

John O'Brien (*Pro Hac Vice*)
Scott C. Sandberg (*Pro Hac Vice*)
Brian P. Gaffney (*Pro Hac Vice*)
Snell & Wilmer L.L.P.
1200 Seventeenth Street
Suite 1900
Denver, Colorado 80202
Telephone: (303) 634-2000
Fax: (303) 634-2020
Email: ssandberg@swlaw.com; jobrien@swlaw.com; bgaffney@swlaw.com
Attorneys for AgStar Financial Services, FLCA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

In re:)
) **Case No. 12-20405-RLJ11**
Friendship Dairies)
) **Chapter 11**
Debtor.)
)

**AGSTAR FINANCIAL SERVICES, FL CA'S OBJECTION TO SECOND
AMENDED PLAN OF REORGANIZATION PROPOSED BY FRIENDSHIP DAIRIES**

AgStar Financial Services, FLCA, as loan servicer and attorney-in-fact for McFinney Agri-Finance, LL ("AgStar") hereby submits its Objection to Second Amended Plan of Reorganization Proposed by Friendship Dairies as follows:

A. The Note

1. On or about September 4, 2007 the Debtor executed and delivered to AgStar its promissory note in the original principal amount of \$18,400,000 (the "Note").

2. As of the August 6, 2012 Petition Date the Debtor owed AgStar \$16,452,377.45 calculated as follows:

Unpaid Principal	\$16,408,373.39
Accrued Interest through 8/6/12	44,004.06
Attorneys' Fees and Costs	<u>TBD</u>
Total to 8/6/12	\$16,452,377.45

The Note continued to accrue interest on and after August 7, 2012 at the per annum rate of 11.30% (current default per diem is \$5,079.86). The Note also has an attorneys' fees clause. In addition, the Note has a SWAP fee that if paid on the Petition Date calculated to \$1,919,204, which is owed in addition to the total amount stated above.

3. After the Petition Date, the Debtor made three payments to AgStar totaling \$257,812.50 as follows:

<u>DATE</u>	<u>AMOUNT</u>
September 24, 2012	\$85,937.50
September 28, 2012	\$85,937.50
October 31, 2012	<u>\$85,937.50</u>
TOTAL	\$257,812.50

4. Pursuant to this Court's Order dated May 21, 2013, on May 28, 2013 the Debtor made an additional payment to AgStar in the amount of \$68,196.16 which AgStar is holding pending an order of this Court for payment (the "Escrowed Funds").

5. As of June 19, 2013 the unpaid balance of the Note was \$19,350,176.67 calculated as follows:

Unpaid Principal:	\$16,408,373.39
Accrued Interest through 6/19/13	1,391,395.89
Appraisal Fees	12,000.00
Attorneys' Fees and Costs Snell & Wilmer	290,000.00
Attorneys' Fees Sprouse Shrader Smith P.C.	9,364.39
Current Prepayment Fee	<u>1,239,043.00</u>
Total to 6/19/13	\$19,350,176.67

The Note continued to accrue interest on and after June 20, 2013 at the per annum rate of 11.30% (current default per diem is \$5,079.86). The Note has a prepayment fee which changes day-to-

day and which if paid on June 19, 2013 calculates to \$1,239,043. The above payoff excludes late charges which may be chargeable to the Note.

6. Section 1 of the Note has an Interest Rate Reset Clause authorizing AgStar to reset the Note's interest rate on September 1, 2015 and each 7-year anniversary thereafter. Specifically, the Note has the following interest rate reset clause (the "Interest Rate Reset Clause"):

Notwithstanding the foregoing, this interest rate shall be subject to adjustment by the Lender or any subsequent holder of this Note on September 1, 2013 and each 7-year anniversary thereafter (if any) (each, a "Rate Change Date"), at which time the interest rate shall change to a rate that shall be determined by the 25th day of the month prior to the Rate Change Date and be based upon the 7-year Admin net yield for a 60 day delivery then being required by Agri-Access (the "Index"), adjusted for credit quality, plus an 0.15 percent per annum field servicing fee. If the Index is not reported by such 25th day of the month, the Index reported on the first business day preceding such 25th day of the month will be used. If the Index is no longer available, Lender will select a new index, which shall be based upon comparable information.

