UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

In re:	:	
	:	In Proceedings Under Chapter 11
	:	
FARMLAND INDUSTRIES,	:	Case No. 02-50557-JWV
INC., *et al*.,	:	Joint Administration
	:	
Debtors.	:	

DECLARATION OF ALBERT SUN

I, Albert Sun, declare as follows:

1. I am a Director at Deutsche Bank Trust Company Americas ("DB"). DB is the agent bank (in such capacity, the "Agent") for the DIP Lenders and the Prepetition Lenders (as defined in the DIP Credit Agreement) under that certain First Amended and Restated Debtor-in-Possession Credit Agreement and Adequate Protection Stipulation dated as of June 5, 2002 (the "DIP Credit Agreement"). In such capacity, I am responsible for overseeing the Debtors' account with respect to the DIP Credit Agreement. I have been regularly and intimately involved in the relationship between the Agent and the Debtors since February 2002. If called as a witness I could and would competently testify to the matters set forth in this declaration based on my personal knowledge, unless otherwise stated.

2. In February 2002, the Debtors and certain of the Lenders entered into a $500 million credit facility secured by substantially all of the assets of the Debtors (the "Prepetition Credit Facilities"). In April and May 2002, the Debtors reported that they were experiencing cash flow problems that threatened the Debtors' ongoing operations.

3. Prior to the Petition Date, Robert Honse, the then chief executive officer of Farmland Industries, Inc. ("Farmland") and Harry Fehrenbacher, a member of Farmland's board of directors, informed me in a telephone conversation that due to the Debtors' liquidity

problems and substantial debt, the board of directors had directed management to sell any and all of the Debtors' assets up to $500 million in order to generate sufficient funds to fully repay the lenders under the Prepetition Credit Facilities. Mr. Honse and Mr. Fehrenbacher delivered a copy of a board resolution authorizing the sale of the Debtors' assets. Mr. Honse and Mr. Fehrenbacher informed me that no asset, [**REDACTED**], would be exempted from this directive. This decision by the Debtors to sell any and all assets up to $500 million necessary to promptly pay the Lenders was reiterated at a meeting between the Agent and Farmland in early May 2002. This meeting, convened at the Debtors' request, was held in the boardroom at Farmland's headquarters in Kansas City. I attended the meeting on behalf of the Agent. A slide presentation reflecting this decision was presented by Farmland's management.

4. In addition, Mr. Berardi, the then chief financial officer of Farmland, informed me in that meeting at Farmland's headquarters in Kansas City that the Debtors' liquidity crisis had reached a point where assets would need to be sold. [**REDACTED**].

5. Prior to the Petition Date, Robert Terry replaced Mr. Honse as the CEO of Farmland. Shortly thereafter, Mr. Terry indicated that the Debtors were engaging UBS Warburg LLC ("UBS") to manage the Debtors' divestitures and develop a strategic plan to do the same. Mr. Terry emphasized that the retention of UBS did not indicate a withdrawal of the Debtors' commitment to sell sufficient assets to promptly repay the Lenders in full, but merely a desire to examine and manage the appropriate process. [**REDACTED**]. On or about May 22, 2002, the Lenders and Farmland met in Chicago to discuss Farmland. [**REDACTED**].

6. [**REDACTED**].

7. Approximately one week before the Petition Date, the Debtors requested that the Lenders provide the Debtors with debtor in possession financing. The Debtors and the

Lenders negotiated and entered into the Debtor-in-Possession Credit Agreement and Adequate Protection Stipulation dated as of June 5, 2002 (the "Interim DIP Credit Agreement") in a very short time.

8. In connection with negotiating the DIP Credit Agreement, Mr. Terry reaffirmed the Debtors' commitment to monetize up to $500 million in assets, including the commitment to monetize one of the Protein assets. I made it very clear to the Debtors that the Lenders expected the Debtors to continue to honor their commitment to sell one of the Protein assets.

9. During negotiation of the DIP Credit Agreement, Mr. Terry informed me that because the Debtors had recently retained UBS to evaluate and manage the divestiture of the Debtors' assets, placing specific covenants in the Interim DIP Credit Agreement regarding the sale of assets was not feasible. UBS and the Debtors simply did not know when and how or to whom particular assets would be sold.

10. In connection with negotiating the DIP Credit Agreement, Debtors' management informed me that UBS was preparing a strategic business plan. The Debtors' management also informed me that UBS was initially retained to market and sell any and all of the Debtors' assets, including Pork and Beef. The Debtors indicated that the strategic plan would be ready by approximately the middle of June 2002.

