the amount stated on the Proof of Claim or application for approval of the

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1 Claim.

2 4. Classified Claims Distribution

3 4. *a. Class 1 Claim*

5 The Allowed Class 1 Claim of Chase Bank shall be paid on a monthly basis
6 through principal and interest payment to Chase Bank in accordance with the terms and
7 conditions of the original loan agreement between the parties.

8 Any and all arrears, including incurring late fees, penalties, and/or interest shall
9 be paid in full within thirty (30) days of the Effective Date from the Plan Funds available
10 in the Plan Fund.

11 12. *b. Class 2 Claims*

13 14. All Allowed Class 2 Claims shall be paid in full, with interest and penalties, and
15 in release and satisfaction of such Claims and any lien associated therewith within thirty
16 (30) days of the Effective Date from funds available in the Plan Fund.

17 18. *c. Class 3 Claims*

19 20. The Class 3 Claims of General Unsecured Creditors shall be paid as follows.
21 Distributions to holders of Class 3 Claims shall be made after Administrative Expense
22 Claims and Priority Claims have been paid in full. Distribution to Class 3 shall occur
23 within thirty (30) days after the Effective Date with funds available in the Plan Fund.

24 25. Class 3 shall receive payment in full of its Allowed Claims, with interest of eight

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percent (8%) per annum calculated from the Petition date.

d. Class 4 Claim

The holder of an Allowed Class 4 Claim – Gordon Kendall, shall be paid in full, with interest as determined by the judgment rate of the Allowed Claim, as follows:

- 33 1/3% of the Allowed Claim shall be paid within thirty (30) days of the date upon which the Claim is deemed Allowed.
- 33 1/3% of the Allowed Claim shall be paid twelve (12) months after the date of the first distribution on his Allowed Claim.
- The remaining balance of Mr. Kendall's Allowed Claim shall be paid in full, with interest, twenty-four (24) months after the first date of distribution to Mr. Kendall.

Payments shall be made from the Plan Fund.

e. *Class 5 Claim*

The Class 5 Allowed Claim of Cody Kendall shall be paid in full, with interest as determined by judgment rate of the Claim once allowed. Class 5 shall receive distribution of payment of its Allowed Claims as follows:

- 33 1/3% of the total amount of the Allowed Claim shall be paid within thirty (30) days of the date of Allowance of Claim 5.
- 33 1/3% of the total amount of the Allowed Claim shall be paid within twelve (12) months of the date of the first disbursement of payment to Class 5.
- The remaining balance of the Allowed Class 5 Claim shall be paid in full, with interest, twenty-four (24) months after the first disbursement of payment to Class 5.

Payment shall be made from the Plan Fund.

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f. Class 6 Claim.

Class 6 consists of the contract claim of CNH Industrial Capital. The Claim is secured entirely by the Debtor's IH Combine and FH Header. The final payment on this Claim is due October 21, 2016. CNH's Allowed Claim shall be paid in full when it is due on October 21, 2016 with Funds available in the Plan Fund. Once paid, CNH Capital shall fully release all securing interest, claim, right, and title to the farm equipment securing its loan, including the IH Combine and IH Header. Payment shall be made from the Plan Fund.

C. Feasibility of the Plan and Best Interests Test

The Bankruptcy Code requires that, for the Plan to be confirmed that does not provide for the liquidation of the Debtor's assets, the Debtor must demonstrate that consummation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor. Here, the Plan meets this test because the Debtor is dedicating sufficient assets to fund the entire Plan within twenty-four (24) to thirty-six (36) months. Sufficient funds will be available to pay one hundred percent (100%) of all Allowed Claims in accordance with the terms and conditions of the Plan.

The Plan is feasible as it is premised upon the sale of marketable and valuable property. It is in the best interest of creditors as the Plan provides for prompt payment of all Allowed Claims in full, with interest, to **all creditors**.