Upon adjustment to the interest rate on any Rate Change Date, the outstanding principal balance at the adjusted interest rate shall be fully reamortized over the remainder of the loan term and the combined monthly payment of principal and interest shall be modified accordingly. Notwithstanding any reamortization, the Maturity Date will remain unchanged.

If, in respect of any payment hereon, Borrower shall tender to the Lender a check, draft, money order, certified check, official bank check, or other negotiable or non-negotiable instrument, the acceptance thereof by the Lender shall be provisional and subject to final payment without exchange to the Lender in collected funds at its bank of deposit.

7. Section 1 of the Note also has the following prepayment or SWAP fee clause (the "SWAP Fee Clause"):

Partial payments may be made only in accordance with the prepayment privilege, if any, as set forth in this Note.

b). Prepayment. Notwithstanding any language in this Note or the other Credit Documents to the contrary (as such term is defined below),

the Borrower has no right to make advance payments of principal (hereinafter, "prepayment") except for an optional prepayment of principal allowable annually only during the month of September ("Optional Prepayment Month") in an amount equal to or less than 10% of the then outstanding principal balance (collectively or individually "Exceptional Plus Economic Product Prepayment").

Prepayments other than Exceptional Plus Economic Product Prepayments, shall not be made without the Lender's consent, which the Lender will grant solely upon the terms and subject to the conditions hereinafter provided. In order to induce the Lender to accept any prepayments other than Exceptional Plus Economic Product Prepayments, the Borrower agrees to pay the Lender a prepayment interest charge (hereinafter "prepayment fee") for each such prepayment. A prepayment fee shall be due and payable for each such other prepayment made prior to September 1, 2015 (hereinafter "Fee End Date"). The prepayment fee shall be due and payable for each such advance payment made by the Borrowers, whether made voluntarily or involuntarily, including any prepayment effected by the Lender's exercise of the acceleration clause in the Note. The prepayment fee shall also be due and payable if the Borrowers convert this loan to another loan product offered by the Lender prior to the Fee End Date and shall be paid on the effective date of such conversion. The prepayment fee due from Borrowers for each such advance payment shall be that amount calculated as follows:

(i). Compare the Initial Reference Rate (as such term is defined below) to the Final Reference Rate (as such term is defined below). If the Initial Reference Rate is less than or equal to the Final Reference Rate, the prepayment fee is zero.

(ii). If the Initial Reference Rate is greater than the Final Reference Rate, the prepayment fee shall be calculated as follows:

(1). Calculate an amortization schedule using the Initial Reference Rate, the amount of the principal prepayment, the prepayment date and the loan maturity date. If the Fee End Date is prior to the loan maturity date, assume for purposes of the calculation that all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date.

(2). Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Initial Reference Rate ("Initial Interest Amount(s)").

(3). Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Final Reference Rate ("Final Interest Amount(s)").

(4). Calculate the "Differential Interest Amount" for each interest payment scheduled through the Fee End Date by subtracting the Final Interest Amount from the Initial Interest Amount for each such payment.

(5). The discounted present value of each Differential Interest Amount shall be calculated by using the Final Reference Rate as the discount rate. The prepayment fee shall be the sum of the discounted present value of each Differential Interest Amount.

(iii). The following terms shall have the meaning given below when used herein:

(1). "Initial Reference Rate" means the annualized interest rate used by the Lender to obtain the funds loaned to the Borrower, which funds are being paid in advance of schedule payment(s).

(2). "Final Reference Rate" means the annualized interest rate Lender would allocate to fund a new advance, on the date of prepayment, with similar scheduled repayment of principal from the time of each such advance payment through the Fee End Date, assuming all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date.

