

35

HAGOP T. BEDOYAN, CSB No. 131285
JACOB L. EATON, CSB No. 244834
KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIB & KIMBALL, LLP
4500 California Avenue, Second Floor
Bakersfield, CA 93309
Telephone: (661) 395-1000
Facsimile: (661) 926-0418
e-mail: jeaton@kleinlaw.com

Attorneys for Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:

SHADY ACRES DAIRY,

Debtor-in-Possession.

Case No. 10-19058-A-11

Chapter 11

DC No. KDG-12

Date: August 10, 2011

Time: 1:30 p.m.

Place: United States Bankruptcy Court
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

Judge: Honorable Whitney Rimel

MODIFIED PLAN OF REORGANIZATION DATED AUGUST 19, 2011

Introduction

Pursuant to section 1121(a) of the Code,¹ SHADY ACRES DAIRY, a California partnership, the Debtor in the above-captioned Chapter 11 case, respectfully proposes the following Plan. Debtor is the proponent of this Plan under Section 1129.²

The Plan contemplates the reorganization of the Debtor and the resolution of all outstanding Claims against and interests in the Debtor. If any Impaired Class of Claims against

¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in Section 18.01 of this Plan.

² All Section numbers refer to sections of the Code unless otherwise specified.

1 Debtor entitled to vote on this Plan does not accept the Plan by the requisite statutory majority
2 required by section 1126(c) of the Code, then Debtor will proceed to confirm the Plan under
3 section 1129(b) of the Code.

4 Under section 1125(b) of the Code, votes to accept or reject a plan of reorganization
5 cannot be solicited from holders of Claims or Interests entitled to vote on the plan until a
6 disclosure statement has been approved by the Bankruptcy Court and distributed to such
7 holders. The *Modified Disclosure Statement Dated March 16, 2011* ("the Disclosure
8 Statement") that accompanies the Plan contains, among other things, a discussion of the
9 Debtors' history, businesses, properties, and operations, projections for those operations, risk
10 factors associated with the business and the Plan, and a summary and analysis of the Plan and
11 certain related matters.

12 **Article I. Designation and Treatment of Administrative Claims and Priority Claims**

13 Administrative Claims and priority claims are defined and treated in the Plan as
14 follows:

15 **Section 1.01 Class One Claims: Administrative Expense Claims.**

16 Class One Claims are the Administrative Claims referred to in section 507(a)(2) of the
17 Code and include only administrative expenses of the Chapter 11 estate allowed under Section
18 503 of the Code. These claims shall include any sums owed to the United States Trustee under
19 Section 1930(a)(6) of the Code, any Administrative Claims arising out of the rejection of real
20 or personal property leases, and professional fees owed to attorneys, accountants, or other
21 professionals retained by Debtor during the pendency of the case.

22 ***Treatment of Class One Claims.*** Class One Claims are unimpaired. Class One Claims
23 incurred through the Effective Date shall be paid on the Effective Date, or after Court order if
24 necessary, unless such claimants agree to a different treatment. Those Claims payable after
25 Court approval shall be paid within 10 days after such approval is obtained. Except as
26 provided below, any application for approval of a Class One Claim arising prior to
27 Confirmation of the Plan shall be filed and served no later than thirty days after Debtor gives
28 notice of said requirement to the affected creditors, *except* that application for approval and

1 payment of any Professional Fee Claims may be made at any time during the Term of the Plan.
2 This paragraph shall not apply to US Trustee Fees, post-petition taxes, utility bills, post-petition
3 debts incurred in the ordinary course of the Debtor's business. All such post-petition
4 obligations shall be paid when they come due under applicable law without Court order. Class
5 One Claims shall be paid from available cash.

6 **Section 1.02 Class Two Claims: Other Priority Claims.**

7 Priority claims as defined by Section 507(a)(3)-(9) of the Code are Class Two Claims.
8 Class Two Claims will be paid in accordance with the Code. Debtor does not believe that there
9 are any Class Two Claims. Therefore, no distribution will be made on Class Two Claims.

10 **Article II. Classification and Treatment of Secured Claims: Unimpaired Claims**

11 **Section 2.01 Class Three Claim: Secured Claim of Linder Equipment Company**

12 The Class Three Claim shall consist of the Allowed Secured Claims of Linder
13 Equipment Company secured by a Case International STX500 tractor. The Class Three Claim
14 was about \$11,968.09 on the Petition Date.

15 ***Treatment of the Class Three Claim:*** The Class Three Claim is unimpaired. The Class Three
16 Claimant was paid in full according to the terms of its loan documents in November 2010.

17 **Section 2.02 Class Four Claim: Secured Claim of Laura Merritt**

18 The Class Four Claim shall consist of the secured claim of Laura Merritt, which is
19 secured by a deed of trust against 1275 acres of real property located in Fresno County,
20 California including Debtor's dairy facility and other improvements ("the Helm Property").
21 Debtor believes that the balance of the Class Four Claim was \$392,573.88 on the petition date.

22 ***Treatment of the Class Four Claim.*** The Class Four Claim is unimpaired. The Class
23 Four Claim shall receive the payments required by the Promissory Note and Deed of Trust
24 executed in favor of the Class Four Claimant. Debtor shall make monthly payments required
25 by the Promissory Note to the Class Four Claimant until the Class Four Claim is paid in full.
26 All terms and conditions of such documents shall remain in full force and effect and the Class
27 Four Claimant shall retain her deed of trust against the Helm Property until the Class Four
28 Claim is paid in full.

Section 2.03 Class Five Claim: Secured Claim of Ruth Ann Latson

The Class Five Claim shall consist of the secured claim of Ruth Ann Latson, which is secured by a deed of trust against the Helm Property. Debtor believes that the balance of the Class Five Claim was \$392,573.88 on the petition date.

Treatment of the Class Five Claim. The Class Five Claim is unimpaired. The Class Five Claim shall receive the payments required by the Promissory Note and Deed of Trust executed in favor of the Class Five Claimant. Debtor shall make monthly payments required by the Promissory Note to the Class Five Claimant until the Class Five Claim is paid in full. All terms and conditions of such documents shall remain in full force and effect and the Class Five Claimant shall retain her deed of trust against the Helm Property until the Class Five Claim is paid in full.

Article III. Classification and Treatment of Secured Claims: Impaired Claims

Section 3.01 Class Six Claims: Secured Claims of Farm Credit West, FLCA

The Class Six Claims shall consist of the Allowed Secured Claims of Farm Credit West, FLCA ("FCW, FLCA") secured by all existing collateral under FCW, FLCA's existing loan documents, including, without limitation: (a) deeds of trust against the Helm Property, (b) deeds of trust against real property owned by Beverly Anker located in Visalia, California ("the Visalia Property"), and (c) a security interest in livestock, inventory, equipment, and other personal property of Debtor pursuant to its loan documents. The class Six Claims shall be further secured by all replacement liens granted by order of the bankruptcy court in this case.

The Class Six Claims include the following loans. Debtor believes the amounts below indicate the approximate amount of the debt owed on each loan as of the Petition Date.

Class	Loan Number	Estimated Balance on Petition Date
Six(a)	0127191-171	\$2,396,188.06
Six(b)	0127191-172	\$2,171,250.16
Six(b)	8058580-171	\$2,379,706.96
Six(b)	8058580-172	\$376,289.39
Six(b)	8058580-173	\$974,835.24
Six(b)	8286159	\$1,681,532.16

Six(b)	3721809	\$825,479.97
	Total	\$10,805,281.94

Debtor has made about \$300,000.00 in principal payments after the Petition Date as of July 31, 2011.

The Class Six Claims are divided into two sub-classes – Class Six(a) and Class Six(b). The Class Six(a) Claim includes Loan No. 0127191-171 referenced above. The Class Six(b) Claims includes all other claims against Debtor held by FCW, FLCA.

