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11
12 **UNITED STATES BANKRUPTCY COURT**
13 **EASTERN DISTRICT OF WASHINGTON**
14

15
16 IN RE:

17
18 WAHLUKE PRODUCE, INC.,
19 TATOES, LLC
20 COLUMBIA MANUFACTURING,
21 INC., d/b/a Columbia Onion,

22 Debtors.
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Case No. 16-00899-FPC11
Case No. 16-00900-FPC11
Case No. 16-00898-FPC11

**FIRST AMENDED
DISCLOSURE STATEMENT**

27
28 **I. INTRODUCTION & PLAN SUMMARY**

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30 This first amended disclosure statement (the “**Disclosure Statement**”)
31 is filed in the chapter 11 cases of Wahluke Produce, Inc. (“**Wahluke**”),
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1 Columbia Manufacturing, Inc. d/b/a Columbia Onion (“**Columbia**”) and
2 Tatoes, LLC (“**Tatoes**”) (collectively the “**Debtors**”). This Disclosure
3 Statement contains information about the Debtors and describes the Debtors’
4 proposed Plan of Reorganization (the “**Plan**”). A full copy of the Plan is
5 attached to this Disclosure Statement as Exhibit 1. *Your rights may be*
6 *affected. You should read the Plan and this Disclosure Statement carefully*
7 *and discuss them with your attorney. If you do not have an attorney, you*
8 *may wish to consult one.*

15 **A. Purpose of This Document**

17 This Disclosure Statement describes:

- 19 - The Debtors and significant events during the bankruptcy case,
- 21 - How the Plan proposes to treat claims or equity interests of the
22 type you hold (*i.e.*, what you will receive on your claim or equity
23 interest if the plan is confirmed),
- 24 - Who can vote on or object to the Plan,
- 26 - What factors the Bankruptcy Court (the “**Court**”) will consider
27 when deciding whether to confirm the Plan,
- 28 - Why the Debtors believe the Plan is feasible, and how the
29 treatment of your claim or equity interest under the Plan
30 compares to what you would receive on your claim or equity
31 interest in liquidation, and



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1 - The effect of confirmation of the Plan.

2
3 Be sure to read the Plan as well as the Disclosure Statement. This
4 Disclosure Statement describes the Plan, but it is the Plan itself that will,
5
6 if confirmed, establish your rights.

7
8 11 U.S.C. §1125(b) PROHIBITS SOLICITATION OF AN ACCEPTANCE
9 OR REJECTION OF A PLAN OF REORGANIZATION UNLESS A COPY
10 OF THE PLAN OF REORGANIZATION OR A SUMMARY THEREOF IS
11 ACCOMPANIED OR PRECEDED BY A COPY OF A DISCLOSURE
12 STATEMENT APPROVED BY THE BANKRUPTCY COURT. A COPY
13 OF THE PROPOSED PLAN OF REORGANIZATION IS ATTACHED AS
14 EXHIBIT 1.

15 THIS DISCLOSURE STATEMENT HAS BEEN APPROVED AS
16 CONTAINING ADEQUATE INFORMATION BY AN ORDER OF THE
17 UNITED STATES BANKRUPTCY COURT ENTERED ON _____ ,
18 2017, AND ITS DISTRIBUTION TO THE HOLDERS OF CLAIMS AND
19 EQUITY SECURITY INTERESTS IS AUTHORIZED BY THAT ORDER.
20 THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE
21 STATEMENT, HOWEVER, DOES NOT CONSTITUTE A
22 RECOMMENDATION OR ENDORSEMENT OF THE PLAN OF
23 REORGANIZATION BY THE BANKRUPTCY COURT.

24 IN ORDER TO BE COUNTED FOR PURPOSES OF SATISFYING THE
25 BANKRUPTCY CODE REQUIREMENTS YOUR BALLOT OF
26 ACCEPTANCE OR REJECTION MUST BE RECEIVED AT THE
27 ADDRESS INDICATED ON THE BALLOT NO LATER THAN _____
28 P.M. ON THE DAY OF _____ 2017.

29 **PLEASE TAKE NOTE THAT THIS DISCLOSURE STATEMENT IS A**
30 **COMBINED DISCLOSURE STATEMENT FOR WAHLUKE**
31 **PRODUCE, INC., COLUMBIA MANUFACTURING, INC. AND**
32 **TATOES, LLC. THIS IDENTICAL DISCLOSURE STATEMENT**
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1 WITH ALL EXHIBITS IS BEING FILED IN THE BANKRUPTCY
2 CASE OF EACH DEBTOR.

3 **B. Summary of Plan.**
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5 The Debtors' Plan involves merging Wahluke & Columbia into Tatoes,
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7 which will operate as the Reorganized Debtor under the Plan. The Debtors'
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9 Plan establishes fifteen (15) classes of creditors and equity security holders,
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11 which are generally as follows:

- 12 Class 1: Administrative Claims – Professionals
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14 Class 2: Administrative Claims – U.S. Trustee Fees
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16 Class 3: Secured Claims of RAF
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18 Class 4: Secured Claims of Saddle Mountain Supply
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20 Class 5: Secured Claims of Windflow Fertilizer
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22 Class 6: Secured Claims of Ally Bank
23
24 Class 7: Secured Claims of Ford Motor Credit
25
26 Class 8.1: Claims of Deere & Company and Deere Credit, Inc.
27
28 Class 8.2: Lease Claims of Deere & Company
29
30 Class 9: Unsecured Claims – Administrative Convenience
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32 Class 10: Unsecured Claims – Wahluke Creditors
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34 Class 11: Unsecured Claims – Columbia Creditors



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- Class 12: Unsecured Claims – Tatoes Creditors
- Class 13: Insider Claims
- Class 14: Equity Security Holders

The Plan proposes to pay all creditors in classes 1-12 in full, with interest, over time. The source of payments to creditors will be through the Debtors' continued business operations. The first year of these operations is outlined in the Budgets, which are attached as Exhibit 12.1 – 12.4 hereto. These Budget projections show that the Debtors will be able to generate sufficient cash to fund its continuing operations as well as make payments to creditors as described below.

The Debtors believe that the payment of creditors under the terms of the Plan will generate more recovery for creditors than if the Debtors' cases were converted to chapter 7 and the Debtors liquidated their assets. The Debtors' liquidation analysis is contained below and is summarized in Exhibits 18-20 attached hereto.



1 **II. DEBTORS' OPERATIONS, ASSETS & CLAIMS**

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3 **A. Description and History of the Debtors' Business**