8. Section 6 of the Note has the following attorneys' fees clause (the "Note Attorneys' Fees Clause"):

Notwithstanding anything to the contrary contained herein, if this Note is not paid when due, whether at maturity or by acceleration, and/or any other Event of Default shall occur, then the undersigned promises to pay all costs and collection, including, but not limited to, reasonable attorneys' fees and all reasonable expenses incurred in connection with the collection of this Note, or any part thereof; the protection or realization of the collateral; and the enforcement of any guarantee incurred by the Lender on account of such collection; whether or not suit is filed hereon.

B. The Security Documents and Collateral

9. The Note is secured by a Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing dated September 4, 2008 and recorded on September 9, 2008, at

Reception No. 08-2044, in the Official Public Records of Deaf Smith County, Texas (the “Deed of Trust”) which grants AgStar a lien on the property described therein (the “Collateral”).

10. The Deed of Trust contains several attorneys’ fees clauses, specifically including but not limited to the following (the “Deed of Trust Attorneys Fees Clauses”):

1.08 Indemnification; Subrogation; Waiver of Offset

(a) If Trustee, Beneficiary or any of its or their members, officers, directors, shareholders, employees or agents (each in its capacity as an indemnified party, a “Beneficiary Indemnatee”) is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, concerning this Deed of Trust or the Collateral or any part thereof or interest therein or the occupancy thereof by Trustor, then Trustor shall indemnify, defend, protect and hold harmless each Beneficiary Indemnatee from and against any and all claims, losses, liabilities, damages, assessments, adjustments, costs and expenses (including specifically, but without limitation, attorneys’ fees and expenses of investigation) (collectively, “Damages”) incurred by such Beneficiary Indemnatee in connection with such suit or proceeding, including those arising from the joint, concurrent, or comparative negligence of such Beneficiary Indemnatee; unless such Damages arise as a direct result of the gross negligence or willful misconduct of such Beneficiary Indemnatee. If Trustee or Beneficiary commences an action against Trustor to enforce any of the terms hereof or because of the breach by Trustor or any of the terms hereof, or for the recovery of any such secured hereby, Trustor shall pay to the Trustee or Beneficiary (as applicable) such party’s attorney’s fees and expenses, and the right to such attorney’s fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any term of this Deed of Trust, Trustee or Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Trustor, Trustor shall pay to the Trustee or Beneficiary (as applicable) such party’s attorney’s fees and expenses, whether or not an action is actually commenced against Trustor by reason of breach.

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1.11 Actions by Beneficiary to Preserve Collateral.

That should Trustor fail to make any payment or to do any act as and in the manner provided in any of the Credit Documents, Beneficiary, in its own discretion, without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation, may reasonably make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. Trustor shall, immediately upon demand therefore by Beneficiary, pay all reasonable costs and expenses incurred by Beneficiary in

connection with the exercise by Beneficiary of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorney's fees.

11. AgStar's lien on personal property constituting a part of the Collateral has been property perfected by virtue of the following financing statements (the "Financing Statements"):

(a) Financing Statement recorded with the Texas Secretary of State on September 11, 2008, at Reception No. 08-0030282225, which Financing Statement was continued by virtue of a continuation statement filed on May 16, 2013 at Reception No. 13-00156115; and

(b) Financing Statement recorded with Deaf Smith County on September 9, 2008, at Reception No. 08-2046, which Financing Statement was continued by virtue of a continuation statement filed on May 24, 2013 at Reception No. 13-0886.

12. The Collateral includes the remaining insurance proceeds from hail damage to the improvements on the real property constituting a part of the Collateral in the amount of \$506,303 which the Debtor is holding in a segregated cash collateral account (the "Insurance Cash Collateral").

13. The Collateral also includes the Escrowed Funds which the Debtor paid to AgStar pursuant to the Cash Collateral Order for reimbursement of a portion of AgStar's attorneys' fees and costs, which amount AgStar is holding in escrow pursuant to this Court's Order.