Treatment of the Class Six Claims. The following terms apply to the treatment of both Class Six(a) and Six(b) Claims:

- a. The Class Six Claims are impaired.
- b. FCW, FLCA shall retain its liens as if the bankruptcy petition had not been filed.
Pre-petition liens shall attach to post-petition collateral in addition to pre-petition collateral, and all such collateral shall secure the indebtedness to FCW, FLCA under the existing loan documents (as modified by the Plan) as though the bankruptcy petition had not been filed.
- c. Each of the Class Six Claims shall be all due and payable (the “FLCA Balloon Payment”) on the date that is the tenth anniversary of the Effective Date (i.e., an September 1, 2011 Effective Date would mean each of the Class Six Claims would be all due and payable on September 1, 2021).
- d. Certain additional provisions applying to the Class Six Claims are set forth in Section 3.02 below as part of the provisions also applying to the Class Seven Claims.

Treatment of the Class Six(a) Claim. The Class Six(a) Claim shall be treated as follows:

- a. The amount owed on the Class Six(a) Claim as of close of business on August 3, 2011 was in the total sum of \$2,298,165.54, consisting of: (1) \$2,296,892.68 in principal; and (2) \$1,272.86 in interest. The Class Six(a) Claim shall be an allowed secured claim in this amount, as it shall be adjusted to reflect any applicable

subsequent credits against this August 3, 2011 balance and increases to this August 3, 2011 balance for additional accrued, but unpaid, interest under the existing loan documents, which shall be allowed under 11 USC § 506(b). The payment expected to be received from the creamery on September 1, 2011, shall be applied to the Class 6(a) Claim in accordance with the existing loan documents for purposes of determining the amount of the Class Six(a) Claim as of the Effective Date. FCW, FLCA shall provide the Debtor with a statement of the Effective Date balance of the Class 6(a) Claim as it has been updated in accordance with this provision following application of the September 1, 2011 payment, which amount shall be the Allowed Claim constituting the Class 6(a) Claim as of the Effective Date.

- b. Interest shall accrue at the fixed rate of 6.65% per annum, from and after the Effective Date, until April 1, 2015. After April 1, 2015, at Debtor's option, the interest will be:
 - i. fixed interest at the rate and terms for which Debtor would be eligible with FCW, FLCA on April 1, 2015 based on FCW, FLCA's regular pricing and underwriting practices for the subject loan (as a fully pre-payable loan) at that time; or
 - ii. variable rate of interest at the amount of the 1-Month London Interbank Offer Rate index ("the LIBOR") plus 3.50 percentage points.
- c. Debtor shall make payments to FCW, FLCA in the amount required by the loan documents between Debtor and FCW, FLCA until April 1, 2015. Payments after April 1, 2015 will be principal and interest payments based on the interest rate selected by Debtor under paragraph b. immediately above and a 20-year, straight amortization of the remaining principal balance (subject to the FLCA Balloon Payment requirement for all FCW, FLCA loans set forth above). The re-amortization of the Class Six(a) Claim based on a change from a fixed rate to variable rate or alternate fixed rate (as provided for herein) shall be re-amortized over the portion of a 20-year amortization period – as has commenced from the

Effective Date – that remains at the time of such interest rate change but shall otherwise remain subject to the required FLCA Balloon Payment (e.g., a change from a fixed rate to a variable rate on April 1, 2015 would be re-amortized over the number of months remaining between April 1, 2015 and the date that is 20 years from the Effective Date but would otherwise remain subject to the required FLCA Balloon Payment). Any re-amortization of the Class Six(a) Claim shall be a straight amortization and shall be in accordance with FCW, FLCA's regular amortization practices.

- d. The pre-payment penalty and breakage fee will remain effective as applicable under the loan documents until April 1, 2015. Debtor may pay the Class Six(a) Claim in full at any time after April 1, 2015 without the payment of a pre-payment penalty or breakage fee.

Treatment of the Class Six(b) Claims. The Class Six(b) Claims shall be treated as follows:

- a. The amounts owed on the Class Six(b) Claims as of close of business on August 3, 2011 were in the total sum and consisted of principal and interest as follows:

Loan	Total Balance As of 8/3/2011	Principal	Interest
0127191-172	\$2,061,674.45	\$2,061,030.38	\$644.07
8058580-171	\$2,302,395.78	\$2,301,676.51	\$719.27
8058580-172	\$363,996.85	\$363,883.14	\$113.71
8058580-173	\$942,997.17	\$942,702.58	\$294.59
8286159	\$1,618,541.73	\$1,618,036.09	\$505.64
3721809	\$793,266.27	\$790,549.59	\$2,716.68
Total	\$8,082,872.25		

The Class Six(b) Claims shall be allowed secured claims in these amounts, as they shall be adjusted to reflect any applicable subsequent credits against these August 3, 2011 balances and increases to these August 3, 2011 balances for additional accrued, but unpaid, interest under the existing loan documents, which shall be allowed under 11 USC § 506(b). The payments expected to be received from the

1 creamery on September 1, 2011, shall be applied to the Class 6(b) Claims in
2 accordance with the existing loan documents for purposes of determining the
3 amount of the Class Six(b) Claims as of the Effective Date. FCW, FLCA shall
4 provide the Debtor with a statement of the Effective Date balances of the Class 6(b)
5 Claims as they have been updated in accordance with this provision following
6 application of the September 1, 2011 payments, which amounts shall be the
7 Allowed Claims constituting the Class 6(b) Claims as of the Effective Date.

- 8 b. Interest shall accrue on the Class Six(b) Claims at a variable rate. The rate of
9 interest shall be the amount of the LIBOR plus 3.50 percentage points. The
10 applicable variable rate of interest shall automatically adjust on the first day of each
11 month.
- 12 c. At any time prior to the maturity of the Class Six(b) Claims, as provided for in this
13 Plan, and provided that the Class Six(b) Claims are not then in default, the interest
14 rate accruing on the Class Six(b) Claims may be fixed for a maximum of 5 years.
15 The amount of the fixed rate will be the then applicable FCW, FLCA cost of funds
16 plus 3.50 percentage points based on FCW, FLCA's regular pricing and
17 underwriting practices for the subject loan (as a fully pre-payable loan) at that time.
18 A pre-payment penalty will only apply to the Class Six(b) Claims for the 6 months
19 immediately following the fixing of the interest rate, if fixed, and no pre-payment
20 penalty shall apply to the Class Six(b) Claims thereafter. A breakage fee will apply
21 to the locking of a fixed interest rate in accordance with FCW, FLCA's standard
22 practices, if the locking of a fixed interest rate is elected by the Debtor in
23 accordance with this provision. Any Class Six(b) Claim that is converted to a fixed
24 rate (which is limited to a maximum of 5 years) shall revert to the variable rate for
25 any period that remains, if any, between the end of such 5-year fixed rate term and
26 the date of the required FLCA Balloon Payment (as set forth above).
- 27
28

- 1 d. There is no pre-payment penalty, and Debtor may pay the Class Six(b) Claims in
2 full at any time, subject to the provisions contained in paragraph c. immediately
3 above.
- 4 e. Debtor shall pay monthly principal and interest payments to FCW, FLCA based on
5 the interest rate and a 20-year, straight amortization (subject to the FLCA Balloon
6 Payment requirement for all FCW, FLCA loans set forth above). The re-
7 amortization of a Class Six(b) Claim based on a change from a fixed rate to variable
8 rate or variable rate to fixed rate shall be re-amortized over the portion of a 20-year
9 amortization period – as has commenced from the Effective Date – that remains at
10 the time of such interest rate change but shall otherwise remain subject to the
11 required FLCA Balloon Payment (e.g., a change from a variable rate to a fixed rate
12 on the fifth anniversary of the Effective Date would be re-amortized over 15 years
13 but otherwise remain subject to the required FLCA Balloon Payment). Any re-
14 amortization of the Class 6(b) Claims shall be a straight amortization and shall be in
15 accordance with FCW, FLCA's regular amortization practices.