4 1. Del & Daneen Christensen have been farming in the Columbia
5 Basin for in excess of thirty (30) years. During the course of the last thirty
6 (30) years the Christensens have formed a number of companies which are
7 involved in certain aspects of the farming operations. These companies
8 include Tatoes, Wahluke & Columbia, which are owned 100% by Del &
9 Daneen Christensen. The Christensens are also majority owners of a number
10 of companies which are not currently in bankruptcy, including U12B253, LLC
11 ("U12"), Terra Management, LLC. ("Terra"), Saddle Mountain Wireless,
12 Inc. ("SMW"), EZ Fixings Foods, LLC ("EZ Fixings"), and DAC Properties,
13 LLC ("DAC") (collectively the "Related Entities" or the "Related
14 Parties"). U12, Terra, SMW, EZ Fixings, and Del & Daneen Christensen are
15 referred to collectively herein as the "Co-Borrowers." U12, Terra, DAC &
16 Del & Daneen Christensen own a significant amount (approximately 1,200
17 acres) of real property in the Mattawa and Royal City ("Related Party
18 Land"). The real properties are generally described on the chart attached
19 hereto as Exhibit 11. With respect to the 2016 and 2017 crops, the Related
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1 Entities have allowed the Debtors to utilize the Related Party Land with no
2 lease payments other than the payment of irrigation, electricity, payment of
3 real property taxes and insurance.
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6 2. Tatoes was originally formed in order to farm the real properties
7 owned by Del & Daneen Christensen and the Related Entities as well as other
8 property which would be leased on an annual basis. During the past several
9 years Tatoes has farmed between 3,000 – 4,000 acres of potatoes, onions and
10 wheat. In 2017, Tatoes is farming approximately 1,750 acres of potatoes,
11 800 acres of onions and 450 acres of wheat. Tatoes plans to continue farming
12 at least as much farm ground during the term of its Bankruptcy Plan. Because
13 onions and potatoes are rotational crops, which cannot be planted on the same
14 land every year, Tatoes is required to lease a significant amount of land from
15 other farmers each year. Tatoes employs approximately 30 people on a full
16 time basis. During the farming season, additional employees are retained to
17 assist with the growing and harvesting of the crops.
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22 3. Once the crops are harvested, Tatoes either delivers the crops to
23 storage or delivers them directly to Wahluke or Columbia. Wahluke was
24 formed in order to pack and sell the potato crops produced by Tatoes.
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1 Columbia was formed in order to pack and sell the onion crops produced by
2
3 Tatoes. Both Wahluke and Columbia have packed and sold crops for other
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5 farmers but the substantial majority of their business involves packing and
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7 selling the crops owned by Tatoes. Wahluke employs approximately 44
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9 people on a full-time basis. Additional employees are brought from time to
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11 time depending upon the quantities that are being packed. Wahluke packs
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13 potatoes on a year-round basis. Columbia employs approximately 41 people
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15 during the packing season. Columbia typically finishes packing in late April
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17 or May and then lays off the majority of its employees until the new crop is
18
19 harvested in August.

20 4. The operations of Tatoes, Columbia and Wahluke are closely
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22 related and over time each entity has supported the operations of the others.
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24 For instance, when potato and onion prices are low, Columbia and Wahluke
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26 have historically utilized packing revenue in order to support the farming
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28 operations. Conversely when potato and onion prices are high, Tatoes has
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30 supported the expansion or modernization of the facilities operated by
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32 Columbia and Wahluke. While each of the Debtors has maintained a separate
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34 corporate identity, it is clear that the Debtors, the Related Parties and Del &



1 Daneen Christensen have historically operated as more of a fully integrated
2 farming operation.
3

4 6. The profitability of growing and selling potatoes and onions is
5 tied to a number of factors, many of which are beyond the control of the
6 Debtors. Some of the most critical factors which determine profitability are
7 yield, quality and market price. Between Del Christensen, his five (5) sons
8 who are all employed by the Debtors and long-time employees, the Debtors
9 have significant expertise in the growing of potato, onion and other rotation
10 crops. This experience allows the Debtors to adapt to growing conditions as
11 well as to utilize new and better methods of growing crops. Notwithstanding
12 the Debtors' ability and knowledge, factors such as weather and market
13 conditions can have a devastating impact on profitability in any given year.
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22 7. Growing and selling a given potato and onion crops is almost a
23 two (2) year cycle. Land is fumigated and fertilized in September/October in
24 anticipation of the next year's crop. In the spring, the fields are planted and
25 fertilized and irrigation of the crops begins. The crops are harvested in the late
26 summer and fall. Once the crops are harvested, the majority of the crops are
27 placed into storage. The crops are then packed and sold over the next ten (10)
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1 to twelve (12) months. By the time that one crop is fully sold, the next crop is
2 almost ready to be harvested. The timing of the agricultural cycle makes
3 analysis of a single year's crop difficult. Instead, it is often easier and more
4 accurate to look at farming in terms of cycles rather than focusing on a single
5 crop year.
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10 8. Unfortunately beginning in 2013 and continuing into 2014-2015,
11 a number of factors conspired to create bad conditions for onion and potato
12 farmers in the Columbia Basin. The most significant of these factors were
13 substantially decreased yields and quality caused by weather conditions and
14 poor price caused by market factors beyond the control of the Debtors. These
15 poor growing and market conditions have persisted for a three (3) year period
16 and have had a devastating impact on the Debtors' business. During the 2013-
17 2015 period, the Debtors suffered losses which are believed to exceed \$10.0
18 million.
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26 9. Prior to 2014, the Debtors had an operating line of credit with
27 Banner Bank. The operating line was used by Wahluke, Columbia and Tatoes
28 and covered all aspects of the Debtors' operations. The 2013 crop results were
29 fairly dismal resulting in significant losses and further resulting in a desire on
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1 the part of Banner Bank to exit the loan relationship with the Debtors. In the
2 summer of 2014, the Debtors arranged for financing with Rabo AgriFinance,
3 Inc., which is now known as Rabo AgriFinance LLC (“RAF”). The RAF
4 loans were given in order to pay off the Banner Bank loans as well as to
5 provide additional working capital necessary for the Debtors to harvest, pack
6 and sell the 2014 crops. Unfortunately, the 2014 results were even worse
7 than the 2013 results. Almost a month of straight one hundred degree
8 temperatures in June and July produced historically low yields of potatoes and
9 onions and negatively affected the quality of the crops as well. Making things
10 worse was the fact that weather conditions in other potato and onion producing
11 regions of the country were not nearly as bad as in the Columbia Basin. The
12 result was poor yields, poor quality and poor prices.
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22 10. At the outset RAF loaned the Debtors (and certain of the Related
23 Parties) approximately \$18,500,000. Of that amount \$12,000,000 was given
24 as an operating line of credit and \$6,500,000 was a term loan. The original
25 RAF loans were secured by substantially all of the real and personal property
26 owned by the Debtors as well as real estate collateral owned by Del & Daneen
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1 Christensen, U12, and Terra. DAC was not originally obligated on the RAF
2 loans.
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4 11. In January, 2015, Del & Daneen Christensen, together with
5 others, formed EZ Fixings, which was a limited liability company formed for
6 purposes of producing a new line of fresh onion products. RAF loaned an
7 additional \$1.25 million to the Debtors, the Related Entities (other than DAC)
8 and EZ Fixings for purposes of purchasing the equipment necessary to
9 commence producing the new onion products.
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15 12. In 2015, Wahluke entered into an exclusive sales and marketing
16 contract with Eagle Eye Produce, Inc. (“Eagle Eye”).¹ Under the Marketing
17 Contract, Wahluke and Columbia are required to sell all of their onions and
18 potatoes through Eagle Eye.² Under the Marketing Agreement Eagle Eye acts
19 as a commission merchant and in exchange receives a commission equal to
20 five percent (5%) of the gross F.O.B. sales price for products sold.³
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26 13. As a result of the poor results related to the 2014 crops, in the
27 summer of 2015, it became apparent that the \$12,000,000 RAF line of credit
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30 ¹ The actual contract is between Wahluke and Eagle Eye, however, the parties have applied the
31 contract to sales by Columbia as well.

32 ² There are certain exceptions under which Wahluke and Columbia continue to sell their own
33 product to a limited number of customers who pre-dated the Eagle Eye/Wahluke relationship.

34 ³ The amount of the commission is reduced on direct sales by Wahluke and Columbia.