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D. Alternatives to Reorganization – Liquidation Analysis

The Bankruptcy Code requires that each holder of an Impaired Claim either (i) accept the Plan or (ii) receive/retain property with a value, as of the Effective Date, that is not less than the value such holder would receive/retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

The Plan meets this test if it either (i) provides creditors payment in full (such as Class 3 General Unsecured Creditors) from sources of funds that are outside any secured or purportedly secured Creditor's security interest, or (ii) provides secured or Disputed, purportedly secured Creditors payment in full from their collateral in order of priority to the extent their Claims are Allowed (and in fact offers the Debtor the ability to obtain a discount on the senior most secured Claim). The Plan, as proposed, provides for the methodical adjudication of Disputed Claims, payment of Allowed Claims, and controlled sale of assets to maximize value and avoid unnecessary tax issues that would be triggered by the complete liquidation of assets by a Chapter 7 Trustee.

In conducting a liquidation analysis, the first step in meeting this test is to determine the dollar amount that would be generated from the liquidation of the Debtor's Assets in the context of a Chapter 7 liquidation case. The gross amount of cash available would be the sum of the proceeds from the disposition of the Debtor's Assets and the cash held by the Debtor at the time of the commencement of the Chapter

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1 7 case. The next step is to reduce that total amount by the amount of any Claims secured
2 by such Assets, the costs and expenses of liquidation, and such additional administrative
3 expenses and Priority Claims that may result from the termination of the Debtor's
4 business and the use of Chapter 7 for the purposes of liquidation. Any remaining net
5 cash would be allocated to creditors in strict priority in accordance with section 726 of
6 the Bankruptcy Code. Finally, the present value of such allocations (taking into account
7 the time necessary to accomplish the liquidation) is compared to the value of the
8 property that is proposed to be distributed under the Plan on the Effective Date.
9
10

11 Under the Chapter 11 Plan, there are sufficient assets dedicated to Plan Funding
12 to ensure that all creditors and classes of creditors receive full payment of their
13 respective Allowed Claims.
14
15

16 As shown on the Statement of Assets and Liabilities attached as Appendix B, the
17 Debtor believes that the value of her assets significantly exceeds the amount of her
18 liabilities. Accordingly, in a Chapter 7 liquidation scenario it is likely that all creditors
19 would also receive full payment of their Allowed Claims, even after payment of all
20 allowed administrative expenses associated with a Chapter 7 proceeding.
21
22

1. Costs of Administration and Litigation

23 The costs of administration would be increased as a result of the Trustee's
24 compensation which is based upon a percentage of the gross amounts distributed by the
25
26

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1 Trustee to creditors. This commission may be substantial based upon the outcome of
2 the disputes as to Class 4 and Class 5 Claims.

3 Furthermore, the Chapter 7 Trustee would also need to hire independent counsel
4 to pursue the pending litigation and claims objections. There would be substantial
5 added cost to the Estate and delay associated with due diligence to be conducted in
6 terms of litigation assessment and strategy by both the Chapter 7 Trustee and his counsel
7 who would not have a historical familiarity with each proceeding.

8
9
10 The Chapter 7 Trustee would also need to retain an accountant to provide a tax
11 opinion related to sale of real property of the Estate. A substantial capital tax liquidation
12 would be triggered by the sale of the Farm Property or Cabin Property.

13
14 2. *Delay*

15 A Chapter 7 Trustee may also have an adverse impact on the Estate in terms of
16 timing and amount of distribution. The underlying resolution of claims would likely be
17 delayed at least six (6) months if not a year as a result of new counsel and unfamiliarity
18 with each case. This time frame does not include the added delay associated with a
19 contest motion to convert the case from Chapter 11 to Chapter 7, which may take at
20 least 90 days. There is also an outside risk that the Chapter 7 Trustee may not be as
21 successful in opposing claims as the Debtor, which could result in the allowance of
22 Class 4 and Class 5 Claims as listed. The Trustee would also liquidate real property
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1 which would take several months and likely result in lower prices. The capital gains
2 tax associated with any sale of the real property would be substantial and estimated in
3 excess of \$200,000. Each of the foregoing events would add risk that the timing of
4 payment to Classes 3, 4, and 5, would be delayed significantly.
5

6 **E. Risk Factors**

7 The Plan, and payments to Creditors hereunder, is based on a number of
8 assumptions. Included in those assumptions is Debtor's ability to sell the Rental
9 Property and personal property. Additional risk associated with the Plan is the
10 contingent nature of litigation and the ultimate outcome of the Appeal and Dissolution
11 proceedings as related to allowance of Claims. The timing of allowance of Claims and
12 amounts may negatively impact distribution. Lastly, there remains an outside risk the
13 Debtor may not be able to finance the Farm Property to complete Plan Funding should
14 the need arise.
15

16 **F. Confirmation Over Dissenting Classes**

17 In the event that any Impaired Class of Claims does not accept the Plan, the Court
18 may nevertheless confirm the Plan at the request of the proponent if all other
19 requirements under section 1129(a) of the Bankruptcy Code are satisfied, and if, as to
20 each Impaired Class that has not accepted the Plan, the Court determines that the Plan
21 "does not discriminate unfairly" and is "fair and equitable" with respect to such non-
22

1 accepting Class. Each of these requirements is discussed below.