16 **Section 3.02 Class Seven Claims: Secured Claims of Farm Credit West, PCA**

17 The Class Seven Claims shall consist of the Allowed Secured Claims of Farm Credit
18 West, PCA ("FCW, PCA" which together with FCW, FLCA are at times collectively referred
19 to as "FCW") secured by all existing collateral under FCW, PCA's existing loan documents,
20 including, without limitation: (a) deeds of trust against the Helm Property, (b) deeds of trust
21 against the Visalia Property, and (c) a security interest in livestock, inventory, equipment, and
22 other personal property of Debtor pursuant to its loan documents. The class Seven Claims shall
23 be further secured by all replacement liens granted by order of the bankruptcy court in this
24 case.

25 The Class Seven Claims include the following loans. Debtor believes the amounts
26 below indicate the approximate amount of the debt owed on each loan as of the Petition Date.

Loan Number	Estimated Balance on Petition Date
8286175-101	\$4,081,708.67
8286175-201	\$2,602,136.99
8286175-301	\$365,892.79
8286175-401	\$400,328.77
8286175-501	\$284,547.93
Total	\$7,734,615.15

Debtor has made about \$215,000.00 in principal payments after the Petition Date as of July 31, 2011.

Treatment of the Class Seven Claims. The Class Seven Claims shall be treated as follows:

- a. The Class Seven Claims are impaired.
- b. The amounts owed on the Class Seven Claims as of close of business on August 3, 2011 (except as to attorneys' fees, which are stated as of July 31, 2011) were in the total aggregate sum of \$7,633,165.61, consisting of: (1) \$7,507,406.55 in principal; (2) \$3,834.36 in interest, and (3) \$121,924.70 in attorneys' fees (unallocated between FCW, PCA and FCW, FLCA). The Class Seven Claims shall be allowed secured claims in this aggregate amount, as they shall be adjusted to reflect any applicable subsequent credits against these August 3, 2011 balances and increases to these August 3, 2011 (and July 31, 2011 attorneys' fees) balances for additional accrued, but unpaid, interest under the existing loan documents and additional attorneys' fees, which shall be allowed under 11 USC § 506(b). The payments expected to be received from the creamery on September 1, 2011, shall be applied to the Class Seven Claims in accordance with the existing loan documents for purposes of determining the amount of the Class Seven Claims as of the Effective Date. FCW, PCA shall provide the Debtor with a statement of the Effective Date aggregate balance of the Class Seven Claims as they have been updated in accordance with this provision following application of the September 1, 2011

1 payments, which amounts shall be the Allowed Claims constituting the Class Seven
2 Claims as of the Effective Date.

3 The Class Seven Claims shall be divided into two tranches as follows, for the
4 limited purposes of certain collateral margin requirements and amortization and
5 payment terms set forth below:

- 6 i. Tranche A. Tranche A will be in the amount of \$4,932,333.42 as of close of
7 business on August 3, 2011 (except as to attorneys' fees, which are stated as of
8 July 31, 2011) consisting of (1) \$4,807,406.55 in principal, (2) \$3,002.17 in
9 accrued but unpaid interest, and (3) \$121,924.70 in attorneys' fees. The amount
10 of the Class Seven Claims attributable to Tranche A will be adjusted from the
11 foregoing stated amounts to reflect the allocation as of the Effective Date of the
12 Plan, as adjusted to reflect any applicable credits against the foregoing August 3,
13 2011 (and July 31, 2011 attorneys' fees) amounts and increases to the foregoing
14 August 3, 2011 (and July 31, 2011 attorneys' fees) amounts. Debtor shall make
15 monthly, interest-only payments to FCW, PCA for Tranche A in an amount
16 sufficient to pay all interest accrued on Tranche A for such period (subject to the
17 PCA Balloon Payment requirement for all FCW, PCA loans set forth below).
- 18 ii. Tranche B. Tranche B will be in the amount of \$2,700,832.19 as of close of
19 business on August 3, 2011 consisting of (1) \$2,700,000.00 in principal, and (2)
20 \$832.19 in accrued but unpaid interest. The amount of the Class Seven Claims
21 attributable to Tranche B will be adjusted from the foregoing stated amounts to
22 reflect the allocation as of the Effective Date of the Plan, as adjusted to reflect
23 any applicable credits against the foregoing August 3, 2011 amounts and
24 increases to the foregoing August 3, 2011 amounts allowed under 11 USC §
25 506(b). Debtor shall make monthly principal and interest payments to FCW,
26 PCA based on a 7-year, straight amortization for Tranche B (subject to the PCA
27 Balloon Payment requirement for all FCW, PCA loans set forth below).
- 28

- 1 c. FCW, PCA shall retain its liens as if the bankruptcy petition had not been filed.
- 2 Pre-petition liens shall attach to post-petition collateral in addition to pre-petition
- 3 collateral, and all such collateral shall secure the indebtedness to FCW, PCA under
- 4 the existing loan documents (as modified by the Plan) as though the bankruptcy
- 5 petition had not been filed. Both Tranche A and Tranche B will remain secured by
- 6 all of FCW, PCA's collateral at all times and for all purposes, without regard to the
- 7 bifurcation of FCW, PCA's Class Seven Claims into Tranches.
- 8 d. Interest shall accrue at a variable rate. The rate of interest shall be the amount of the
- 9 LIBOR plus 3.50 percentage points. The applicable variable rate of interest shall
- 10 automatically adjust on the first day of each month.
- 11 e. At any time prior to the maturity of the Class Seven Claims, as provided for in this
- 12 Plan, and provided that the Class Seven Claims are not then in default, the interest
- 13 rate accruing on the Class Seven Claims may be fixed. The amount of the fixed rate
- 14 will be the then applicable FCW, PCA cost of funds plus 3.50 percentage points
- 15 based on FCW, PCA's regular pricing and underwriting practices for the subject
- 16 loan (as a fully pre-payable loan) at that time. A pre-payment penalty will only
- 17 apply to the Class Seven Claims for the 6 months immediately following the fixing
- 18 of the interest rate, if fixed, and no pre-payment penalty shall apply to the Class
- 19 Seven Claims thereafter. A breakage fee will apply to the locking of a fixed interest
- 20 rate in accordance with FCW, PCA's standard practices, if the locking of a fixed
- 21 interest rate is elected by the Debtor in accordance with this provision. The re-
- 22 amortization of Tranche B based on a change from a variable rate to fixed rate or
- 23 fixed rate to variable rate shall be re-amortized over the portion of a 7-year
- 24 amortization period – as has commenced from the Effective Date – that remains at
- 25 the time of such interest rate change but shall otherwise remain subject to the
- 26 required PCA Balloon Payment (e.g., a change from a variable rate to a fixed rate on
- 27 the third anniversary of the Effective Date would be re-amortized over 4 years but
- 28 otherwise remain subject to the required PCA Balloon Payment described below).

1 Class Seven Claims that are converted to a fixed rate shall revert to the variable rate
2 for any period that remains, if any, between the end of such fixed rate term and the
3 date of the required PCA Balloon Payment (as set forth below). Any re-
4 amortization of Tranche B shall be a straight amortization and shall be in
5 accordance with FCW, PCA's regular amortization practices.

- 6 f. There is no pre-payment penalty, and Debtor may pay the Class Seven Claims in
7 full at any time, subject to paragraph e. immediately above.
- 8 g. The Class Seven Claims shall be all due and payable (the "PCA Balloon Payment")
9 on the date that is the fifth anniversary of the Effective Date (i.e., an September 1,
10 2011 Effective Date would mean each of the Class Seven Claims would be all due
11 and payable on September 1, 2016).