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1 would be insufficient to allow Tatoes to continue growing and harvesting the
2 2015 crops. In August, 2015, RAF agreed to extend an additional \$4.8 million
3 in operating funds to the Debtors in order to allow the Debtors to finish
4 harvesting the 2015 crops. In exchange for the additional operating money,
5 DAC provided RAF with significant additional real estate collateral
6 (approximately 800 acres appraised by RAF at approximately \$13,000,000) to
7 secure the entire balance of the RAF loans⁴.
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13 14. The August, 2015 modification of the RAF loans required the
14 Debtors to make certain principal reductions, which reductions were based
15 upon fairly optimistic assumptions as to the price of the 2015 crops. By the
16 late fall and winter of 2015 it became apparent that it would be impossible for
17 the Debtors to meet the principal paydown requirements imposed by RAF.
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22 15. When the Debtors missed one of their required principal
23 paydowns in early 2016, relations between the Debtors and RAF became
24 strained. Ultimately RAF refused to allow the Debtors to use any additional
25 funds to grow any 2016 crops. Attempts by the Debtors to work out a
26 restructuring or forbearance of the RAF loans were not successful. The
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32 ⁴ DAC is not a borrowing obligor on the RAF Indebtedness, but rather has pledged collateral to
33 secure the RAF Indebtedness.
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1 inability of the Debtors to use crop proceeds in order to grow the 2016 crops
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3 led to the Debtors filing for bankruptcy protection on March 21, 2016 (the
4 “**Petition Date**”).
5

6 **B. The Bankruptcy Cases.**
7

8 16. Immediately upon filing for bankruptcy protection the Debtors
9
10 filed a motion to use cash collateral to allow the Debtors to protect, preserve
11 and liquidate the 2015 crops as well as to grow and harvest the 2016 crops.
12
13 The Court entered an emergency order approving the use of cash collateral in
14
15 March, 2016, an interim order approving the use of cash collateral in April,
16
17 2016 and a final order approving the use of cash collateral on May 26, 2016
18
19 (“**Final Cash Collateral Order**”). The Final Cash Collateral Order
20
21 authorized the Debtors, subject to certain restrictions, to: (a) continue packing
22 and selling the remaining 2015 crops; and (b) grow, harvest and pack the 2016
23
24 crops owned by Tatoes.
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26 17. The Bankruptcy Court has entered several additional cash
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28 collateral orders which authorized the Debtors to commence growing their
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30 2017 crops. The most recent cash collateral order entered by the Court on
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1 April 28, 2017 authorizes the Debtors to continue using cash collateral through
2 July 31, 2017, subject to the restrictions contained in the cash collateral order.
3

4 18. Up to the time of filing of the bankruptcy, the prices for the 2015
5 potato and onion crops had been substantially below historical levels. As of
6 the date of filing the Debtors were hopeful that they would receive
7 approximately \$7.25 million for the remaining 2015 crops between March and
8 September, 2016. The Debtors proposed to use the 2015 crop proceeds
9 together with some 2016 crop proceeds to finish packing and selling the 2015
10 crops.
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17 18. As of the date of this Disclosure Statement, the Debtors have
18 packed and sold all the 2015 crops. Prices for the 2015 crops were lower than
19 the Debtors had hoped. However, the Debtors managed to offset the lower
20 than expected returns on the 2015 crop with cost savings related to the
21 growing of the 2016 crops. In August, 2016, the Debtors began selling the
22 2016 crops. 2016 crop prices have also been below historical levels, although
23 potato prices have begun to rise in the spring of 2017. Notwithstanding the
24 lower than expected prices the Debtors have been able to pay their costs and
25 comply with the terms of the cash collateral orders entered by the Court.
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1 19. Pursuant to the Final Cash Collateral Order as well as the
2 subsequent cash collateral orders entered by the Court, the Debtors have been
3 required to provide certain financial reporting to RAF, including balance
4 sheets, income statements and budget vs. actual comparisons for each month
5 of operations during the period covered by the Final Cash Collateral Order.
6 Copies of the Debtors' monthly balance sheets and income statements for
7 October, November & December, 2016 and January, February & March, 2017
8 are attached hereto as Exhibits 2-7 respectively. The Debtors have also filed
9 monthly operating statements required by the Bankruptcy Code for the months
10 of March, 2016 – March, 2017. Copies of these monthly operating statements
11 can be obtained from the Bankruptcy Court's website at
12 <http://www.waeb.uscourts.gov>.
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22 20. The Debtors managed to grow and harvest their 2016 crops
23 utilizing only the proceeds of the 2015 crops that were remaining as of the
24 filing date. Similarly the Debtors have only utilized the proceeds from their
25 2016 crops in order to commence with the growing of their 2017 crops.
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29 21. Outside of cash collateral matters, there has been very little
30 material action in the Debtors' bankruptcy cases. Wahluke has employed
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1 Bailey & Busey, PLLC as legal counsel, Columbia has employed Hurley &
2 Lara as legal counsel and Tatoes has employed the Law Offices of Paul H.
3 Williams as counsel.
4

5
6 22. The Debtors have obtained approval to pay certain insiders
7 compensation as a result of their work for the Debtors. On April 5, 2016, the
8 Debtors filed an amended notice of intent to compensate insiders. A copy of
9 the Amended Notice to Compensate Insiders is attached hereto as Exhibit 8.
10 The Amended Notice is subject to a stipulation between RAF and the Debtors
11 which limits certain compensation that may be paid to the Debtors from the
12 Related Entities. A copy of the Stipulation between the Debtors and RAF is
13 attached hereto as Exhibit 9. In 2016 the insiders who received compensation
14 agreed to reduce their compensation from historical levels in order to assist
15 with the Debtors' cash flow.
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24 23. Wahluke has moved to assume real property leases with the
25 Washington State Department of Natural Resources, Randy Niessner and
26 Robert Christensen.⁵ Currently no order approving such an assumption has
27 been entered, although the Debtor is proposing to assume the existing leases as
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32 ⁵ See Wahluke Docket No. 120 for details of the Motion to Assume and Wahluke Docket No. 122
33 for the supporting Declaration of Del Christensen.
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1 part of its plan of reorganization. Tatoes has previously obtained a Court
2 order allowing it to assume four (4) equipment leases with Deere Credit, Inc.
3 as well as two (2) 2016 real property farming leases.⁶ Although the Debtors
4 have only assumed a few leases, the Debtors believe they are current in
5 performing all of their post-petition obligations under all real and personal
6 property leases pursuant to 11 U.S.C. 365.
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11 **C. Assets & Liabilities of the Debtors.**
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13 24. The Debtors assets and liabilities as of March 31, 2017 are more
14 specifically detailed on Exhibit 7 hereto. A summary of the assets and
15 liabilities is as follows:
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32 ⁶ See Tatoes Docket No. 211 (Assuming Anderson lease), Docket No. 212 (Assuming Leland
33 lease) and Docket No. 213 (Assuming 4 leases with Deere Credit, Inc.).
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1	Combined Assets & Liabilities***		
2	Assets*		
3	<i>Tatoes</i>		
4	2016 Crop	\$	3,068,994.77
5	2017 Crop	\$	3,150,326.57
6	Current Assets (other than 2016 crop)	\$	1,680,140.08
7	Other Current Assets	\$	-
8	Equipment (Net of Depreciation)	\$	2,277,217.12
9	<i>Wahluke</i>		
10	Current Assets	\$	1,873,866.01
11	Land & Equipment Net of Depreciation	\$	2,814,468.38
12	Other Assets	\$	110,000.00
13	<i>Columbia</i>		
14	Current Assets	\$	1,708,147.44
15	Land & Equipment (Net of Depreciation)	\$	655,220.61
16	TOTAL ASSETS	\$	17,338,380.98
17	Liabilities		
18	<i>Tatoes**</i>	\$	32,358,030.54
19	<i>Columbia</i>	\$	945,546.15
20	<i>Wahluke</i>	\$	1,530,385.27
21	TOTAL LIABILITIES	\$	34,833,961.96
22	EQUITY	\$	(17,495,580.98)
23			
24			

* This balance sheet summary does not include any receivables/payables of one Debtor to another Debtor or any receivables/payables from a Debtor to any of the Related Entities.