2 1. *No Unfair Discrimination*

3 The Plan “does not discriminate unfairly” if: (i) the legal rights of a dissenting
4 Class are treated in a manner that is consistent with the treatment of other Classes whose
5 legal rights are similar to those of the dissenting Class, and (ii) no Class receives
6 payment in excess of that which it is legally entitled to receive for its Claims. The
7 Debtor believes the Plan does not discriminate unfairly as to any Impaired Class of
8 Claims.

9 2. *Fair and Equitable Test*

10 The Bankruptcy Code establishes different “fair and equitable” tests for secured
11 Claims and unsecured Claims, as follows:

12 a. Secured Claims

13 To satisfy the “fair and equitable” requirements as to a class of Secured Claims,
14 the Plan must, at a minimum, provide that: (i) each Impaired secured Creditor retain its
15 secured lien and receive deferred cash payments having a present value equal to the
16 amount of its Allowed secured Claim; (ii) each Impaired secured Creditor realizes the
17 “indubitable equivalent” of its Allowed secured Claim; or (iii) the property securing the
18 Claim is sold free and clear of liens with such liens to attach to the proceeds, and the
19 liens against such proceeds are treated in accordance with clause (i) or (ii) of this
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paragraph. The Plan provides for the payment of any secured Claims in full.

b. Unsecured Claims

To satisfy the “fair and equitable” requirement, to the extent it applies to a Class of unsecured Claims, the Plan must, at a minimum, provide that: (i) each Impaired unsecured Creditor receive or retain property of a value equal to the amount of its Allowed Claim; or (ii) the holders of Claims and interests that are junior to the Claims of the non-accepting Class do not receive or retain any property under the Plan on account of such Claims. Here, Class 3 and Class 4 will be receiving a value equal to each creditors Allowed Claim.

c. Judgment Lien

Class 5 is a disputed Claim which may or may not be secured by a valid judgment lien. To the extent a judgment lien exists and is not set aside as a preferential transfer, Class 5 shall retain its lien on the Debtor's real property until paid in full. As of the Effective Date, the payment stream to Class 5 has a value equal to the Allowed Claim. The Plan is fair and equitable as to Class 5.

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1 **VII. POST-PETITION MANAGEMENT, PROFESSIONALS,**
2 **AND OTHER MATTERS**

3 A. Management

4 The Debtor is an individual and will continue to manage her personal financial
5 affairs post confirmation. The Debtor shall have the full and complete authority to
6 implement and consummate the provisions of this Plan.

7 B. Professionals

8 The Debtor shall retain the following professionals post-Confirmation:

- 9 • Munding, P.S. – Attorneys;
- 10 • Joseph Brown, Law Office of Paul Mack, Special Counsel;
- 11 • Martin Salinas, Randall Danskin, Special Counsel; and
- 12 • Daniel Johnson, Johnson & Associates P.S., Accountants.

13 To the extent professionals are required to sell the Debtor's real or personal
14 property, or for accounting purposes, the Debtor may employ such persons or entities
15 without further Court approval, provided that expenses for such employment may
16 only be paid out of the proceeds, income, or in accordance with standard commission
17 to be paid in a real estate transaction. Pre-Effective Date professional fees and
18 expenses shall be paid based upon their Allowed Claims or fees approved by Court
19 Order. Post-Effective Date professional fees and expenses shall be paid directly by
20 the Reorganized Debtor from available assets and/or funds available.

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1 As of the date of filing of the Plan, the Estate has not paid any professional fees
2 and expenses. As of the date of filing of the Plan, the Debtors anticipate or have accrued
3 the following professional fees and expenses for which authorization for payment will
4 be sought:

- 6 • Munding, P.S. - \$35,000 (estimated);
7
- 8 • Martin Salinas, Randall Danskin, Special Counsel – \$10,000
9 (estimated);
10
- 11 • Joseph Brown, Law Office of Paul Mack, Special Counsel –
12 \$15,000 (estimated); and
13
- 14 • Daniel Johnson, Johnson & Associates PS -- \$2,500.00 (estimated).