14. The current gross value of Collateral is approximately \$19,563,466.73, calculated as follows:

<u>Description</u>	<u>Amount</u>
Real Property	\$17,900,000.00
Insurance Cash Collateral	506,323.00
Milk Cash Collateral	1,088,947.57
Escrowed Funds	<u>68,196.16</u>
Total	\$19,563,466.73

C. Debtor's Treatment of AgStar's Claim

15. AgStar's claim is treated as a Class 12 Claim under the Plan. The Debtor proposes to pay AgStar as follows:

- (a) Fix the amount of AgStar's claim at \$16,408,373.40, which understates the balance due on the Note.
- (b) Forgive all default interest owed to AgStar.
- (c) Forgive the prepayment fee or SWAP fee.
- (d) Acknowledges that AgStar's claim is fully secured, and acknowledges that AgStar's claim shall be secured with its liens on the collateral described in the Deed of Trust, Security Agreement, Assignments of Rents, and Fixture Filing.
- (e) Proposes to deliver to AgStar a new promissory note as of the Effective Date with a 5% interest rate.
- (f) Proposes to pay AgStar in installments amortized over 240 months with a balloon payment at the end of 180 months with estimated monthly payments of \$112,170.28.
- (g) Proposes to comply with non-monetary terms of the loan documents, yet proposes to give AgStar replacement loan documents not customized for the Debtor's dairy loan, lacks adequate covenants, and fails to provide for title insurance.

(h) Proposes to reimburse AgStar for its attorneys' fees starting 15 years after confirmation of the plan and without paying AgStar any interest on such amount.

D. Objections to Plan

16. AgStar believes that the Debtor cannot make the payments due under the Plan, and this will lead to a loss to AgStar in light of the thin equity cushion. Therefore, AgStar requests that Friendship surrender the Collateral to AgStar to avoid a loss to AgStar. AgStar is a "farmer owned" company, and Debtor's actions in this case will lead to losses upon other farmers. If Friendship will not surrender the Collateral, AgStar requests that its pending motion for relief from stay be granted.

17. If AgStar is unable to obtain its Collateral to avoid unnecessary risk of loss, in the alternative AgStar's objections to the Plan are stated below.

INTEREST RATE

18. The proposed interest rate (5%) is unreasonably low. In regard to the market rate of interest the Court should consider the following factors which have increased the risk to AgStar after it first made the loan:

- (a) There is not much equity remaining in the Collateral;
- (b) The Debtor owes more to AgStar today than the original amount of the loan;
- (c) The Collateral is distressed, and is commonly known to be involved in protracted bankruptcy proceedings;
- (d) Friendship has a history of withholding payments to creditors for negotiating leverage;
- (e) Friendship has a long history of being unable or unwilling to provide timely and accurate financial reports to its creditors;

(f) When AgStar made the loan, three co-makers proudly sported sound balance sheets. Today, the three co-makers claim to be judgment proof according to the Debtor;

(g) When AgStar made the loan, the Debtor had a large line of credit with Frontier Bank to assist it in making regular monthly note payments as monthly cash flow varies in the ordinary course of business. Today the Debtor has no operating lender or post-petition line of credit and needs to fund a dairy and farm operation from cash receipts which are not sustainable or consistent beyond the short term;

(h) The Debtor has no surplus capital and is relying on unachievable assumptions to make Plan payments;

(i) The Plan is not feasible in the long run, and not feasible and unduly risky to AgStar because it relies upon unachievable assumptions, which are not reasonable assumptions for sound underwriting purposes;

(j) This Loan has had and will continue to have a high internal and external cost to administer;

(k) The Debtor has not materially paid down debt during the long administration period of the case;

(l) The Debtor has lost between \$2,000,000 and \$4,000,000 during the administrative period of this case, and these losses are projected to continue.

(m) Debtor suffers from inadequate management.

19. AgStar has not completed its interest rate analysis. At this juncture, AgStar believes the interest rate should be not less than Prime plus 4% adjusted daily (current rate 7.25%), and AgStar's final determination after it completes its analysis may suggest a rate of Prime plus 6% consistent with the current market and risk of further default under the Note.

20. Consistent with the terms of the Note and normal banking practices, the Plan should provide that AgStar shall have the right to re-price the Note on each seventh year in accordance with the Interest Rate Reset Clause.