** Tatoes liabilities include the entire amount of the obligation owed to Rabo AgriFinance

*** These numbers are derived from the March 31, 2017 Balance Sheets attached to

25. A few additional points are important to note with respect to the assets and liabilities of the Debtors:



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1 25.1 The liabilities of the Debtors do not include any
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3 receivables/payables between the Debtors or any receivables/payables between
4
5 a Debtor and any of the Related Parties except for amounts due to Tatoes from
6
7 Columbia/Wahluke on account of the delivery of 2016 crops. These insider
8
9 payables/receivables are detailed on the notes to the Debtors' March 31, 2017
10
11 financial statements, which notes are attached hereto as Exhibit 10.

12 25.2 The Debtors' 2016 crops are valued at the lower of market
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14 price or cost. The Debtors' 2017 crops are valued at cost. The Debtors
15
16 believe that the market value of the crops may be significantly higher than the
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18 cost of such crops, which would result in the understatement of the Debtor's
19
20 assets.

21 25.3 The Debtors equipment is valued net of depreciation which
22
23 may result in the equipment being significantly undervalued.

24 25.4 The Debtors' balance sheets do not include any real or
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26 personal property owned by the Related Parties ("**Related Party Collateral**"),
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28 although the Related Party Collateral does serve as collateral for the Debtors'
29
30 obligations to RAF. A description of the Related Party Collateral is attached
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1 hereto as Exhibit 11⁷. The values of the Related Party Collateral is based upon
2 internal and external appraisals performed by RAF during 2014 and 2015.
3
4 The Debtors believe the value of the Related Party Collateral is in fact higher
5 than the values listed in the RAF Appraisals. The RAF Appraisals value the
6 farm land owned by the Related Parties at between \$10,000-\$12,000/acre.
7
8 The Debtors believe that the true fair market value of the farm land is between
9 \$15,000-\$18,000/acre. Even at the values described in the RAF Appraisals the
10 Related Party Collateral has a value of \$21,475,000.
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15 **D. Means of Implementing the Plan**
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17 26. The Debtors' Plan proposes a joint and combined plan of
18 reorganization. On the Effective Date of the Plan (the "**Effective Date**") the
19 Debtors propose to merge Wahluke and Columbia into Tatoes, LLC, which
20 will in turn operate as the "**Reorganized Debtor**" pursuant to the Plan. The
21 Debtors' Plan contains the following provisions related to the merger and
22 formation of the Reorganized Debtor:
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28 **26.1 Merger of Wahluke & Columbia into Tatoes.** Del &
29 Daneen Christensen, who are the sole members of Tatoes, LLC and the sole
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31 ⁷ The liquidation value listed on Exhibit 11 is referred to in the Liquidation Analysis contained
32 below. The Debtors believe the fair market value of the Related Party property is significantly
33 higher than the liquidation value.
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1 shareholders of **WAHLUKE PRODUCE, INC. and COLUMBIA**
2 **MANUFACTURING, INC**, shall, after the Confirmation Date but prior to
3 the Effective Date, prepare and file with the State of Washington, Articles of
4 Merger, to merge Wahluke and Columbia into Tatoes, LLC. The sole members
5 of Tatoes, LLC shall remain Del & Daneen Christensen.
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10 **26.2 Transfer of Assets to the Reorganized Debtor.** On the
11 Effective Date, the Articles of Merger will be filed, and the Debtors shall take
12 all steps necessary for the consummation of a statutory merger of Wahluke &
13 Columbia, with Tatoes, LLC being the surviving entity. Except as provided in
14 the Plan, the Assets of the surviving Tatoes, LLC shall continue to be subject
15 to any liens or encumbrances which existed against such assets prior to the
16 date of transfer. Such liens and encumbrances shall attach in the same priority
17 as the liens and encumbrances had prior to the merger, but shall not attach to
18 any other assets of the Reorganized Debtor except as otherwise provided for in
19 the Plan.
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28 **26.3 Assumption of Plan Liabilities.** On the Effective
29 Date, the Reorganized Debtor, to the extent it is not already obligated, shall
30 assume all the liabilities of the Debtors, or any of them, under the Plan (“Plan
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1 **Liabilities**”). Upon assumption of liabilities, the Reorganized Debtor will
2
3 succeed to all the rights, duties and obligations of the Debtors with respect to
4
5 any obligations assumed. The confirmation of the Plan or the assumption of
6
7 the Plan Liabilities by Tatoes, LLC shall not impact, release or otherwise
8
9 affect the liability of any non-Debtors or the Related Parties who may be
10
11 obligated to creditors dealt with in the Plan.

12 **26.4 Funding of Plan Payments.** The payments
13
14 contemplated by the Plan will be funded through the operations and cash
15
16 assets of the Reorganized Debtor. Tatoes will assume and conduct all of the
17
18 Debtors’ farming, storage, packing and sales operations from and after the
19
20 Effective Date. The Debtors believe and assert that the cash flow generated
21
22 from the combined operations of Tatoes, LLC will be sufficient to fund all of
23
24 the Plan Obligations (see discussion below).

25 **26.5 Post-Confirmation Operations.** As of the Effective
26
27 Date, and subject to the terms of the Plan, Tatoes, as the Reorganized Debtor,
28
29 shall be free to farm the properties which it leases or owns according to such
30
31 terms and conditions as the Reorganized Debtor may elect in its sole
32
33 discretion. In addition, after the Effective Date, the Reorganized Debtor may,
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1 without limitation (except for certain provisions contained in the agreement
2 between the Debtors and RAF), enter into such leases, sub-leases or other
3 agreements as the Reorganized Debtor may deem desirable to prepare,
4 fumigate, farm, store, pack and sell its crops to generate revenue sufficient to
5 fund the payment of the Plan Liabilities. The Reorganized Debtor, shall not be
6 required to obtain Court approval with respect to any of its post-confirmation
7 operations. As of the Effective Date, and subject to the terms of the Plan, the
8 Reorganized Debtor shall be authorized, without Court approval, to enter into
9 any loan or financing agreements which the Reorganized Debtor deems
10 necessary or desirable in order to effectuate its operations; provided, that the
11 repayment and collateral rights of RAF under the Plan and the Amended RAF
12 Loan Documents and the repayment and collateral rights of the other secured
13 creditors under the Plan shall not be impacted by any such post-confirmation
14 loan or financing agreements until such creditors are paid in full pursuant to
15 the terms of the Plan.
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28 **26.6 Long Term Lease of Related Party Land.** The Debtors
29 have entered into a variety of 2017 farming leases with Del & Daneen
30 Christensen and DAC. These leases are detailed in Tatoes' Motion to Approve
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1 2017 Farm Leases (Tatoes Docket No. 413). The 2017 farming leases provide
2 that Tatoes will pay as rent, the amounts required for water, electricity,
3
4 property taxes and insurance on such properties in an amount not to exceed
5
6 \$150.00/acre. The Amended RAF Loan Documents (as described below)
7
8 provide that for 2018 and until RAF has been paid in full, Tatoes will enter
9
10 into one year written leases on any property owned by the Co-Borrowers or
11
12 DAC which Tatoes intends to farm (“**Insider Leases**”). So long as no default
13
14 exists under the Amended RAF Loan Documents, Tatoes may pay the Co-
15
16 Borrowers and DAC up to \$350/acre for non-potato and onion ground which
17
18 is leased and up to \$700/acre for potato and onion ground which is leased. All
19
20 such Insider Leases shall serve as collateral for repayment of the Total RAF
21
22 Secured Claim Amount.

