

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:)	Bankr. No 21-40264
)	Chapter 12
JOEL LEE NAMMINGA,)	
f/d/b/a Namminga Trucking,)	
SSN xxx-xx-6307,)	PLAN AS CONFIRMED
)	
and)	
)	
ELIZABETH FAITH NAMMINGA,)	
f/n/a Elizabeth Faith Kazena,)	
f/n/a Elizabeth Faith Kezena,)	
SSN xxx-xx-7713,)	
)	
Debtors.)	

Part 1. Notice of Certain Items

The following items may be of particular importance to some creditors. Creditors and other parties in interest are given notice of them pursuant to Federal Rule of Bankruptcy Procedure 3015.1.

- | | | |
|-----|--|--------------|
| 1.1 | Nonstandard Provisions. | Included |
| 1.2 | A limit on the amount of a secured claim based on a valuation of the collateral for the claim, which may result in a partial payment or no payment at all to the secured creditor. | Included |
| 1.3 | Avoidance of a judicial lien or a nonpossessory, nonpurchase money security interest on property claimed exempt. | Not included |

Part 2. Plan term and Debtors' Payments to Trustee

2.1 Plan term.

Debtors will make the first plan payment on or before December 29, 2022, and the last plan payment on or before December 1, 2027.

2.2 Debtors' payments to the trustee.

Debtors will pay \$102,500.00 per year to the chapter 12 trustee for 5 years, and one payment of \$67,682.67 on or before December 1, 2027, for a total of \$580,182.67.

During the plan term, Debtors will give the trustee a copy of each federal income tax return at the

same time the return is filed. Debtors will also turn over to the trustee any federal income tax refunds Debtors receive, after any statutory set-off by the IRS, for tax years 2022, 2023, 2024, 2025, and 2026.

Debtors also commit to the plan any disposable income, as defined by 11 U.S.C. §1225(b)(2), that Debtors receive during the plan term.

2.3 Default.

In the event that Debtors fail to timely make any plan payment, the Trustee may give Debtors and Debtors' attorney thirty (30) days' notice to cure the default. If not cured within thirty (30) days, the Trustee may file an Affidavit of Default to dismiss the Chapter 12 case without further notice of hearing.

Part 3. Treatment of Administrative Expenses and Other Priority Claims

3.1 Trustee fees.

The trustee's fees will be paid from Debtors' plan payments at the rate provided by 11 U.S.C. § 326(b) and 28 U.S.C. § 586(e).

3.2 Debtors' attorney fees.

After Debtors' attorney files and gives notice of a fee application, the Court will enter an order awarding the attorney fees consistent with 11 U.S.C. § 330. The attorney fees awarded will be paid as follows:

Estimated total fees
\$12,530.00

Estimated payments
\$3,132.50 per year for 4 years
beginning December 29, 2022.

If the Court awards fees that total more than the estimate above, Debtors may file a motion to modify the confirmed plan to provide for those additional fees.

3.3 Domestic support obligations to be paid in full.

No such claim owed.

3.4 Domestic support obligations assigned to or owed to a governmental unit and that may be paid less than the full amount.

No such claim owed.

3.5 Other priority claims.

No such claim owed.

In the event the IRS is owed any capital gains tax or tax based upon sale or disposition of property used in Debtors' farming operation, prior to or during the plan period, such claim will be considered a general unsecured claim in accordance with 11 U.S.C. §1232 and not paid as a priority claim.

4. Executory Contracts and Unexpired Leases

4.1 Assumptions.

Debtors assumes the executory contracts and unexpired leases listed below. The trustee will make any arrearage payments specified. Debtors will make the remaining current installment payments.

Name of lessor or other party to contract	Description of leased property or subject of executory contract	Arrearage, if any, and payment terms	Current installment terms
Harold Tjeerdsma	Contract for Deed on 30972 407 th Ave Avon, SD	None	\$18,786.63 Annual payment
Harold Tjeerdsma	Farm Land Lease	None	Land lease payable annually in the fall in the amount of \$30,000.00
Larry Namminga	Farm Land Lease	None	Land lease payable annually in the fall in the amount of \$10,000.00
Patty Odens	Farm Land Lease	None	Share-crop land lease; landlord receives 1/3 share

4.2 Rejections.

None to reject.