21. The proposed 5% non-default interest rate on the Note is neither market rate nor fair or reasonable with respect to AgStar because under the Plan other Creditors are receiving a higher rate of interest.

THE SWAP FEE

22. AgStar is entitled to the SWAP Fee pursuant to the SWAP Fee Clause. In addition, and as the evidence has shown in this case, the prepayment or SWAP fee is not a windfall to AgStar. Ninety-seven percent of the prepayment fee or SWAP fee is owed by AgStar to its lending source upon any unpermitted prepayment of the Note and upon any change in the interest rate to a rate below the current stated rate of interest in the Note. The Debtor had the option to select multiple interest rate products, and chose the produce fixing the rate of interest at 6.3% with the related SWAP fee, and it would be inequitable to excuse the Debtor from performing under its SWAP obligation. Further, the Debtor selected this interest rate product because it was a lower interest rate than similar products without the SWAP fee, Debtor has enjoyed these reduced interest rate benefits from September 2008 through the present, and it would be inequitable for the Debtor to be excused from performing under the corresponding SWAP fee having enjoyed interest rate savings during the last five years.

ATTORNEYS FEES REIMBURSEMENT; INTEREST ON PROTECTIVE ADVANCES

23. AgStar should not be required to wait 15 years without interest for the payment for its attorneys' fees.

24. Pursuant to Section 1.11 of the Deed of Trust reprinted below, AgStar is entitled to interest on its attorneys' fees and other advances at the 11.3% default rate stated in the Note:

That in the event Beneficiary is called upon to pay any sums of money to protect this Deed of Trust and the Note secured hereby as aforesaid, all monies advanced or due hereunder shall become immediately due and payable, together with interest at a rate as is set forth in the Note for regular and default interest.

25. AgStar should be reimbursed its attorneys' fees and costs at the inception of the Plan, and, in any event, *pari passu* with the estate professionals who are also seeking attorneys' fees from the Debtor, and after proper adjustment for the attorneys' fees that have already been paid to and should be held by estate professionals' trust accounts.

MONTHLY PAYMENTS INADEQUATE

26. In light of the unpaid balance of the Note, the proposed monthly principal payments of \$112,170.28 and accrued interest will not retire the Note in a reasonably timely manner, and the balloon payment due on October 1, 2028 would be too large to carry at the interest rate the Debtor proposes.

MATURITY DATE

27. It is not reasonable or customary to require AgStar to accept Plan payments through June 1, 2029. In no event should the maturity date extend more than the maturity date currently stated in the Note consistent with normal dairy lending practices if AgStar cannot adjust the interest rate every seven years consistent with the market and then current risk and as provided in the Note.

LOAN DOCUMENT COVENANTS

28. There is no basis to replace the Note and Deed of Trust with alternative loan documents written by the Debtor which omit necessary and customary covenants for dairy facility loans.

29. The Plan provides that Debtor shall be required to comply with all of the non-monetary covenants of the Deeds of Trust (i.e. insurance requirements, real estate tax payment requirements, repair and maintenance requirements and financial reporting requirements). The Plan should provide that any nonmonetary default thereunder shall constitute a default under the Plan authorizing AgStar to enforce its lien rights without further order of the court.

TITLE INSURANCE

30. If the Note is modified, as the Debtors propose, the Plan should provide that the Debtor shall obtain a title policy or endorsement for the benefit of AgStar from a reputable title insurance company at the Debtor's expense insuring AgStar's ongoing first lien after Deed of Trust modification.

FEASIBILITY

31. The Plan is not supported by meaningful, reliable, or consistent income or expense projections or a budget. However, an analysis of the Debtor's operation shows that the Plan is not feasible. The Debtor cannot and will not make the payments or be able to comply with the Plan after the short term.

32. The Debtor has not accurately budgeted its operations and has not met its financial projections during the 340 day administrative period of this case. AgStar believes that it is the only party in interest to have accurately forecast and informed the court of the Debtor's true financial condition.

33. The Debtor has maintained a positive cash flow only because it has liquidated and failed to replace livestock and has failed to make payments to creditors. This is not sustainable.