23 **26.7 Execution of Documents by Reorganized Debtor.** To the
24 extent it is not already obligated with respect to a Plan Liability, the
25
26 Reorganized Debtor shall execute such documents as any
27
28 creditor/claimant/lessor may reasonably require in order to evidence the
29
30 Reorganized Debtor’s obligation to such creditor/claimant/lessor under the
31
32 Plan. Disputes with respect to the reasonableness of any such documents shall
33
34



1 be resolved by the Bankruptcy Court after reasonable efforts to reach
2 agreement by the parties.
3

4 26.8 Payment of Insider Compensation by Reorganized

5
6 **Debtor.** The Reorganized Debtor intends to continue employing the
7
8 insiders who are described on Exhibit 8 to perform services for the Debtors
9
10 under the Plan. The compensation to be paid to insiders prior to the Effective
11
12 Date will be the amounts described in Exhibit 8, which amounts are well
13
14 below the historical salaries that have been paid to the insiders. Depending
15
16 upon the performance of the Reorganized Debtor under the Plan, the
17
18 Reorganized Debtor may increase or decrease the salaries of insiders during
19
20 the term of the Plan. In addition, the Reorganized Debtor may make
21
22 distributions to its members, Del & Daneen Christensen, depending upon the
23
24 financial performance of the Reorganized Debtor. The Reorganized Debtor
25
26 shall not make distributions to insiders or members which would cause the
27
28 Reorganized Debtor not to be able to make the payments called for by the
29
30 Plan.
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1 **E. Projected Operations of Reorganized Debtor.**

2
3 27. The Debtors have prepared a 2017-2018 budget related to their
4 combined operations ("**Budget**"). The Budget represents the Debtors'
5 estimate of their combined operation from June, 2017 through July, 2018.
6
7 The Debtors believe and assert that the Debtors' projected budget will provide
8 sufficient cash flow to allow the Reorganized Debtor to fund its operations as
9 well as to pay the Plan Liabilities. The Debtors believe the Budget is
10 representative of the Debtor's operations going forward under the Plan. The
11 term of the Plan is significantly longer than the 2017-2018 budget period.
12
13 However, the Debtors believe that operations in subsequent years will be
14 substantially similar to those contained in the Budget. While the yields, prices
15 and expenses are anticipated to vary from year to year, the projections
16 contained in the Budget are based upon historical yield and price information
17 which the Reorganized Debtor believe will be valid over time.
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26 28. The Budget contains a number of discreet spreadsheets. These
27 spreadsheets comprise the Debtors' best estimates as to the costs of packing,
28 storing and selling the Debtors' 2016/17 crops as well as the costs of growing,
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1 harvesting and selling the 2017 crops. The Budget spreadsheets are attached
2 hereto as Exhibit 12.1 –12.4.

3
4 29. Exhibit 12.1, 12.2 and 12.3 are thirteen (13) month budgets for
5 Tatoes, Wahluke and Columbia. These budgets combine each of the Debtors'
6 operations for a thirteen (13) month period which runs through July, 2018.
7
8 While the Debtors' Plan proposes to merge Wahluke & Columbia into Tatoes,
9
10 it is not anticipated that the costs detailed in the Budget will be substantially
11 impacted by such merger.⁸ These budgets include operating expenses only
12 and do not include any payments to creditors under the Debtors' proposed
13 Plan except for lease payments to Deere & Company or Deere Credit, Inc.
14
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18
19 30. The Debtors' Budget projects that the Debtors' yields for potatoes
20 will be between 30 and 32.5 tons/acre. The Debtors' Budget project that the
21 Debtors' yield for onions will be approximately 35 tons/acre for all onions.
22 The Debtors' historical potato yields have been approximately 32.5 tons/acre.
23
24 In previous years' average yields for yellow and white onions have been
25 slightly higher than 35 tons/acre while yields on red onions have typically
26 been slightly less than 35 tons/acre.
27
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31
32 ⁸ Some cost savings should be recognized by the Reorganized Debtor as a result of accounting
33 and administrative savings which should result from combining operations.
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1 31. The Debtors' budgets also detail the Debtors' projections as to
2 the price to be received for the 2016/2017 potato and onion crops. The
3 Debtors' projections for 2016 are based largely upon actual results with some
4 adjustments being made for late season potatoes. 2017 prices are based upon
5 the Debtors' projections, which take into account both historical returns as
6 well as the Debtors' expectations with respect to the market in 2017-2018.
7
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11 32. Exhibit 12.4 details the combined net income from operations for
12 the period June, 2017 through July, 2018 (which is the income which would
13 be utilized to make projected plan payments in the first year of the Plan). The
14 combined net income is projected to be approximately \$8,500,000 for that
15 period⁹. This net income will be sufficient to make all payments called for by
16 the Plan during the budget period. Exhibit 13 hereto shows the projected
17 payment obligations of the Reorganized Debtor during the first twelve (12)
18 months of the Plan. The projected plan payments in the first year are
19 approximately \$3,000,000.
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32 ⁹ This figure does not include any Excess Proceeds generated by the sale of FU 12 B 253 as
33 provided for in the Amended RAF Loan Documents.
34



1 **G. Claims Against the Debtors.**

2
3 33. The Debtors' Bankruptcy schedules were filed with the Court on
4 April 13, 2016. Subsequently, a number of creditors filed claims against the
5 Debtors. The deadline for filing proofs of claim was August 1, 2016. Exhibit
6 14, attached hereto is a description of all claims filed against the Debtors.
7
8 Claims are represented at the value listed in the Debtors' bankruptcy
9 schedules, unless a creditor has filed a proof of claim, in which case the
10 amount described in the proof of claim is used.
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15 34. Exhibit 14 does not reflect any claims by any of the Debtors
16 against the other Debtors or any claims against any of the Debtors by any of
17 the Related Parties.
18
19

20 35. Total secured claims against the Debtor are approximately
21 \$26,540,000¹⁰, which is comprised largely of the secured claim of RAF and
22 the secured claims of Saddle Mountain Supply Company and Windflow
23 Fertilizer Company, both of whom provided inputs into Tatoes' 2016 crops
24 prior to the Petition Date.
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33 ¹⁰ This includes both the RAF Plan Claim and the RAF Set Aside Claim.
34



1 36. Total unsecured claims against the Debtors are approximately
2 \$4,307,000.00. The majority of these unsecured claims constitute claims of
3 trade creditors which related to inputs into the Debtors' 2016 crops.
4
5

6 37. In addition to the claims reflected on Exhibit 14, the Debtors have
7 incurred certain administrative expenses in the form of attorneys' fees and
8 costs which will be payable under the Plan. The Debtors do not know the
9 exact amount of these fees and costs, however, the Debtors believe the
10 following is a reasonable estimate of the fees and costs that will be due at
11 confirmation¹¹:
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- | | | | |
|----|----|---|-------------|
| 17 | A. | Bailey & Busey, counsel for Wahluke - | \$50,000.00 |
| 18 | | | |
| 19 | B. | Hurley & Lara, counsel for Columbia - | \$25,000.00 |
| 20 | | | |
| 21 | C. | Paul Williams, counsel for Tatoes - | \$25,000.00 |
| 22 | | | |
| 23 | D. | Southwell & O'Rourke, counsel for
Tatoes Unsecured Creditors Committee - | \$25,000.00 |
| 24 | | | |

25 The Debtors do not intend to reject any leases or executory contracts under the
26 Plan. As a result, there should be no rejection claims against the Debtors. The
27 Debtors believe they are current in the payment of all pre-petition and post-
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31
32 ¹¹ These numbers do not include amounts the Debtors have already paid in attorneys' fees even
33 if such amounts have not been approved by the Court.
34



1 petition tax. The Debtors believe they are current in the payment of all pre-
2 petition and post-petition wage and employee benefit claims. The Debtors are
3 not aware of any other administrative or priority claims which may be asserted
4 against the Debtors.
5
6

7
8 38. The Debtors are parties to a number of pre-petition leases which
9 they intend to assume under the Plan. These leases fall into the following
10 categories:
11