Part 5. Treatment of Secured Claims

5.1 Claims secured only by Debtors' principal residence. - No such claimed owed.

5.2 Claims fully secured by real or personal property, excluding claims in Parts 5.1 and 5.4.

Any arrearage on the claims listed below will be paid in full during the plan term through disbursements by the trustee, with interest, if any, at the rate stated. If there is no arrearage, "none" is inserted. Debtors will make the current installment payments directly to the creditors during the plan term and thereafter, as may be necessary. Unless otherwise stated, the balance owed and Debtors' current installment payments, as to the amount, the rate of interest, and the length of the repayment term, will be consistent with the written agreement between Debtors and the creditor and may occasionally change pursuant to the agreement's terms.

Unless otherwise ordered by the Court, the amount of the arrearage and the balance owed stated below are controlling and, if the value of the creditor's collateral exceeds the amount of its allowed claim, the balance owed includes interest and other allowances provided by 11 U.S.C. § 506(b), unless the creditor has otherwise agreed.

A creditor listed below will retain its lien or other encumbrance on the collateral stated until the creditor's claim is paid in full pursuant to the written agreement between Debtors and the creditor, at which time the lien or other encumbrance will terminate and shall be promptly released by the creditor.

If the Court grants a creditor listed below relief from the automatic stay regarding the collateral described below, then, unless otherwise ordered by the Court, the trustee's payments to that creditor under this part will cease.

Name of creditor and description of collateral	Arrearage, if any, and payment terms ["none" inserted if no arrearage]	Balance, excluding any arrearage, and current installment
John Deere Financial – John Deere 4430 tractor	No arrearage; payments direct, not through the Plan	\$11,293.98 at approx. \$2,855.51 per year for 4 more years, which payments includes interest at agreement rate of 2.45%
Community State Bank – Corn Husker 48' grain trailer	No arrearage; payments direct, not through the Plan	\$8,002.39 at approx. \$3,049.28 per year for 2 years, and 1 payment of \$1,903.83 in the 3 rd year
Commercial State Bank Loan ending 474; agricultural business blanket lien	No arrearage; payments direct, not through the Plan	\$25,000.00 payment made annually at 6% interest until maturity in 2027

5.3 Claims partially secured by real or personal property as provided by 11 U.S.C. § 506(a).

Farmers' Cooperative Elevator Co., Paul Voigt, PHI Financial Service, Inc., B and H Publishing, Inc., and Venosdel Refrigeration all hold pre-petition judgments against Debtors. The value of Debtors' real estate after mortgages that have a priority over these judgments is not sufficient for any of these judgment liens to attach. When a discharge is entered, these judgments shall be considered void and no longer liens. These creditors shall receive no payment under this plan unless they timely filed a claim which is not contested.

5.4 Secured claims excluded from 11 U.S.C. § 506. - *No such claim owed.*

5.5 Surrender of collateral and relief from stay; continuation of co-Debtor's stay.
No Collateral to be surrendered.

Part 6. Treatment of Unsecured and Undersecured, Nonpriority Claims

After making the disbursements described in Parts 3, 4.1, and 5, the trustee will distribute the balance of the plan payments and other funds received from Debtors, including any tax refunds and disposable income committed to the plan, to creditors holding unsecured and undersecured, nonpriority claims who timely file a proof of claim on or before the deadline established by Federal Rule of Bankruptcy Procedure 3002(c). If a creditor holding an unsecured or undersecured, nonpriority claim receives appropriate notice of the case but fails to timely file a proof of claim, that creditor will not receive any distribution under this Plan and its claim will be discharged to the extent set forth in 11 U.S.C. §1228(a) when Debtors complete all plan payments. If all unsecured and undersecured, nonpriority creditors known to Debtors timely file proofs of claim, each creditor holding an unsecured and undersecured, nonpriority claim will receive approximately 100% of its allowed claim.

Attached to this plan as Exhibit B and incorporated by reference is Debtors' liquidation analysis showing the total payments under this section to creditors holding unsecured, nonpriority claims will be at least as much as these creditors would receive if Debtors' nonexempt assets were liquidated in a case under chapter 7 of the bankruptcy code.

Part 7. Other Provisions

7.1 Property of the estate. Unless otherwise ordered by the Court, property of the bankruptcy estate will vest with Debtors upon confirmation of the plan.

7.2 Changes in Debtors' income and expenses.
No post-petition changes in income or expenses.

7.3 Taxes. During the plan term, Debtors will timely file all tax returns required by any governmental entity and will provide a copy of each return to the trustee at the same time the return is filed. During the plan term, Debtors will also pay when due any tax imposed by any governmental entity, subject to 11 U.S.C. §1232 provisions.