12
13 **Additional Terms Applicable to both Class Six and Class Seven Claims.**

14 The following terms are applicable to Class Six(a), Class Six(b), and Class Seven
15 Claims:

- 16 a. Except as expressly modified under the Plan, all terms of the existing loan
17 documents between Debtor and FCW will remain in full force and effect.
- 18 b. Debtor shall provide FCW with the following reports/inspections within the
19 indicated timeframes, without limitation on any other reporting/inspection
20 requirements under the existing loan documents:
- 21 i. A monthly variance report comparing budgeted to actual cash expenses; due no
22 later than 30 days after month-end. Debtor and FCW will review and may
23 modify, without further Court order, this requirement 12 months after the
24 Effective Date.
- 25 ii. The creamery statements; due no later than 15 days after close of creamery
26 reporting period (e.g., advance statements within 15 days of close of advance
27 period, monthly closing statements within 15 days of close of monthly
28 production period, etc.).

- 1 iii. A monthly inventory report. The inventory report is to accurately reflect the
- 2 Debtor's livestock inventory, feed inventory, accounts receivable and all
- 3 accounts payable and be completed in the form of FCW's Dairy Inventory
- 4 Worksheet. The accounts payable reporting shall (1) indicate the amount of
- 5 feed payables and all payables and (2) include an aging report; due no later than
- 6 15 days after month-end.
- 7 iv. A herd status report similar to Dairy Comp or DHIA testing report, including
- 8 Debtor's cull rate, every 45-50 days as prepared in the normal course of
- 9 business; due every 55 days beginning on or before September 5, 2011.
- 10 v. A report of all cow and heifer sales due no later than 14 days after sale; excludes
- 11 cull and bull calf sales in the regular course of business.
- 12 vi. A quarterly livestock inspection and count to be conducted by FCW
- 13 representatives, which is to be accompanied by a representative of Debtor.
- 14 FCW shall also continue to be permitted to regularly inspect (whether monthly
- 15 or more frequent intervals, in FCW's discretion) all of FCW's collateral at
- 16 reasonable times upon request and reasonable notice to Debtor, which
- 17 inspections need not be accompanied by a representative of Debtor.
- 18 vii. Annual CPA Reviewed financial reports for each calendar year; due no later
- 19 than May 1 of each year.
- 20 viii. Semi-annual CPA Reviewed financial reports for period ending June 30 each
- 21 year; due no later than October 1 of each year.
- 22 c. Each of the following shall be a default under the Plan as to FCW which shall
- 23 constitute a default under the existing FCW loan documents and, as such, shall be in
- 24 addition to any other events, occurrences, failures, or other circumstances that
- 25 would constitute a default under the existing loan documents or this Plan.
- 26 i. Minimum milk production – It shall be an event of default under the Plan as to
- 27 FCW if Debtor fails to have a milk production level of at least 65 pounds per
- 28 cow per day for 2 consecutive months based on a 3-month rolling average of the
- production reported by Debtor's creamery. Debtor shall have 30 days following

notice of default from FCW to cure default of this minimum milk production default trigger. The milk production per cow, for purposes of this default trigger, will be based on actual milk production. The data reported in the "herd status report" (described above), the monthly creamery statements (described above) and monthly inventory report (described above) may be used to calculate compliance (but shall be subject to FCW's inspection rights and actual numbers as they exist at any given time). The following is an example of how this trigger will be calculated and will work.

-If the 3 months production ending with Month 1 are 67 pounds, 63 pounds, and 64 pounds, the 3-month rolling average for Month 1 is 64.66.

-If the 3 months production ending with Month 2 are 63 pounds, 64 pounds, 68.5 pounds, the 3-month rolling average for Month 2 is 65.16.

-If the 3 months production ending with Month 3 are 64 pounds, 68.5 pounds, and 67 pounds, the 3-month rolling average for Month 3 is 66.5.

In this scenario, Month 1 is out of compliance. However, it is corrected in Months 2 and 3 and there are not two consecutive months with the 3 month rolling average below 65 pounds so no default has occurred in this example.

- ii. Herd margin – It shall be an event of default under the Plan as to FCW if Debtor at any time fails to maintain the Minimum Margin in the then-existing value of Debtor's heifers and mature cows in excess of the then-outstanding balance of the Tranche A portion of the Class 7 Claims. The "Minimum Margin" shall be the amount that is the difference between \$6,833,050.00 (which is the value of Debtor's heifers and mature cows as of June 30, 2011) and the Tranche A balance on the Effective Date, less \$250,000.00 (e.g., if the Tranche A balance on the Effective Date is \$4,950,000.00 then the Minimum Margin shall be \$1,633,050.00). The value of Debtor's heifers and mature cows shall be based

on the Debtor's inventory reporting (subject to FCW's inspection rights and actual counts as they exist at any given time). For the purposes of inventory reporting as it concerns this minimum herd margin requirement, mature cows shall have a value of \$1,400.00 and heifers shall have values according to the following:

1. Bred Heifers - \$1,300.00
2. Heifers from 15-18 months old (unless bred) – \$1,100.00
3. Heifers from 12-15 months old (unless bred) – \$1,000.00
4. Heifers from 7-11 months old – \$850.00
5. Heifers from 4-6 months old – \$500.00
6. Heifers from 0-3 months old – \$350.00

The above per-head values by cattle type may be reviewed by Debtor and FCW annually against then-existing market conditions and may be subsequently modified by written agreement between Debtor and FCW without Court order. Debtor shall have 45 days following notice of default from FCW to cure default of this herd margin default trigger.

- iii. Herd Complexion - It shall be an event of default under the Plan as to FCW if Debtor fails to maintain a ratio of .65 Heifers for each Milk Cow based on a 3-month rolling average of the Debtor's inventory reports (subject to FCW's inspection rights and actual counts as they exist at any given time). For the purposes of the Herd Complexion default trigger, the term "Heifer" shall mean Debtor's heifers and springers or those female Holsteins having zero lactation on the date of measurement. For the purposes of the Herd Complexion default trigger, the term "Milk Cow" shall mean Debtor's mature female Holsteins having lactated on or before the date of measurement whether or not the cow is a dry cow or a milking cow at the time of measurement. Debtor shall have 30 days following notice of default from FCW to cure a default of this herd complexion default trigger.

This Herd Complexion default trigger may be modified or replaced upon written agreement between Debtor and FCW if Debtor decides to undertake a material shift in operating strategy that involves herd reduction or eliminating Debtor's heifer raising program. In the event of such a material shift in operating strategy by the Debtor, such modification or replacement of this Herd Complexion default trigger will also be for the purpose of, without limitation, assuring the ongoing preservation of FCW's milking cow herd collateral, including products therefrom, as a whole.

- d. The automatic stay (in effect under 11 U.S.C. section 362) will be terminated as to FCW exercising any and all rights and remedies that FCW has in and to its collateral under applicable non-bankruptcy law without further order of the Court after notice of default by FCW and an opportunity to cure such default within the specified time. The amount of time to cure a default will depend on the type of default that may occur as indicated in paragraph c. immediately above. Debtor shall have 17 days' notice of the opportunity to cure any default not identified in paragraph c. immediately above, including a payment default.
- e. As it concerns FCW, the provisions of Sections 3.01 and 3.02 of the Plan shall control over any other provisions of the Plan (including, without limitation, Exhibits to the Plan) in the event of any ambiguity, conflicting or inconsistent provisions.
- f. FCW shall not be required to amend its proof(s) of claim(s) filed in this case in order to state the amount of its Allowed Class Six Claims and Allowed Class Seven Claims as of the Effective Date, the statement of which is otherwise provided for above.