15 **C. Creditors Committee**

16 No Unsecured Creditors Committee was appointed in this case.

17 **D. Continuation of Business**

18 Debtor will continue to hold, operate, and manage her real and personal
19 property interests, including farming operations
20

21 **E. Insider Transactions/Avoidance Actions**

22 Debtor has completed investigation of the insider transactions subject to
23 avoidance under Code sections 547, 548, and 550. Cody Kendall, the Debtor's adult
24 son, received payment of \$178,000 on account of collection of an antecedent debt.
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1 Furthermore, Cody Kendall also is believed to have recorded a judgment lien(s) which
2 encumbered the Debtor's real property. The events described occurred within one year
3 prior to commencement of the Debtor's bankruptcy case. The Debtor will likely
4 commence an action to set aside and avoid such transactions as necessary to
5 consummate the Plan. The Debtor is also awaiting the outcome of the pending appeal
6 before the Court of Appeals, State of Washington, Division III, as such decision may or
7 may not impact the underlying judgments and the Debtor's decision to pursue this
8 claim.

11 F. Plan Modification
12

13 The Debtor may modify the Plan pursuant to section 1127 of the Bankruptcy
14 Code and as herein provided, to the extent allowed by law. Subject to the limitations
15 contained herein, the Debtor may modify the Plan in accordance with this paragraph,
16 before or after Confirmation, without notice or hearing, or after such notice and hearing
17 as the Court deems appropriate, if the Court finds that the modification does not
18 materially and adversely affect the rights of any parties-in-interest which have not had
19 notice and an opportunity to be heard with regard thereto. In the event of any
20 modification on or before Confirmation, any votes to accept or reject the Plan shall be
21 deemed to be votes to accept or reject the Plan as modified, unless the Court finds that
22 the modifications materially and adversely affect the rights of parties-in-interest which
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1 have cast said votes. The Debtor reserve the right in accordance with section 1127 of
2 the Bankruptcy Code to modify the Plan at any time before the Confirmation Date.
3

4 G. Court Jurisdiction

5 The Court shall retain jurisdiction over this Estate as set forth in the Plan. This
6 jurisdiction includes, but is not limited to, matters involving interpretation, correction,
7 modification, or reconciliation of any inconsistencies in the Plan, entry of any order
8 deemed necessary and appropriate by the Court to implement the Plan, and adjudication
9 of all Causes of Action, including but not limited to all pending adversary proceedings,
10 litigation, and Claim objections. In the event that the Court is found to lack jurisdiction
11 to resolve any matter, then the District Court shall hear and determine such matter. If
12 the District Court does not have jurisdiction, then the matter may be brought before any
13 court having jurisdiction with regard thereto.
14

15 H. Holding Injunction

16 The Plan provides for a Holding Injunction which prohibits and enjoins the
17 commencement, prosecution, or collection by any person or entity, whether directly or
18 otherwise of any claims, obligations, suits, judgments, damages, demands, debts, rights,
19 causes of action, or liabilities, without leave of the Bankruptcy Court.
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1 I. Exculpation and Limitation of Liability

2 Subject to the provisions of this Plan and payment provided for herein, the Debtor
3 believes that the real estate provided herein to be retained, and all unsecured or liened
4 personal property listed in Schedules filed herein, which Debtor shall retain pursuant to
5 the specific terms of this Plan, is exempt without exception pursuant to applicable
6 exemption statutes, provided the payments proposed by Debtor to be made to Creditors
7 by this Plan is made. The Debtor hereby claims the property exempt. Debtor's
8 exemptions are not allowed, to the extent they exceed the statutory limit, until full
9 payment is made pursuant to this Plan. Provided, further, that if for any reason the
10 Debtor does not make the payments proposed and specified by this Plan, the Debtor
11 does not waive her exemption or her right to amend the claim of exemptions. The
12 Debtor shall have the right to amend her claim of exemptions. However, the property
13 which exceeds allowable exemptions would be available to Creditors. Notwithstanding
14 any provision in this paragraph or the Plan to the contrary, upon the Effective Date, all
15 exemptions claimed by the Debtor in Debtor's Bankruptcy Schedules shall be allowed.
16
17