34. The Debtor does not have sufficient working capital to compete or sustain operations.

35. Debtor cannot show that confirmation of the Plan is not likely to be followed by the liquidation or the need for further reorganization of the Debtor.

PLAN REJECTION

36. With respect to AgStar's secured claim, AgStar has not accepted the Plan, and the Plan does not provide that AgStar shall retain its lien securing its claim and the value, as of the effective date of the Plan, of the property to be distributed by the Debtor under the plan on account of AgStar's claim is not less than the allowed amount of such claim. Further, the Debtor has not surrendered AgStar's collateral to AgStar.

37. AgStar has not accepted the Plan, and the Debtor has not surrendered AgStar's collateral to AgStar.

**THE PLAN IS NOT PROPOSED IN GOOD FAITH, AND THE DEBTOR
HAS NO INTENTION OR ABILITY TO COMPLETE THE PLAN**

38. As a practical matter, the Debtor has proposed a short term plan involving additional liquidation of young stock to raise money to operate in the short term and before the Debtor runs out of money again (the "Short Term Plan"). The Short Term Plan accomplishes the objectives of three groups of creditors before conversion to Chapter 7:

(a) First, estate professionals would get paid their fees before the Debtor converts to a Chapter 7.

(b) Second, it inoculates a certain subclass of unsecured creditors from avoidance claims. Under the Plan, all avoidance exposure would be eliminated, and unsecured creditors having avoidance exposure would still get a 30% cashout; the same cashout as unsecured creditors who do not have avoidance exposure. According to the Debtor's Disclosure Statement, significant beneficiaries of this avoidance exposure inoculation are Dimmit and Gavilon who control the Unsecured Creditors Committee.

(c) Third, Frontier whose secured position is voidable because it filed its financing statement on the petition date. Under the Plan Frontier's avoidance exposure would similarly be inoculated. In addition, post-petition Frontier has received approximately \$1,000,000 of voidable "adequate protection" payments, the voidability of which would be similarly inoculated under the Plan. Further, under the Plan Frontier would essentially "scoop up" a lien on all the Debtor's assets except the real estate and milk and milk proceeds on which AgStar has the first lien. In addition, under the Debtor's liquidation analysis, Frontier should be paid approximately \$10,000,000 upon liquidation. Under the Plan, Frontier is paid \$16,000,000 or approximately 175% of its legitimate allowed claim.

39. The Short Term Plan meets the objectives of certain creditors who are active in this case. However, the Short Term Plan is unconfirmable because the Debtor will not be able to (and in fact has no intention to) complete all payments due under the Plan once the short term objectives of certain professionals and creditors are met under the Short Term Plan.

40. To be fair, no voidability inoculation should be given to any creditor and no final order approving attorneys' fees for professionals of the estate should be entered until after the Debtor has timely made at least three years of payments under the plan and has performed all of its material obligations under the plan.

INADEQUATE MANAGEMENT

41. Management is unqualified, unreliable, and has personal financial problems which adversely impact the Debtor's operations and which will ultimately lead to the Debtor's business closure.

42. Current management cannot or will not provide timely or accurate financial reports.

43. The proposed management agreement is not in the best interest of the Debtor because current management has not demonstrated an ability to manage the company in a sound or profitable manner.

44. The Debtor refuses to address or take remedial action for management's prior failings.

FINANCIAL REPORTING

45. The Plan should provide for regular and ongoing financial reporting by a reputable third party to creditors until creditors are paid in full, and such financial reporting should be no less than currently required section 1.19 of the Deed of Trust.

NO CO-DEBTOR STAY

46. The Plan should confirm that AgStar may enforce its rights against Patrick Van Adrichem, Jakob Van Der Weg and Lidwina Van Adrichem who are co-makers of the Note but not a Debtor under the Bankruptcy Code. According to the Plan the co-makers are not contributing any funding to the Plan.