12
13 38.1 *Tatoes 2016/2017 Farming Leases.* Prior to filing
14 bankruptcy Tatoes entered into a number of farming leases for the 2016 crop
15 season. Tatoes filed a motion to assume these farming leases on July 18,
16 2016. The majority of the farm leases called for half of the payment to be
17 made in April, 2016 and half of the lease payments to be made in October,
18 2016. Tatoes made all lease payments due under these farm leases for 2016.
19 Tatoes has obtained Court approval to enter into a number of 2017 farming
20 leases (“**2017 Farming Leases**”), which are detailed in Tatoes Motion for
21 Approval of 2017 Leases (Tatoes Docket No. 413). Tatoes intends to assume
22 these 2017 Farming Leases in the Plan. With respect to farm leases which
23 extended beyond the 2017 crop year, the Reorganized Debtor intends to
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1 assume such leases and continue performing such leases according to their
2 terms.
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4 38.2 *John Deere Equipment Leases.* Tatoes entered into a
5 number of pre-petition equipment leases with Deere Credit, Inc. As of the
6 projected date of Confirmation of the Plan, only two (2) of the pre-petition
7 leases (“**Deere Leases**”) with Deere Credit, Inc. (“**Deere**”) remain active and
8 will be assumed by Tatoes under the Plan. A description of the active leases
9 which the Reorganized Debtor intends to assume under the Plan, are attached
10 hereto as Exhibit 15. Deere has filed a claim related to the leases in the
11 amount of \$6,269,261.87. The claim appears to be based in large part upon
12 the assumption that Tatoes is liable to Deere for the full amount of the
13 purchase options granted to Tatoes under the leases. Tatoes does not believe
14 that the claim is valid to the extent of such purchase options, as Tatoes has no
15 intention of purchasing the leased equipment. The remainder of the Deere
16 lease claim appears to be based upon the full amount of all lease payments due
17 under the remainder of the lease terms. Tatoes intends to assume all of the
18 Deere Leases. Tatoes does not believe that the Deere Leases are currently in
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1 default. Tatoes believes that the Budget includes the payments that are due to
2 Deere under the Deere Leases to be assumed.
3

4 38.3 *Wahluke Headquarters Lease.* Wahluke's headquarters
5 sits upon land which is leased from the Washington State Department of
6 Natural Resources ("DNR"). The DNR Lease was effective July 1, 1996 and
7 runs through June 30, 2021. The original lease called for annual rent
8 payments of \$7,000.00 annually, however, the lease contains a rent escalation
9 provision which allows the State of Washington to adjust the rent every five
10 (5) years. The State of Washington has adjusted the rent so that the current
11 annual rent is \$14,000.00. The DNR Lease requires Wahluke to pay any taxes
12 attributable to the leased property during the term of the lease. Wahluke has
13 constructed improvements on the DNR Leased property, including an office
14 building and potato packing facility. An appraisal by RAF which was
15 prepared in July, 2014, values the improvements and DNR Lease at
16 approximately \$4,060,000.00. The improvements and lease have substantial
17 value to Wahluke. The Debtors will assume the DNR Lease under the Plan.
18 The Debtors believe they are current in all payments and obligations due to
19 DNR under the DNR Lease. The Budget includes payments to the DNR under
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1 the DNR Lease. All of RAF's rights under the RAF Pre-Petition Loan
2 Documents with respect to the DNR Lease, including RAF's rights under the
3 Mortgage (Including Leasehold Mortgage), Assignment of Rents and Security
4 Agreement dated July 15, 2014, the Mortgage (Including Leasehold
5 Mortgage), Assignment of Rents and Security Agreement dated January 28,
6 2015, the Loan Security Agreement dated August 22, 2014, and the Lease
7 Assignment for Loan Security dated August 22, 2014, are reserved and
8 preserved under the Plan.
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15 38.4 *Columbia Manufacturing Lease.* Wahluke has leased
16 certain property upon which Columbia conducts its onion packing operations
17 from Robert & Joanne Christensen, pursuant to a Ground Lease dated
18 February 1, 2009 ("**Onion Lease**"). The Onion Lease covers approximately
19 six (6) acres of real property and has an annual lease payment of \$1,500.00.
20 The lease term extends to January 31, 2034, which an option to renew the
21 lease for an additional twenty-five (25) year term. Wahluke has constructed
22 an onion packing shed and related improvements upon the property subject to
23 the Onion Lease and Columbia conducts its onion packing and sales
24 operations on the property. An appraisal conducted on the Property by RAF in
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1 July, 2014 valued the leasehold and improvements at approximately
2 \$2,240,000.00. In addition to having significant equity in the lease and
3 improvements located on the property, the property is also necessary for
4 Columbia's operations. As a result, the Debtors believe it is necessary to
5 assume the Onion Lease under the Plan. All of RAF's rights under the RAF
6 Pre-Petition Loan Documents with respect to the Onion Lease, including
7 RAF's rights under the Mortgage (Including Leasehold Mortgage),
8 Assignment of Rents and Security Agreement dated July 15, 2014, and the
9 Mortgage (Including Leasehold Mortgage), Assignment of Rents and Security
10 Agreement dated January 28, 2015, are reserved and preserved under the Plan.
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19 38.5 *Niessner Lease.* Wahluke leases certain property located
20 in Royal City, Washington from Randal & Cindy Niessner pursuant to the
21 terms of a Lease Agreement dated September 1, 2015 ("**Niessner Lease**").
22 The Niessner Lease runs through August 31, 2018. The Niessner Lease
23 requires monthly rental payments of \$17,916.00. In addition, Wahluke is
24 responsible for repairs and maintenance on the property. Wahluke is also
25 responsible for maintaining its own insurance on the product located at the
26 leased premises. The Niessner property contains a number of onion and
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1 potato storages which are utilized by Wahluke in storing onions and potatoes
2
3 grown by Tatoes, which crops are ultimately delivered to Wahluke for packing
4
5 and sale. Wahluke is in need of potato and onion storage in order to be able to
6
7 store potato crops while they are waiting to be packed and stored by Wahluke.
8
9 The terms of the Niessner Lease are commercially reasonable. Because the
10
11 Lease runs until August, 2018, it allows the Debtor to lock in the storage rates
12
13 and insures that the Reorganized Debtor will have sufficient storage for crops
14
15 during the time period of the Lease. For those reasons the Debtors intend to
16
17 assume the Niessner Lease.

18
19 38.6 *Leaf Leases.* Wahluke is a party to two leases dated on or
20
21 about October 29, 2012 with Leaf Capital Funding, LLC (“**Leaf Leases**”).
22
23 The Leaf Leases related to certain equipment related to providing water and
24
25 water dispensing equipment to the Debtors’ employees. To the extent of any
26
27 defaults under the Leaf Leases existing on the Effective Date, the Reorganized
28
29 Debtors will cure the defaults and assume the Leaf Leases under the Plan.