18 J. Retention of Documents

19 The Plan Disbursing Agent shall retain records of disbursements under the Plan
20 for such time as attorneys are generally required to maintain records of distributions
21 from their trust accounts, after which time they will be destroyed.
22
23

1 K. United States Trustee Fees

2 Until the Chapter 11 case is closed, the Debtor must file post-Confirmation
3 reports and pay quarterly fees under 28 U.S.C. § 1930(a)(6), which are paid for with
4 Estate funds. The Debtor will act to close the case as quickly as possible, thereby
5 reducing the amount of such fees.

6 L. Substantial Consummation

7 This Plan shall be deemed substantially consummated upon the filing of a final
8 report and request for final Order by the Reorganized Debtor through counsel certifying
9 that substantially all duties imposed upon the Reorganized Debtor under this Plan have
10 been completed and all payments under the Plan have been completed.

11 M. Final Decree

12 The Court may, upon application of the Reorganized Debtor, at any time on or
13 after the Effective Date, enter a final decree in this case. In such event, the Court may
14 enter an Order closing the Chapter 11 Case pursuant to section 350 of the Bankruptcy
15 Code, provided, however, that: (i) the Reorganized Debtor shall continue to have the
16 rights, powers, and duties set forth in the Plan; (ii) any provision of the Plan requiring
17 the absence of an objection shall no longer be required, except as otherwise ordered by
18 the Court; and (iii) the Court may from time to time reopen the Chapter 11 Case if
19 appropriate for any of the following purposes: (a) administering Assets; (b) entertaining
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1 any adversary proceedings, contested matters, or applications the Debtor brought or will
2 bring with regard to the liquidation of Assets and the prosecution of Causes of Action;
3 (c) enforcing or interpreting the Plan or supervising its implementation; or (d) allowing
4 for the entry of an Order of Discharge upon completion of Plan payments.

6 **VIII. TAX CONSEQUENCES**

7 The Plan will impact various Creditors differently, depending on the nature of
8 their Claims, their taxpayer status, their accounting methods, and other variables.
9 Creditors should consult their own independent tax advisors regarding the tax impacts
10 of the Plan on their individual circumstances. No opinion of counsel has been sought
11 or obtained with respect to any tax consequences of the Plan. No rulings or
12 determinations of the Internal Revenue Service (“IRS”) or any other tax authorities have
13 been sought or obtained with respect to any tax consequences of the Plan, and the
14 discussion below is not binding on the IRS or other authorities. No representations are
15 being made to the Debtor or any holder of a Claim or Interest regarding the particular
16 tax consequences of the Confirmation and consummation of the Plan. Holders of
17 Claims and Interests are strongly urged to consult their own tax advisor regarding the
18 federal, state, local, and foreign tax consequences of the transactions described in this
19 Disclosure Statement and the Plan. ***IRS Circular 230 Notice:*** to comply with U.S.
20 Treasury Regulations, be advised that any U.S. federal tax advice included in this
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1 communication (and it is not intended that any such advice be given in this Disclosure
2 Statement) is not intended or written to be used, and cannot be used, to avoid any U.S.
3 federal tax penalties or to promote, market, or recommend to another party any
4 transaction or matter. Claimants are advised to consult with their tax advisers.
5

6 **IX. DISCLAIMER**
7

8 Court approval of this Disclosure Statement and accompanying Plan, including
9 appendix, is not a certification of the accuracy of the contents thereof. Furthermore,
10 Court approval of these documents does not constitute the Court's opinion as to whether
11 the Plan should be approved or disapproved.
12

13 **X. CONCLUSION**
14

15 Debtor believes the Plan provides for the best solution for resolving and paying
16 all Allowed Claims. The Plan is fair and equitable and is in the best interest of all
17 Creditors.
18

19 Dated this 16th day of September, 2016.
20

21 MUNDING, P.S.
22

23 */s/ John D. Munding*
24 JOHN D. MUNDING, WSBA #21734
25 Attorney for Debtor Jeannie Kile
26

MUNDING, P.S.
1610 W. RIVERSIDE AVE.
SPOKANE, WA 99201
(509) 624-6464