Section 3.03 Class Eight Claim: Secured Claim of Penny Newman Grain Co.

The Class Eight Claim shall consist of the Allowed Secured Claim of Penny Newman Grain Co. secured by a dairy cattle supply lien filed on July 20, 2009. The amount of the Class Eight Claim will be \$170,000.00 on the Confirmation Date.

1 ***Treatment of the Class Eight Claim:*** The Class Eight Claim is impaired. The Class
2 Eight Claimant shall retain its lien and the Class Eight Claim shall be paid as follows:

- 3 a. Interest shall accrue at the rate of 4.75% per annum, from and after the
4 Effective Date, based upon a 5-year amortization of the balance owed on
5 the Class Eight Claim as of the Effective Date.
- 6 b. Payments of \$3,188.68 per month shall be made to the Class Eight
7 Claimant commencing on the Effective Date for a period of five years, at
8 which time the Class Eight Claim shall be all due and payable.
- 9 c. The difference, if any, between the secured amount of the Allowed
10 Claim of Penny Newman Grain Co. and the total amount of Penny
11 Newman Grain Co.'s Allowed Claim shall be a general unsecured Class
12 Fourteen Claim.
- 13 d. There is no pre-payment penalty, and Debtor may pay the Class Eight
14 Claim in full at any time.

15 **Section 3.04 Class Nine Claim: Secured Claim of Penny Newman Milling, LLC**

16 The Class Nine Claim shall consist of the Allowed Secured Claim of Penny Newman
17 Milling, LLC secured by a dairy cattle supply lien recorded on July 20, 2009. Debtor believes
18 the amounts amount of the Class Nine Claim was \$101,762.44 on the Petition Date.

19 ***Treatment of the Class Nine Claim:*** The Class Nine Claim is impaired. The Class
20 Nine Claimant shall retain its lien and the Class Nine Claim shall be paid as follows:

- 21 a. Interest shall accrue at the rate of 4.75% per annum, from and after the
22 Effective Date, based upon a 5-year amortization of the balance owed on
23 the Class Nine Claim as of the Effective Date.
- 24 b. Payments of \$1,910.00 per month shall be made to the Class Nine
25 Claimant commencing on the Effective Date for a period of five years, at
26 which time the Class Nine Claim shall be all due and payable.
- 27 c. The difference, if any, between the secured amount of the Allowed
28 Claim of Penny Newman Milling, LLC and the total amount of Penny

Newman Milling, LLC's Allowed Claim shall be a general unsecured Class Fourteen Claim.

- d. There is no pre-payment penalty, and Debtor may pay the Class Nine Claim in full at any time.

Section 3.05 Class Ten Claim: Secured Claim of Fresno County Tax Collector

The Class Ten Claim shall consist of the Allowed Secured Claim of the Fresno County Tax Collector secured by a lien against the Helm Property. Debtor believes the amounts amount of the Class Ten Claim was \$45,241.14 on the Petition Date.

Treatment of the Class Ten Claim: The Class Ten Claim is impaired. The Class Ten Claimant shall retain its lien and the Class Ten Claim shall be paid as follows:

- a. Interest shall accrue at the rate of 18.0% per annum, from and after the Effective Date, based upon a 1-year amortization of the balance owed on the Class Ten Claim as of the Effective Date.
- b. Payments of \$4,150.00 per month shall be made to the Class Ten Claimant commencing on the Effective Date for a period of one year, at which time the Class Ten Claim shall be all due and payable.

Section 3.06 Class Eleven Claim: Secured Claim of Western Finance and Lease

The Class Eleven Claim shall consist of the Allowed Secured Claim of Western Finance and Lease, Inc. secured by security interest in a 2010 Supreme Model 1200 Mixer. Debtor believes the amounts amount of the Class Nine Claim was \$77,850.57 on the Petition Date.

Treatment of the Class Eleven Claim: The Class Eleven Claim is impaired. The Class Eleven Claimant shall retain its lien and the Class Eleven Claim shall be paid as follows:

- a. Interest shall accrue at the contract rate of 7.11% per annum, from and after the Effective Date, based upon a 6-year amortization of the balance owed plus \$2,000.00 in attorneys fees and costs on the Class Eleven Claim as of the Effective Date.

- b. Payments of \$1,400.00 per month shall be made to the Class Eleven Claimant commencing on the Effective Date and continuing on the same day of each month thereafter until the Class Eleven Claim is paid in full, including principal, accrued interest, and allowed attorneys fees and costs.
- c. There is no pre-payment penalty, and Debtor may pay the Class Eleven Claim in full at any time.
- d. Debtor shall not object to the allowance of Proof of Claim No. 19 filed by Western Finance and Lease on October 4, 2010. However, Debtor may object to any amendment to the Western Finance and Leasing Proof of Claim.
- e. Payments will be applied first to interest and then to principal.
- f. All terms of the equipment finance agreement between Debtor and Western Finance and Leasing will remain in full force and effect other than as modified under the Plan.
- g. The automatic stay under Section 362 will lift automatically and debtor will immediately tender the collateral to Western Finance and Leasing if an event of default occurs.

Article IV. Provisions for Executory Contracts and Unexpired Leases

Section 4.01 Class Twelve Claims

The Class Twelve Claims shall consist of all executory contracts and unexpired leases of Debtor. The Class Twelve Claims are unimpaired under the Plan. All executory contracts and unexpired leases not rejected before the Confirmation Date shall be assumed under the Plan. Any general unsecured claim arising out of the rejection of executory contracts and unexpired leases by Debtor shall be treated as a Class Fourteen Claim. Any allowed Administrative Claim arising out of the rejection of the executory contracts and unexpired leases by Debtor shall be treated as a Class One Claim.

1 **Article V. Provisions for Allowed Administrative Convenience Claims Consisting of**
2 **General Unsecured Claims of \$3,500.00 or Less.**

3 **Section 5.01 Class Thirteen Claims**

4 The Class Thirteen Claims shall consist of all of the Allowed Claims of general
5 unsecured creditors of Debtor owed \$3,500.00 or less or creditors electing to be treated as
6 such.

7 ***Treatment of the Class Thirteen Claims:*** The Class Thirteen Claims are impaired.
8 The Class Thirteen Claims shall not accrue interest and shall receive a pro-rata distribution of
9 a one-time payment of \$4,000.00 within 30 days of the Effective Date of the Plan in
10 satisfaction of their claims.

11 The pro rata share of any Class Thirteen Claim to which an objection has been filed
12 before the Effective Date shall be segregated by Debtor until such time as the objection is
13 resolved and final by order of the Court. If no such objection to a Class Thirteen Claim has
14 been filed prior to the Effective Date, the Claim shall be allowed.

15 **Article VI. Provisions for Allowed Claims of General Unsecured Creditors in**
16 **Excess of \$3,500.00.**

17 **Section 6.01 Class Fourteen Claims**

18 The Class Fourteen Claims shall consist of the Allowed Claims of general unsecured
19 creditors of Debtor not included in the Class Thirteen Claims. The Class Fourteen Claims shall
20 include the deficiency claims of secured creditors who have repossessed and liquidated their
21 collateral, the unsecured portion of secured claims, and general unsecured claims arising out of
22 the rejection of executory contracts and unexpired leases. Debtor estimates that the amount of
23 the allowed Class Fourteen Claims will be about \$2,362,000.00 on the Effective Date.

24 ***Treatment of the Class Fourteen Claims:*** The Class Fourteen Claims are impaired.
25 The Class Fourteen Claims shall not accrue interest. Debtor shall make payments totaling
26 \$50,000.00 semi-annually to the Class Fourteen Claimants commencing in November 2011,
27 and continuing each May and November of each year through May 2016, or until all Class
28 Fourteen Claims are paid in full, whichever is first. All Class Fourteen Claims shall receive a

1 pro rata share of each distribution made by Debtor under this Plan based upon the amount of
2 their Allowed Claims.