30
31 39. *Insider & Related Party Claims.* On the Petition Date,
32
33 certain of the Debtors had claims against the other Debtors. In addition, the
34
35 Debtors owed or were owed money by certain of the Related Entities

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1 (collectively “**Insider Claims**”). A summary of the Insider Claims are
2 detailed in the March 31, 2017 financial statement notes attached hereto as
3 Exhibit 10. As a result of the merger of Wahluke & Columbia into Tatoes
4 under the Plan, the Debtors’ claims against the other Debtors will be merged
5 into Tatoes and eliminated as of the Effective Date. The Debtors’ claims
6 against the Related Parties and obligations in favor of the Related Parties will
7 be offset and then forgiven as part of the Plan.
8
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13 **III. THE DEBTOR’S PLAN**

14 **A. Summary of Plan.**

15
16 As indicated above, the Debtors’ Plan involves merging Wahluke &
17 Columbia into Tatoes, which will operate as the Reorganized Debtor under the
18 Plan. The Debtors’ Plan establishes fifteen (15) classes of creditors and equity
19 security holders, which are generally as follows:
20
21
22
23

- 24
25 Class 1: Administrative Claims – Professionals
26
27 Class 2: Administrative Claims – U.S. Trustee Fees
28
29 Class 3: Secured Claims of RAF
30
31 Class 4: Secured Claims of Saddle Mountain Supply
32
33 Class 5: Secured Claims of Windflow Fertilizer
34



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- 1 Class 6: Secured Claims of Ally Bank
2
3 Class 7: Secured Claims of Ford Motor Credit
4
5 Class 8.1: Claims of Deere & Company and Deere Credit,
6 Inc.
7
8 Class 8.2: Lease Claims of Deere & Company
9
10 Class 9: Unsecured Claims – Administrative Convenience
11
12 Class 10: Unsecured Claims – Wahluke Creditors
13
14 Class 11: Unsecured Claims – Columbia Creditors
15
16 Class 12: Unsecured Claims – Tatoes Creditors
17
18 Class 13: Insider Claims
19
20 Class 14: Equity Security Holders

21 Under the Debtors' Plan, the Debtors believe that all creditors in Classes
22 1-12 will receive payment of one hundred percent (100%) of the principal
23 amount of their claims as well as interest as described below. Class 13 will
24 receive no payments under the Plan. Class 14 claimants Del & Daneen
25
26 Christensen will retain their ownership interests in the Debtors and the
27 Reorganized Debtor.
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30

31 **B. Proposed Plan Treatment of Each Class of Claims.**
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Class 1. Administrative Expenses – Professionals.

(a) **Classification.** Class 1 consists of all Allowed Claims of professionals entitled to priority under Section 507(a) of the Bankruptcy Code.

(b) **Treatment.** The holder of a Class 1 Allowed Claim will receive cash in the full amount of such Allowed Claim on the later of: (a) fourteen (14) days after the Effective Date of /the Plan; or (b) ten (10) days after the Court has entered an order approving such fees and costs in accordance with the Bankruptcy Code and Bankruptcy Rules.

(c) **Non-impairment.** Class 1 is not impaired.

Class 2. Administrative Claim – U.S. Trustee’s Fees.

(a) **Classification.** Class 2 consists of the claim of the U.S. Trustee for quarterly fees.

(b) **Treatment.** Any U.S. Trustee quarterly fees falling due prior to the Effective Date will be paid in cash fourteen (14) days after the Effective Date. Post-confirmation fees will be paid as they come due in accordance with the terms of the Bankruptcy Code.

(c) **Impairment.** Class 2 is not impaired.

Class 3. Secured Claim of RAF



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1 (a) **Classification and Description of Class 3 Claim.** The Class 3
2 Claim consists of the Allowed Secured Claim of RAF pursuant to §506 of the
3 Bankruptcy Code.
4

5
6 (b) **Basis for Claim:** RAF has asserted a secured claim against the
7 Debtors, as of the Petition Date, in the amount of \$22,152,129.58. The claim
8 is based upon: (a) an operating line of credit in the original principal amount
9 of \$16,400,000; (b) a term loan in the original principal amount of \$6,500,000;
10 and (c) a real estate line of credit in the original principal amount of
11 \$1,250,000. Copies of the loan, collateral, security and other documents
12 existing prior to the filing of the Bankruptcy Case that evidence the RAF
13 claim are attached to RAF's proof of claim filed in each of the Debtors' cases,
14 and are referred to herein as the "**RAF Pre-Petition Loan Documents.**"¹² In
15 addition to the Debtors, the Related Parties are also obligated to RAF under
16 the RAF Pre-Petition Loan Documents. The Debtors' obligations to RAF are
17 secured by: (i) substantially all of the real and personal property assets of the
18 Debtors; (ii) substantially all of the real and personal property assets of the
19 Related Parties; and (iii) certain real property mortgaged by DAC in favor of
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31 ¹² See Proof of Claim No. 13 filed against Tatoes on or about August 1, 2016 for a full
32 description of RAF's claims, the collateral securing those claims and the loan documents
33 supporting the RAF claims.
34

1 RAF. In addition to the security interests and mortgage liens granted to RAF
2 under the RAF Pre-Petition Loan Documents, RAF has been granted a post-
3 petition lien and security interest against the Debtors' post-petition crops as
4 adequate protection for the use of RAF's collateral during the pendency of the
5 Bankruptcy Case.
6
7

8
9
10 (c) **Treatment.** The Debtors, Co-Borrowers and DAC
11 (collectively "**RAF Obligors**") and RAF have entered into an Amendment to
12 the 2014 & 2015 Credit Agreements ("**Loan Amendment**") which outlines
13 the treatment of RAF's claim under the Plan. A true and correct copy of the
14 Loan Amendment is attached hereto as Exhibit 16. The Loan Amendment is
15 conditioned, in addition to other factors, on an order confirming the Debtors'
16 Plan in a form acceptable to RAF. In addition, the Co-Borrowers and DAC
17 have entered into a Forbearance Agreement ("**Forbearance Agreement**")
18 with RAF (conditioned upon the confirmation of the Debtors' Plan) which
19 amends the RAF Pre-Petition Loan Documents governing the relationship
20 between the Co-Borrowers and DAC and RAF. A true and correct copy of the
21 Forbearance Agreement is attached hereto as Exhibit 17. The terms of the
22 Loan Amendment and the Forbearance Agreement are incorporated into the
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1 Plan and are considered to be part of the Plan. The treatment of RAF's Claim
2 shall be governed by the loan, collateral, security and other documents
3 constituting the RAF Pre-Petition Loan Documents, as the same are amended
4 by the Loan Amendment, Forbearance Agreement and the Plan. The RAF Pre-
5
6 Petition Loan Documents, as amended by the Loan Amendment, Forbearance
7
8 Agreement and the Plan are referred to herein as the ("**Amended RAF Loan**
9
10 **Documents**").
11