Part 8. Nonstandard Provisions

A nonstandard provision is a provision not otherwise included in Appendix 3A of the local bankruptcy rules for the District of South Dakota.

This plan includes the following nonstandard provisions:

Internal Revenue Service – Any tax based upon sale or disposition of property, see part 3, 3.5, Supra.

Undersecured creditors listed in part 5.3, Supra.

Payments to Restructured Secured Creditors.

Commercial State Bank loan ending 472 – This creditor has a priority secured mortgage position on Debtors' real estate and a first secured lien position through an agricultural business blanket lien. The Debtors will make annual payments for the five (5) years of the plan to this creditor with the first payment of \$17,500.00 on December 15, 2022, through the trustee, then the remaining balance shall be paid as a balloon payment on December 29, 2027. This creditor shall retain its security interest until it is paid in accordance with this Plan. Upon final payment under the Plan, all liens and mortgages of record shall be promptly released.

Treatment of Unsecured, Nonpriority Tax to Internal Revenue Service.

In the event the Internal Revenue Service is owed any taxes resulting from the sale, transfer, exchange, or other disposition of any property used in the Debtors' farming operation, prior to or during the plan period, such claim will be considered a general unsecured claim in accordance with 11 U.S.C. §1232 and not paid as a priority claim. No priority tax obligation is owed pre-petition, except as stated above.

Other Provisions.

Debtors shall insure, maintain, replace, and repair the assets secured by the secured creditors stated in Part 8 as agreed, throughout the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

Pursuant to Federal Rules of Bankruptcy Procedure 3015(c) and 3015.1(e)(1), nonstandard provisions are set forth in this part only. Any nonstandard provision set forth elsewhere in this plan is ineffective.

Part 9. Signatures of Debtors and Attorney for Debtors

By signing and filing this plan, Debtors, if not represented by an attorney, or the attorney for Debtors certifies the plan does not contain any nonstandard provisions other than any set forth in Part 8.

Dated this _____ day of September, 2022.

/s/ Joel Namminga
Joel Namminga

/s/ Elizabeth Namminga
Elizabeth Namminga

THURMAN LAW OFFICE

By: /s/ Creighton A. Thurman
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Exhibit A. Summary of Debtors' Payments to Trustee and Trustee's Disbursements

A.1 Debtors' payments to trustee under plan.

\$102,500.00 for five (5) years	\$512,500.00
Last payment (year 6)	\$67,682.67
Less trustee's fee	<u>(\$52,216.44)</u>
Available for distribution	\$527,966.23

Debtors have also committed tax refunds for tax years 2022, 2023, 2024, 2025, and 2026, and projected disposable income from December 15, 2022, through November 30, 2027, to plan payments, which may increase the funds available for distribution.

A.2 Trustee's total disbursements under plan.

Administrative expenses	Attorney for Debtors	\$12,530.00
Other priority claims	NONE	0.00
Leases and executory contract arrearage payments	NONE	0.00
Secured claims arrearage payments	NONE	87,500.00
Unsecured, nonpriority claims		427,936.23
Total disbursements by trustee under plan		\$527,966.23