3 **Article VII. Provision for Interests of Principals of Debtor**

4 **Section 7.01 Class Fifteen Claims: Interests of Beverly Anker, Edward Anker, 5 Jr., Christopher Anker and Joshua Anker**

6 Class Fifteen Claims are the interests of Beverly Anker, Edward Anker, Jr., Christopher
7 Anker, and Joshua Anker, the partners of Debtor.

8 *Treatment of the Class Fifteen Claims:* The Class Fifteen Claims are unimpaired.
9 The Class Fifteen Claimants shall retain their interests in Debtor.

10 **Article VIII. Provisions for Interests of Debtor**

11 **Section 8.01 Class Sixteen Claims: Interests of Debtor**

12 The Class Sixteen Claims are the claims or interests held by Debtor. Debtor shall retain
13 its assets and shall not be required to liquidate any of its assets except as provided in the Plan.
14 Additionally, Debtor shall manage its affairs subject to the provisions of the Plan without the
15 appointment of a trustee or other outside management or control. The assets owned by Debtor
16 shall revert in Debtor upon the Effective Date.

17 **Article IX. Means for Executing the Plan**

18 **Section 9.01 Debtor's Continued Operations**

19 Debtor will continue to operate its business after confirmation of the Plan. Debtor has
20 taken steps to improve its operations including (a) increasing cow comfort in order to increase
21 milk production, (b) computerized its feed mixing to control milk cow diet for increased milk
22 production and reduced feed costs, (c) increase the number of milk cows, while decreasing
23 nonessential calves and heifers, and (d) work with Debtor's veterinarian to address fertility
24 problems and increase pregnancy levels. Debtor believes that these actions have improved its
25 business and ability to make payments required under the Plan. Based upon these
26 improvements, Debtor projects that its business will generate gross income of about
27 \$34,076,546.50 between March 1, 2011, and February 28, 2014. Debtor's expenses for the
28 same period are projected to be \$28,609,441.67, calculated as provided in the Budgets. This

1 will leave net income of \$5,469,104.83. Debtor projects that the payments required by the Plan
2 will be \$4,822,510.00 for the same period. The assumptions underlying Debtor's belief as to
3 its ability to achieve these profits are included in the Budgets.

4 **Section 9.02 Available Cash to Fund Plan**

5 According to Debtor's projections, this will yield available cash to pay creditors as
6 required by the Plan. Debtor believes it will achieve the income projected in the Budgets by
7 focusing on the operation of its dairy. Debtor believes that the income it will generate after
8 confirmation of the Plan will be sufficient for it to pay ongoing expenses and fund the Plan.

9 **Article X. Continued Operation of Dairy Business**

10 **Section 10.01 Debtor's Operations**

11 Debtor shall manage its operations including, but not limited to, general dairy
12 management, payment processes, and funds investment, including without limitation:

- 13 a. Debtor is authorized to employ partners, managers, agents, brokers,
14 representatives and attorneys to carry out any activity authorized by this Plan;
 - 15 b. Debtor is authorized to pay ordinary operating costs and current taxes without
16 further order of the Court;
 - 17 c. Debtor retains the right to prosecute all claims arising from any dispute
18 involving Debtor or any property within its control;
 - 19 d. Except as otherwise provided in the Plan, Debtor is authorized to distribute its
20 property and the proceeds from any sale of its property to the creditors of Debtor and those
21 entitled to receive such distribution under the terms of this Plan.
 - 22 e. Debtor may, but is not required to, prosecute any claims against other entities
23 including, but not limited to, any avoidance actions to recover fraudulent transfers or
24 preferential payments.
 - 25 f. Debtor may, but is not required to, object to any claim pursuant to the Plan,
26 whether in the Chapter 11 Case or otherwise, and may pursue such litigation as is appropriate
27 to resolve such disputes and objections.
- 28

g. Debtor may, but is not required to, pursue any claim for monetary damages that Debtor determines is appropriate, against any person or entity.

Section 10.02 Post-Confirmation Expenses

The reorganized Debtor shall be entitled to expend funds reasonably necessary to carry out the terms of the Plan. Professional Fee Claims shall be paid only upon application to and approval of the Court. Expenses that can be paid in the ordinary course of business, including post-confirmation professional fees, shall continue to be paid in the ordinary course of business.

Article XI. Claims Handling

Section 11.01 Ownership and Transfer of Claims

For purposes of any Distribution under the Plan, Debtor has no obligation to recognize any transfer of Claims occurring on or after the Distribution date. Debtor is permitted to recognize and deal for all purposes with only those Claimants of record stated on the claims docket maintained by the Court, or scheduled in the list of creditors filed with the Court under Bankruptcy Rule 1007 and not listed as disputed, contingent, or unliquidated as to amount, and to which no objection has been interposed.

Section 11.02 Amendments to Claims

In order for Debtor to settle disputes and otherwise implement the Plan, a proof of claim may be amended to increase or liquidate the amount or priority of such Claim after the Bar Date, but only as agreed upon by Debtor and the holder of such Claim, or as otherwise permitted by the Court, the Bankruptcy Rules or applicable law. Without limiting the previous sentence in any manner, unless otherwise provided in the Plan, proofs of claim shall not be filed or amended after Confirmation of the Plan unless the amendment is solely to decrease the amount or priority of the Claim. Any such new or amended Claim filed after the Confirmation of the Plan is disallowed in full and is expunged without any action by the Debtor.

Section 11.03 Disputed Claims

Except as otherwise provided in the Plan, Debtor may object to the allowance of Claims filed with the Court if Debtor disputes liability, priority, or amount, including, without

1 limitation, objections to Claims that have been assigned and the assertion of the doctrine of
2 equitable subordination with respect thereto. All objections may be litigated to Final Order, or
3 compromised, or withdrawn. Unless otherwise ordered by the Court, Debtor shall file and
4 serve all objections to Disputed Claims no later than the Objection Date, or such other date as
5 may be approved by the Court.

6 **Section 11.04 Objection Date**

7 There shall be no fixed Objection Date for any Claims other than the Class Six, Seven, Eight,
8 and Nine Claims. The Objection Date with respect to Class Six, Seven, Eight, and Nine Claims
9 shall be no later than the Effective Date.

10 **Section 11.05 Estimation of Claims.**

11 Debtors may request that Court to estimate any contingent, unliquidated or Disputed
12 Claim under Section 502(c). Debtors may request the Court to estimate a Claim regardless of
13 whether the Claim has been objected to by a party in interest. Estimation of a Claim shall not
14 constitute the allowance of a claim and Debtors reserve the right to object to the allowance of
15 any estimated Claim.

16 **Section 11.06 Allowance of Disputed Claims.**

17 When a Disputed Claim becomes, in whole or in part, an Allowed Claim, Debtor shall
18 distribute to the Claimant the distributions the Claimant is then entitled to under the Plan,
19 together with any permitted interest. Such distribution, if any, shall be made on or after the date
20 that the order or judgment of the Court allowing such Disputed Claim becomes a Final Order,
21 or after amendment, but not more than thirty days thereafter.

22 **Article XII. Payments to Creditors Under the Plan**

23 **Section 12.01 Distributions**

24 There shall be an initial distribution and subsequent distributions to creditors under the
25 Plan. Timing of such distributions shall be made as described under Articles I through VI.

26 **Section 12.02 Method of Payment**

27 The method of payment shall be at the election of Debtor, but may include, without
28 limitation, bank check, business check, or wire transfer.

Section 12.03 Means of Distribution

Distributions by mail to holders of Allowed Claims shall be made as follows: (1) at the addresses set forth on the respective proofs of claim by such holders; (2) at the addresses set forth in any written notices of address changes delivered to Debtor after the date of any related proof of claim; or (3) at the address designated in any written agreement between Debtor and such Claimants or so designated by order of the Court.