BEST INTEREST OF CREDITORS

47. The Plan is not in the best interest of the Debtor's creditors, and is not in the best interest of AgStar.

RELIEF FROM STAY UPON DEFAULT

48. The Plan should provide that upon confirmation the Debtor's assets shall vest in the Debtor, and that AgStar shall have relief from stay, and that upon any post-petition default AgStar may enforce its lien rights without further order of the Court.

ABSOLUTE PRIORITY RULE

49. The plan does not satisfy the “absolute priority rule.”

REJECTION OF PLAN

50. With respect to AgStar’s secured claim, AgStar has not accepted the Plan, and the Plan does not provide that AgStar shall retain its lien securing its claim, and the value, as of the effective date of the Plan, of the property to be distributed by the Debtor under the plan on account of AgStar’s claim is not less than the allowed amount of such claim. Further, the Debtor has not surrendered AgStar’s collateral to AgStar.

E. Legal Authority on Pendency Interest and Charges

51. Under Section 506(b), AgStar is entitled to all of its default interest, reasonable attorneys’ fees, costs, and late charges. *See In re Tx. Star Indus. Gp. Ltd.*, Case No. 06-41518-DML-11, 2007 Bankr. LEXIS 4219 at *9 (Bankr. N.D. Tex. December 19, 2007) (providing that Section 506(b) states that the holder of an over secured claim “shall be allowed...interest on such claim, and any reasonable attorneys’ fees, costs or charges....”) (citing 11 U.S.C. § 506(b) (2007)).

52. Based upon a balance of the equities in this matter, AgStar is entitled to pendency interest for the period of time between the default of the Note and the effective date of any plan of reorganization at the default rate provided in the Note. *See In re Tx. Star Indus. Gp. Ltd.*, Case No. 06-41518-DML-11, 2007 Bankr. LEXIS 4219 at *9 (Bankr. N.D. Tex. December 19, 2007) (“As to what interest rate should apply, there is a presumption in favor of the default rate, unless the court determines the higher rate would produce an inequitable result upon a balancing of the equities.”) (citing *Southland Corp. v. Toronto-Dominion (In re Southland Corp.)*, 160 F.3d 1054, 1060 (5th Cir. 1998)). The default rate is only 11.3% and AgStar did not raise the rate as it could have under the Interest Rate Reset Clause. Further, this case has consumed enormous in-house resources which

are not reimbursable under the attorneys' fees clause. Therefore, the 11.3% default rate is not inequitable.

F. Legal Authority on the Plan Interest Rate

53. The proposed interest rate of 5% is inadequate. *See In re SJT Ventures, LLC*, 441 B.R. 248, 252-53 (Bankr. N.D. Tex. 2010) (rejecting the theory that the Debtor is entitled to the pre-default contract rate as the interest rate post-confirmation).

54. AgStar should be paid at least market rate to which the Note should be reset pursuant to the Interest Rate Reset Clause. *See SJT Ventures*, 441 B.R. at 253 (providing that post-effective date interest rate should be the market rate "based on a calculation indicative of the ordinary practices of commercial real-estate lenders in the area...").

55. AgStar believes that the market rate should be at least Prime plus 4% to Prime plus 6% at this time, and subject to AgStar's ongoing right to reset on each seventh year. This market rate of interest takes into account the various risk factors associated with the Plan and the Debtor. *See In re N.W. Timberline Enterps., Inc.*, 348 B.R. 412, (Bankr. N.D. Texas. 2006) (providing that the market rate should take into account loan specific and debtor specific criteria); *SJT Ventures*, 441 B.R. at 255 ("[A] significant objective of a bankruptcy court when determining an appropriate rate of Cramdown interest is to arrive at a rate of interest that 'reflects the present value of the [creditor's] claim and accounts for the specific level of risk.'") (citing *T-H New Orleans Ltd. P'Ship*, 116 F.3d 790, 801 (5th Cir. 1997)).

G. Reservation in the Event the Cash Collateral Stipulation Payments are not Paid

56. At the July 25, 2013 cash collateral hearing, the Debtor, AgStar, and Frontier entered into a stipulation pursuant to which Frontier shall cash out AgStar's lien on the Debtor's milk and milk receivables for a payment of \$700,000 and pursuant to which the Debtor shall pay

AgStar \$371,323 for its Insurance Proceeds Cash Collateral. In the event Frontier and Debtor fail to make these payments as stated pursuant to the stipulated order AgStar reserves the right to submit additional objections.