Exhibit B. Debtors' Liquidation Analysis

	<u>Market Value</u>	<u>Total of Valid Encumbrances</u>	<u>Claimed Exemptions</u>	<u>Equity</u>
<u>Real Property Interests</u>				
Homestead – 30972 407th Ave, Avon, SD 57315 - Bon Homme County	\$ 232,500.00	\$232,500.00*	\$ 60,000.00	\$ -
<u>Vehicles, Trailers, Etc.</u>				
2000 Ford F350	\$ 4,000.00	\$ -	\$ 4,000.00	\$ -
2005 Chevy Uplander	\$ 200.00	\$ -	\$ 200.00	\$ -
1994 Chevy Suburban	\$ 1,000.00	\$ -	\$ 1,000.00	\$ -
1999 Chevy Suburban	\$ 250.00	\$ -	\$ 250.00	\$ -
2008 GMC Yukon	\$ 6,750.00	\$ -	\$ -	\$ 6,750.00
1991 Ford F-250*	\$ 2,600.00	\$ -	\$ -	\$ 2,600.00
2011 Flat boat and trailer*	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00
2011 Tracker pontoon*	\$ 8,000.00	\$ -	\$ -	\$ 8,000.00
John Deere 4430 tractor	\$ 11,000.00	\$ 11,255.71	\$ -	\$ -
		John Deere Financial		
1987 Peterbilt*	\$ 7,750.00	\$ -	\$ -	\$ 7,750.00
Stock car and trailer*	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00
2001 Freightliner*	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00
<u>Farm/Ranch-related Property</u>				
CIH MX 200 Tractor*	\$ 35,000.00	\$ -	\$ -	\$ 35,000.00
Bobcat S660 w/ attach.*	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
Bush Hog*	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00
Kawasaku 750*	\$ 3,000.00	\$ -	\$ -	\$ 3,000.00
Honda Rancher 350*	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00
Shop Tools*	\$ 4,000.00	\$ -	\$ -	\$ 4,000.00
Hustler 60" Comm. Mower*	\$ 3,000.00	\$ -	\$ -	\$ 3,000.00
Heston 4600 Sq. Bailer*	\$ 2,000.00	\$ -	\$ -	\$ 2,000.00
Allis Chalmers B*	\$ 500.00	\$ -	\$ -	\$ 500.00
Welder*	\$ 1,000.00	\$ -	\$ -	\$ 1,000.00
IH 720 Plow*	\$ 200.00	\$ -	\$ -	\$ 200.00
Air Compressor*	\$ 600.00	\$ -	\$ -	\$ 600.00
Heater*	\$ 400.00	\$ -	\$ -	\$ 400.00
Pressure Washer*	\$ 1,000.00	\$ -	\$ -	\$ 1,000.00
Honda Generator*	\$ 600.00	\$ -	\$ -	\$ 600.00
Panels*	\$ 600.00	\$ -	\$ -	\$ 600.00

Tire Machine*	\$	600.00	\$	-	\$	-	\$	600.00
Air Compressor*	\$	400.00	\$	-	\$	-	\$	400.00
Tub Grinder*	\$	237,500.00	\$	223,842.00	\$	-	\$	13,658.00
J&M Gravity Box*	\$	1,500.00	\$	-	\$	-	\$	1,500.00
CIH 1688*	\$	9,000.00	\$	-	\$	-	\$	9,000.00
1020 25' Flex Head/Trailer*	\$	2,000.00	\$	-	\$	-	\$	2,000.00
CIH 1063 6-row Corn Head*	\$	3,000.00	\$	-	\$	-	\$	3,000.00
H Farmall*	\$	800.00	\$	-	\$	-	\$	800.00
Sickle Mower*	\$	100.00	\$	-	\$	-	\$	100.00
Parker Grain Cart*	\$	4,000.00	\$	-	\$	-	\$	4,000.00
Cornhusker 48' Grain Trailer**	\$	8,000.00	\$	8,000.00	\$	-	\$	-
Int. S22 Water Truck*	\$	5,000.00	\$	-	\$	-	\$	5,000.00
Trailer*	\$	3,900.00	\$	-	\$	-	\$	3,900.00
2 Shipping Containers*	\$	3,000.00	\$	-	\$	-	\$	3,000.00
Fuel Tanker*	\$	800.00	\$	-	\$	-	\$	800.00
Grinder Mixer*	\$	500.00	\$	-	\$	-	\$	500.00
Fuel Tanks*	\$	3,000.00	\$	-	\$	-	\$	3,000.00

* Commercial State Bank –
Loans ending in 472 & 474

** Community State
Bank

Personal and Household Items

Personal and Household	\$	2,650.00	\$	-	\$	2,650.00	\$	-
Sporting Equipment	\$	5,250.00	\$	-	\$	3,900.00	\$	1,350.00

Financial Assets

\$	160,000.00	\$	-	\$	-	\$	160,000.00
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Business-related Property

\$	-	\$	-	\$	-	\$	-
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Other Property Interests

\$	-	\$	-	\$	-	\$	-
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Total Equity \$ 339,608.00

Less estimated reduction:	\$ -
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Less liquidation costs as follows:	\$ (3,000.00)
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estimated commission on real estate at 5% and personal property at 10%	\$ (32,335.00)
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estimated sales tax on commissions at 6.5%	\$ (2,102.00)
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estimated depreciation recapture on equipment & capital gains tax on real estate	\$ -
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Less Chapter 7 trustee fees per 11 U.S.C. § 326(a) & estimated attorney's fees:	\$ (5,000.00)
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TOTAL AVAILABLE FOR DISTRIBUTION	<u>\$ 297,171.00</u>
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