Section 12.04 Holding of and Failure to Claim, Undeliverable Distributions

All Distributions are to be made by Debtor to the holder of each Allowed Claim at the holder's address as described under section 12.03. If any holder's Distribution is returned as undeliverable, no further Distributions to such holder shall be made unless and until Debtor is notified of such holder's then current address, at which time all required Distributions shall be made to such Claimant. Undeliverable Distributions shall be held by Debtor until such Distributions are claimed, so long as they are claimed within ninety days following a Distribution. After 90 days, all unclaimed Distributions revert to Debtor, and the Claim of any Claimant or its successor with respect to the Distribution shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

Article XIII. Voting

Section 13.01 Acceptance/Rejection Votes

Debtor shall request confirmation of the Plan under Section 1129(b) of the Code to the extent any Class impaired under the Plan and entitled to vote does not accept the Plan by the requisite statutory majority provided in Section 1126(c), or is deemed to have rejected the Plan.

Section 13.02 Impaired Classes to vote

Each holder of a Claim in an impaired Class shall be entitled to vote separately to accept or reject this Plan, unless such holder is deemed to accept or reject the Plan.

Section 13.03 Acceptance by Class of Creditors

An impaired Class of holders of Claims shall have accepted the Plan if the Plan is accepted by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have voted to accept or reject the Plan. A Class of

1 holders of Claims shall be deemed to accept the Plan in the event that no holder of a Claim
2 within that Class submits a ballot by the deadline for the return of ballots. Proponent requests
3 Confirmation of the Plan under Sections 1129(a) and 1129(b).

4 **Article XIV. Effect of Confirmation**

5 **Section 14.01 Terms Binding**

6 On the Effective Date, all provisions of this Plan shall be binding upon Debtor, all
7 Claimants, and all other individuals and entities who are affected in any manner by the Plan.

8 **Section 14.02 Discharge**

9 All Claims against Debtor that exist upon Confirmation of the Plan shall be discharged
10 and all pre-petition defaults deemed cured in exchange for the payments required under the
11 Plan.

12 **Section 14.03 Injunction**

13 Claimants are permanently enjoined from commencing or continuing any action to
14 collect, recover, or offset any released Claim as a personal liability of Debtor, to the fullest
15 extent permitted by sections 1141(d)(1) and 524 of the Code.

16 **Section 14.04 Preservation of Avoidance Actions Claims and Rights**

17 On and after the Effective Date, Debtor shall retain any avoidance actions, including
18 any preference claims or fraudulent conveyance claims. Debtor may also assert such avoidance
19 actions in the context of defeating any Disputed Claim. Except for the releases and waivers
20 expressly stated in the Plan, nothing in the Plan waives the avoidance and other powers of
21 Debtor under the Code or the Bankruptcy Rules. Debtor retains after Confirmation and after
22 the Effective Date, all powers granted by the Code and the Bankruptcy Rules, including but not
23 limited to all claims held by a trustee or debtor in possession arising on or before the Effective
24 Date. Confirmation of the Plan does not release any Claim held by Debtor or the estate, unless
25 the Plan or Confirmation Order specifically and unambiguously so provides.

26 ///

27 ///

28 ///

Section 14.05 Statutes of Limitation

All applicable statutes of limitations and extensions thereto, including but not limited to any applicable state law statute of limitations and Sections 108, 546, and 550 shall remain in full force and effect and available to Debtor as if Debtor was a trustee in bankruptcy.

Article XV. Amendments or Modifications to the Plan

Section 15.01 General Arrangements.

The Plan may be amended or modified in the manner prescribed in Section 1127. A holder of a Claim that has accepted or rejected this Plan shall be deemed to have accepted or rejected, as the case may be, the Plan as modified, unless, within applicable time periods, such holder changes its previous acceptance or rejection.

Section 15.02 Amendment of the Plan

At any time before Confirmation of the Plan, Debtor may alter, amend, or modify the Plan under Section 1127(a); provided that such alteration, amendment, or modification does not materially and adversely affect the treatment and rights of the holders of Claims under this Plan. After the Confirmation of the Plan and before substantial consummation of the Plan as defined in Section 1101(2), Debtor may, under Section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation order, and such matters as may be necessary to carry out the purposes and effects of the Plan, so long as such proceedings shall not materially and adversely affect the treatment of holders of Claims under the Plan; provided, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or applicable order of the Bankruptcy Court. At any time after Confirmation of the Plan, Debtor may modify the Plan so long as such modification is accomplished consistent with the Code.

Section 15.03 Revocation or Withdrawal of the Plan

Debtor reserves the right to revoke or withdraw this Plan at any time before Confirmation of the Plan.

Section 15.04 Reservation of Rights

Neither the filing of the Plan or Disclosure Statement, or provision contained in the Plan or in the Disclosure Statement, nor the taking of any action with respect to the Plan by any party in interest shall (a) be or be deemed to be an admission against interest, and (b) until the Effective Date, be or be deemed to be a waiver of any rights any party in interest may have (i) against any other party in interest, or (ii) in any of the assets of any other party in interest, and all such rights are specifically reserved until the Effective Date. In the event that the Plan is not confirmed or fails to become effective, neither the Plan nor the Disclosure Statement may be used or relied upon in any manner in any suit, action, proceeding, or controversy within or without this Chapter 11 Case involving Debtor or the estate, except with respect to Confirmation of the Plan.

Article XVI. Miscellaneous Provisions

Section 16.01 Jurisdiction of the Court

The Court will retain jurisdiction after confirmation of the Plan to the extent permitted by applicable law. Any litigation involving primarily matters of state law shall be prosecuted in the state court.

Section 16.02 Taxes

Each holder of an Allowed Claim that has received a Distribution has sole responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit. For tax purposes, Distributions received in respect of Allowed Claims shall be allocated first to unpaid accrued interest, then to the principal amount of such Claims.

Section 16.03 Severability

If any provision of this Plan is determined to be unenforceable, the enforceability, operation, or effect of any other provision of this Plan is not affected. So long as the Plan still fulfills its essential purpose, any unenforceable provision is severed from the Plan.

Section 16.04 Successor and Assigns

The rights and obligations of any party in interest to this Plan are binding on, and inure to the benefit of, the successors and assigns of such party in interest.

Section 16.05 Effectuating Documents; Further Transactions

Debtor is authorized and directed to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the Confirmation order, and to take all actions necessary or appropriate to effectuate the provisions of this Plan. Debtor may engage counsel to assist in its duties, including counsel who may have previously represented Debtor.

Section 16.06 Modification of Payment Terms

At any time after the Effective Date, Debtor may modify the treatment of any Allowed Claim, so long as the holder whose Allowed Claim is being adversely affected consents in writing.

Section 16.07 De Minimis Distributions

Notwithstanding anything to the contrary contained in the Plan, Debtor shall not disburse payment to the holder of an Allowed Claim in an impaired class of claims if the amount of payment otherwise due for such distributions is less than \$25.00.

Section 16.08 Incorporated Provisions to Reconcile with the Disclosure Statement.

The Plan and the Disclosure Statement should be reconciled and consistent with each other. However, the terms of the Plan supersede and shall control any statements in the Disclosure Statement if the Plan and Disclosure Statement are inconsistent and cannot be reconciled.

Article XVII. Payment of Quarterly Fees and Post Confirmation Status Reports

Section 17.01 Payment of Quarterly Fees

Debtor shall pay Quarterly Fees to the United States Trustee after the Effective Date and until the Court enters an order closing the case. Debtor shall pay the Quarterly Fees owed to the United States Trustee from income generated by the operation of its business and the payment of Quarterly Fees shall not affect feasibility of the Plan.