WHEREFORE, AgStar submits its Objection to Second Amended Plan of Reorganization Proposed by Friendship Dairies.

Dated this 30th day of July, 2013.

Respectfully submitted,

SNELL & WILMER L.L.P

By: /s/John O'Brien
Scott C. Sandberg #33566
John O'Brien #15183
Brian P. Gaffney #39119
Snell & Wilmer L.L.P.
1200 Seventeenth Street, Suite 1900
Denver, Colorado 80202-5854
Phone: (303) 634-2000
Fax: (303) 634-2020
Email: ssandberg@swlaw.com;
jobrien@swlaw.com; bgaffney@swlaw.com
ATTORNEYS FOR AGSTAR FINANCIAL
SERVICES, FLCA

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2013 **AgStar's Financial Services, FLCA's Objection to Second Amended Plan of Reorganization Proposed by Friendship Dairies** was electronically filed with the Court using the CM/ECF system, which sent notification to the following parties participating in the CM/ECF system:

Friendship Dairies
P.O. Box 1556
Hereford, Texas 79045

Sharon L. Stolte
Stinson Morrison Hecker LLP
1201 Walnut, Ste. 2900
Kansas City, Missouri 64106

J. Bennett White
J. Bennett White, P.C.
P.O. Box 6250
Tyler, Texas 75711

Jason B. Binford
Kane Russell Coleman & Logan PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201

Office of United States Trustee
1100 Commerce Street, Room 976
Dallas, Texas 75242

R. Byrn Bass, Jr.
Attorney-at-Law
Compass Bank Building
4716 4th Street, Suite 100
Lubbock, Texas 79416

John F. Massouh
Sprouse Shrader Smith P.C.
701 S. Taylor, Suite 500
Amarillo, TX 79101

Jeff P. Prostok
Clarke V. Rogers
Forshey Prostok LLP
777 Main Street, Suite 1290
Fort Worth, TX 76102

Steven R. Jakubowski
Levenfeld Perlstein, LLC
2 North LaSalle Street, Suite 1300
Chicago, IL 60602

Jonathan P. Firedland
Levenfeld Perlstein, LLC
2 North LaSalle Street, Suite 1300
Chicago, IL 60602

Elizabeth B. Vandesteeg
Levenfeld Perlstein, LLC
2 North LaSalle Street, Suite 1300
Chicago, IL 60602

Conrad D. Hester
Brown & Fortunato, P.C.
905 S. Fillmore, Suite 400
Amarillo, TX 79101

James G. Rea
McGuire, Craddock & Strother, P.C.
2501 N. Harwood St.
Dallas, TX 75201

Benjamin E. Gurstelle
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Joel R. Hogue
Irwin Merritt Hogue Price & Carthel, P.C.
P.O. Box 15090
Amarillo, TX 79105

Scott W. Sharp
Timberlake, Weaver & Sharp, P.C.
1408-A Buddy Holly Ave.
Lubbock, TX 79401

Megan Adeyemo
Gordon & Rees LLP
555 Seventeenth Street
Suite 3400
Denver, CO 80202

Holly R. Shilliday
Snell & Wilmer L.L.P.
1200 Seventeenth St.
Suite 1900
Denver, CO 80202

Scott C. Sandberg
Snell & Wilmer L.L.P.
1200 Seventeenth St.
Suite 1900
Denver, CO 80202

Mark S. Finkelstein
Shannon, Martin, Finkelstein & Alvarado, P.C.
1001 McKinney Street, Suite 1100
Houston, TX 77002

Elizabeth D. Alvarado (Lisa)
Shannon, Martin, Finkelstein & Alvarado, P.C.
1001 McKinney Street, Suite 1100
Houston, TX 77002

/s/ Joanne E. Milelli
Joanne E. Milelli