12
13 The following is a summary of the terms of the Loan Amendment and
14 the Forbearance Agreement. To the extent of any inconsistency between the
15 terms of the Plan and the Loan Amendment and/or the Forbearance Agreement
16 (which are part of the Plan), the Loan Amendment and Forbearance
17 Agreement shall control. Parties are encouraged to read the terms of the Loan
18 Amendment and the Forbearance Agreement for a full explanation of the terms
19 of the agreement between the Debtors and RAF.
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26 (i) As of March 31, 2017, the Debtors and Co-Borrowers owe RAF
27 the sum of \$25,094,599.72, which includes principal, interest, default interest,
28 attorneys' fees, swap termination fees and other amounts provided for under
29 the RAF Pre-Petition Loan Documents. Additional amounts shall continue to
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1 accrue under the RAF Pre-Petition Loan Documents between April 1, 2017
2 and the ~~confirmation of the~~ Debtors' Plan. Under the Amended RAF Loan
3 Documents, RAF will update the amount of its claim prior to confirmation of
4 the Debtors' Plan. As more fully outlined in Recital F of the Loan
5 Amendment, by no later than twenty (20) calendar days prior to the date set
6 for the confirmation hearing (the "**Confirmation Hearing**") on the Plan, RAF
7 will provide to the Debtors an accounting of (1) all attorneys' fees, costs and
8 advances that have accrued since the Petition Date that RAF asserts should be
9 reimbursed by the Debtors and the Co-Borrowers under the RAF Pre-Petition
10 Loan Documents or applicable law, (2) all additional amounts (excluding
11 attorney's fees, costs and advances) that have accrued on the RAF loans
12 following the date of the March 31, 2017 payoff amount set forth in the Loan
13 Amendment, (3) RAF's per diem interest calculations, and (4) RAF's
14 estimates for such additional amounts that RAF believes will accrue on the
15 RAF loans up to the Effective Date. The Debtors shall then have ten (10)
16 calendar days to review such accounting and, if they disagree with any portion
17 thereof and such dispute cannot be informally resolved by RAF and the
18 Debtors, then by no later than ten (10) calendar days prior to the date set for
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1 the Confirmation Hearing, the Debtors shall be entitled to file an objection to
2 the accounting ~~setting forth~~, in detail, the legal and factual basis for such
3 objection, and the particular items or charges that are objected to. If such an
4 objection is filed, RAF shall then have seven (7) calendar days from the date
5 the objection is filed to file a response setting forth the legal and factual basis
6 for its response, and the Debtors' objection shall be resolved by the
7 Bankruptcy Court at the Confirmation Hearing. If no objection is filed, then
8 by no later than five (5) calendar days prior to the date of the Confirmation
9 Hearing, the Debtors shall file a Joint Plan Supplement (the "**RAF Claim**
10 **Amount Plan Supplement**") with the Court. The RAF Claim Amount Plan
11 Supplement will set forth all the amounts owed to RAF on the Effective Date
12 of the Plan (such amounts are referred to herein as the "**Total RAF Secured**
13 **Claim Amount**"). The Total RAF Secured Claim Amount as set forth in the
14 RAF Claim Amount Plan Supplement will include the calculations for both
15 the Plan Claim and the Set Aside Claim. If an objection is filed by the
16 Debtors as set forth above, then the Total RAF Secured Claim Amount shall
17 be determined by the Court at the Confirmation Hearing.
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1 (ii) The Total RAF Secured Claim Amount shall continue to be
2 secured by all property which served as collateral under the RAF Pre-Petition
3 Loan Documents. In addition, RAF shall be granted under the Plan and under
4 the Loan Amendment a first priority security interest and lien in all of the
5 Debtors' and the Reorganized Debtor's presently existing and after-acquired
6 post-petition and post-confirmation assets, including but not limited to all
7 crops and farm products and the proceeds thereof, to secure the payment and
8 performance of the Total RAF Secured Claim Amount, subject only to: (a) the
9 prior liens and rights of the holders of an properly perfected purchase money
10 security interests; and (b) the rights of Saddle Mountain Supply Company and
11 Windflow to argue that their asserted crop liens and security interests in the
12 Debtors' 2016 crops (to the extent of their allowed secured claims) have
13 priority over RAF's security interests in liens in the Debtors 2016 crops and
14 proceeds thereof.
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26 (iii) RAF will divide the Total RAF Secured Claim Amount into two
27 separate portions. The first portion shall constitute the default interest due on
28 the Effective Date under the RAF Pre-Petition Loan Documents ("**Set Aside**
29 **Claim**"). The second portion shall consist of the Total RAF Secured Claim
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1 Amount less the Set Aside Claim (“**Plan Claim**”). As of March 31, 2017, the
2 Set Aside Claim was approximately \$2.4 million. After the Effective Date
3 interest shall continue to accrue on the Set Aside Claim and Plan Claim at the
4 non-default rate of the 30 day LIBOR rate plus 5.00% per annum.
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8 (iv) The Reorganized Debtor will make payments on the Plan Claim
9 as follows: (a) the sum of \$275,000 shall be payable within ten (10) days of
10 the Effective Date; (b) each April 1, July 1, October 1 and January 1 following
11 the Effective Date, payment in the sum of \$250,000 plus all non-default
12 interest due on the Plan Claim.
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17 (v) So long as no uncured default exists under the Amended RAF
18 Loan Documents no payments shall be due on the Set Aside Claim.
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21 (vi) In addition to the payments outlined above, the RAF Obligors
22 shall, on or before December 31, 2017, sell property located in Farm Unit 12,
23 Block 253 (“**Sale Property**”) for an amount that will generate net sales
24 proceeds of no less than \$1,440,000.00. RAF shall be paid the sum of
25 \$1,440,000. In addition, if the RAF Obligors sell the Sale Property for an
26 amount which generates in excess of \$1,440,000 in net sales proceeds
27 (“**Excess Proceeds**”), RAF shall be paid the Excess Proceeds in addition to
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1 the \$1,440,000. The Excess Proceeds only shall be credited to the
2
3 Reorganized Debtor's next quarterly principal payment(s).

4 (vii) The Plan Claim shall be due in full no later than December 31,
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6 2022 (the "Maturity Date"). In the event the RAF Obligors pay the entire
7
8 Plan Claim on or before the Maturity Date of December 31, 2022, RAF has
9
10 agreed to waive and forgive the Set Aside Claim. If the Reorganized Debtor
11
12 has any uncured defaults under the Plan, or if the RAF Obligors fail to pay
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14 and satisfy the Plan Claim in full by the Maturity Date, or if the RAF Obligors
15
16 have uncured defaults under either the Loan Amendment or the Forbearance
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18 Agreement, then the Set Aside Claim, including accruing non-default interest
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20 and (if applicable) default interest at the default rate under the Loan
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22 Amendment on the Set Aside Claim, shall remain due and owing to RAF, and
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24 shall be paid in full to RAF on the Maturity Date.

25 (viii) After the Effective Date, the RAF Obligors shall provide RAF
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27 with certain financial reporting, including but not limited to the reporting
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29 required by paragraph 10 of the Loan Amendment.
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1 (ix) As of the Effective Date the RAF Obligors will acknowledge that
2 they have no claims, defenses or offsets to the Total RAF Secured Claim
3 Amount.
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6 (x) The effectiveness of the Amended RAF Loan Documents is
7 conditioned upon the occurrence of a number of factors, most significant of
8 which are: (a) entry of an order confirming the Debtors' Plan in a form
9 acceptable to RAF which approves the Amended RAF Loan Documents; (b)
10 the RAF Obligors obtaining from Farm Credit Services of America a release
11 of a mortgage against approximately 160 acres of real estate owned by DAC
12 ("Release Property"). Currently Farm Credit has a first position mortgage
13 against the Release Property. Once the Debtors obtain the mortgage release
14 required by the Loan Amendment, RAF will have a first position mortgage
15 against the Release Property, which shall continue to secure the payment and
16 performance of the Total RAF Secured Claim Amount.
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26 (xi) In the event of a default by the RAF Obligors under the Amended
27 RAF Loan Documents, RAF has agreed to provide the RAF Obligors with a
28 written notice of default and limited opportunity to cure such default. For
29 payment defaults the cure period shall be five (5) calendar days. For non-
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1 payment defaults which can be cured by the payment of money, the cure
2 period shall be ten (10) calendar days. For non-payment defaults which
3 cannot be cured by the payment of money, the cure period shall be thirty (30)
4 calendar days.
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8 (xii) Until RAF has been paid in full, the RAF Obligors will be
9 required to purchase crop revenue insurance and name RAF as a loss payee on
10 all such crop insurance policies.
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13 (xiii) So long as the RAF Obligors do not default under the Amended
14 RAF Loan Documents, RAF has agreed that it will forbear from taking any
15 action against the Co-Borrowers and DAC. Further, the Co-Borrowers and
16 DAC shall not be required to make any payments to RAF so long as the RAF
17 Obligors are not in default under the Amended RAF Loan Documents. RAF
18 will forbear as of the Effective Date from enforcing the existing defaults that
19 were in effect under the Pre-Petition RAF Loan Documents on the Petition
20 Date and continuing through the Effective Date; provided, that such
21 forbearance shall not extinguish or impair RAF's rights under the Plan and the
22 Amended RAF Loan Documents, including with respect to the Set Aside
23 Claim.
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