Section 17.02 Post-Confirmation Status Reports

Debtor shall file Post-confirmation Status Reports with the Bankruptcy Court one time every three months until the dismissal of the case, conversion of the case, or entry of a Final Decree closing the case. The Post-confirmation Status Reports shall explain the progress made by Debtor toward substantial consummation of the Plan. A Post-confirmation Status Report shall be filed with the Court for the quarter within which the Plan is confirmed. Subsequent Post-confirmation Status Reports shall be filed at the expiration of each quarter thereafter until dismissal of the case, conversion of the case, or entry of a Final Decree closing the case. Post-confirmation Status Reports shall be filed with the Court and served on the United States Trustee not later than the last day of the month following the expiration of a reporting period. Post-confirmation Status Reports shall be served on the United States Trustee not later than the day on which the report is filed with the Court. The Post-confirmation Status Reports shall include information to enable the Court to determine:

- a. whether the order Confirming the Plan of Reorganization has become a Final Order;
- b. whether deposits required by the Plan have been distributed;
- c. whether any property proposed by the Plan to be transferred has been transferred;
- d. whether the reorganized Debtor has assumed the business or management of property dealt with under the Plan;
- e. whether payments under the Plan have been commenced;
- f. whether fees owed to the United States Trustee pursuant to 28 U.S.C. section 1930 have been paid to the date of the Post-confirmation Status Report; and
- g. whether all motions, contested matters, adversary proceedings, and other litigation involving Debtor has been concluded.

///

///

///

Article XVIII. Definitions and Rules of Interpretation

Section 18.01 Definitions

“Administrative Claim” means a Claim for payment of an administrative expense of a kind specified in Section 503(b) and entitled to priority under Section 507(a)(2), including, but not limited to, Professional Fee Claims filed on or before the Administrative Claims Bar Date.

“Administrative Claims Bar Date” means 30 days after the entry of the Order confirming the Plan.

“Allowed Claim” means a claim (a) for which a proof of claim has been filed within the period fixed by Bankruptcy Rule 3001 or Final Order of the Court or (b) scheduled in the list of creditors filed with the Court pursuant to Bankruptcy Rule 1007(b) and not listed as disputed, contingent, or unliquidated as to amount and to which no objection has been interposed.

“Budgets” means Debtor’s Cash Flow Projections for March 2011 through February 2014 that are attached to the Disclosure Statement as Exhibit “C.”

“Claim” means any right to payment against Debtor in existence upon the Confirmation of the Plan, whether or not such right to payment is reduced to judgment, liquidated, unliquidated, disputed, undisputed, legal, secured, or unsecured.

“Claimant” means the person or entity asserting, or capable of asserting, a Claim.

“Class” means any class into which Claims are classified pursuant to this Plan.

“Code” means Title 11 of the United States Code.

“Confirmation” means the entry of an order of the Court confirming the Plan.

“Confirmation Date” means the date of the entry of an order of the Court confirming the Plan.

“Court” means the United States Bankruptcy Court for the Eastern District of California.

“Debtor” means Shady Acres Dairy, a California partnership.

“Disputed Claims” means claims for payment filed by individuals or entities seeking to be paid from assets of the estate that Debtor believes (a) are not owed, (b) are not owed in

1 the amount of the claim filed, or (c) assert improper priority, and to which Debtor objects on or
2 before the date required by this Plan.

3 **"Distributions"** means payments to the holder of an Allowed Claim as provided by the
4 Plan.

5 **"Effective Date"** means September 1, 2011.

6 **"Executory Contracts"** means contracts and unexpired leases that were executory on
7 the Petition Date within the meaning of Section 365.

8 **"Final Decree and Order Closing the Chapter 11 Case"** means the Order of the
9 Court determining that Debtor's estate has been fully administered and that the Plan has been
10 substantially consummated, and closing the case.

11 **"Final Order"** means an order or judgment of the Court or other court of competent
12 jurisdiction that has not been reversed, stayed, modified or amended, and as to which the time
13 to appeal has expired without such an appeal.

14 **"Impaired Claim"** means a Claim that shall not receive full payment under the Plan
15 consistent with the contractual rights of the claimant.

16 **"Objection Date"** means the date set by the Plan, or if not by the Plan by order of the
17 Court, setting the deadline for Debtor to file objections to any timely filed proof of claim filed
18 by a Claimant.

19 **"Petition Date"** means August 9, 2010, the date on which Debtor commenced its
20 Chapter 11 case, and, where relevant, the time of the filing of Debtor's Chapter 11 petition.

21 **"Plan"** means this *Modified Plan of Reorganization Dated August 19, 2011*, as
22 amended or modified in accordance with the Code.

23 **"Professional Fee Claims"** means an Administrative Claim of a professional for
24 compensation for services rendered or reimbursement of costs, expenses, or other charges and
25 disbursements incurred during the period from the Petition Date through the last day of the
26 calendar month immediately preceding the date of Confirmation.

27 **"Term of the Plan"** means that period of time from the date on which Debtor filed its
28 Voluntary Petition to the date on which the Court enters an order closing this case.

1 **“Unimpaired Claim”** means a Claim that shall receive full payment under the Plan
2 consistent with the contractual rights of the Claimant.

3 **Section 18.02 Rules of Interpretation**

4 Unless otherwise specified, all article, section, exhibit, or schedule references in this
5 Plan are to the respective article in, section in, exhibit to, or schedule to the Plan, as the same
6 may be amended, waived, or modified from time to time. Whenever from the context it is
7 appropriate, each term, whether stated in the singular or the plural, shall include both the
8 singular and the plural and any pronoun stated in the masculine, feminine or neuter gender shall
9 include the masculine, feminine and neuter gender. Captions and headings in the Plan are
10 inserted for convenience of reference only and are not intended to be a part of or to affect the
11 interpretation hereof. Whenever the words “include,” “includes” or “including” are used in this
12 Plan, they shall be deemed to be followed by the words “without limitation,” whether or not
13 they are in fact followed by those words or words of like import.

14 References from or through any date mean from and including or through and
15 including, respectively, unless otherwise specified. Any references in the Plan to a contract,
16 instrument, release, indenture, or other agreement or document being in a particular form or on
17 particular terms and conditions means that such document will be substantially in such form or
18 substantially on such terms and conditions.

19 With respect to any reference in this Plan to a consent, approval, or acceptance by any
20 party that shall not unreasonably be withheld, or to an issue, agreement, order or other
21 document (or the terms thereof) that shall be reasonably acceptable to any such party, such
22 consent, approval or acceptance shall not be unreasonably conditioned, delayed or withheld.

23 **Section 18.03 Computation of Time**

24 In computing any period of time prescribed or allowed by the Plan, unless otherwise
25 expressly provided, the provisions of Bankruptcy Rule 9006(a) apply. In the event that any
26 payment, distribution, act, or deadline under the Plan is required to be made or performed or
27 occurs on a day that is not a business day, then the making of such payment or distribution, the
28 performance of such act or the occurrence of such deadline, is deemed to be on the next

succeeding business day without interest, but will be deemed to have been completed or to have occurred as of the required date.

Section 18.04 References to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

Section 18.05 Exhibits; Schedules

All exhibits and schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full in the Plan. To the extent any exhibit or schedule is inconsistent with the terms of the Plan, unless otherwise ordered by the Court, the non-exhibit or non-schedule portion of the Plan shall control.

The undersigned, on behalf of Debtor, submits and agrees to be bound by the terms of the Plan.

Date: August 16, 2011

SHADY ACRES DAIRY

By 
EDWARD ANKER, Partner

APPROVED:

KLEIN, DeNATALE, GOLDNER,
COOPER, ROSENBLIEB & KIMBALL, LLP

By 
HAGOP T. BEDOYAN
JACOB L. EATON
Attorneys for Debtor-in-Possession