11. The Agent and the Lenders relied in good faith on the commitment made by the Debtors to sell up to $500 million in assets to repay the Lenders in full in agreeing to provide the Debtors with debtor in possession financing. In order to insure a clear, feasible map to how the Lenders would be repaid, the Agent and the Lenders required the Debtors to file a plan of reorganization acceptable to all DIP Lenders within 120 days after the Petition Date.

12. I was involved in the negotiation of the Asset Sale Program described in the DIP Credit Agreement. The Asset Sale Program was designed to address only the "low hanging fruit", i.e. assets that both the Debtors and the Lenders knew would be sold. William Shpall, Managing Director at DB who was involved in negotiating the DIP Credit Agreement, specifically informed Mr. Terry in my presence that assets not included in the asset sales program would likely need to be sold for the Debtors to propose a plan of reorganization acceptable to the DIP Lenders. Mr. Terry acknowledged that he understood that an acceptable strategic plan and plan of reorganization would likely require the sale of additional assets and that the Debtors were prepared to accommodate those requirements.

13. During the summer of 2002, I became increasingly concerned about the Debtors' delay in preparing its strategic business plan. On July 23, 2002, I sent a letter to Mr. Terry expressing the Agent's concern over the lack of progress in the Debtors' overall strategic reorganization and reminded the Debtors that the DIP Lenders had extended the DIP financing on the Debtors' promise that a strategic business plan would be developed and presented by UBS. A true and correct copy of the letter is attached hereto as **Exhibit B**[1] and is incorporated herein by this reference.

14. Around the time of the Petition Date, I became aware that Smithfield Foods, Inc. ("Smithfield") was interested in acquiring the Protein assets. Subsequently, I had several conversations with the Debtors' regarding Smithfield's interest in acquiring the Protein assets. I encouraged the Debtors to investigate Smithfield's offer and told the Debtors that I believed that their fiduciary obligations to creditors mandated that they investigate the offer. On August 6, 2002, Albert Fischetti, a Director at DB, sent a letter to Mr. Terry encouraging him to investigate the Smithfield offer. A true and correct copy of the letter is attached hereto as

Exhibit C and is incorporated herein by this reference. On August 16, 2002, I sent a similar letter to the board of directors. A true and correct copy of the letter is attached hereto as **Exhibit D** and is incorporated herein by this reference. The Agent received no response from management or the board of directors.

15. [**REDACTED**].

16. On September 4, 2002, I attended a meeting at the Debtors' headquarters in Kansas City where the Debtors presented their restructuring strategy to the Agent and the Committees. At the meeting, the Debtors delivered a business plan, a true and correct copy of which is attached hereto as **Exhibit E** and incorporated herein by this reference. [**REDACTED**].

17. After the meeting with the Debtors on September 4, 2002, I was concerned that the Debtors were tentative in carrying out the asset sales discussed in the meeting and described in the business plan. On September 12, 2002, I sent a letter to Mr. Terry noting my concerns, a true and correct copy of which is attached hereto as **Exhibit F** and incorporated herein by this reference.

18. [**REDACTED**] . In October and November 2002, I became increasingly concerned with the lack of progress the Debtors were making towards assets sales. UBS was initially retained to market and sell any and all of the Debtors' assets, including Pork and Beef. However, the Committees objected to UBS's retention in such capacity and after lengthy negotiations, the Debtors' abandoned that portion of UBS's retention agreement.

19. [**REDACTED**].

20. On numerous occasions, I reminded Debtors' management that based on their statements, the DIP Lenders expected that either Beef or Pork would be sold in connection

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[1] Exhibit A is intentionally omitted.

with a plan of reorganization and that the DIP Lenders would not approve a plan of reorganization that did not set forth clear means to repay the Lenders in full. This expectation was based on the Debtors' repeated statements that this was their intent and the only practical means to repay the Lenders in full. However, subsequent to the Debtors delivery of the business plan, it continued to appear that, notwithstanding repeated statements of intent, the Debtors either could not or would not execute on their commitments. True and correct copies of two emails dated October 11, 2002 from counsel for the Agent to counsel for the Debtors are attached hereto as **Exhibit G** and are incorporated herein by this reference.

21. In the fall of 2002, the Debtors approached the Agent and requested a waiver of the requirement under Section 8.13 of the DIP Credit Agreement that the Debtors file a plan of reorganization approved by all DIP Lenders by November 27, 2002. [**REDACTED**].

22. Thereafter, a draft of a potential waiver was sent to the Debtors. A true and correct copy of the draft is attached hereto as **Exhibit H** and incorporated herein by this reference. The draft was designed to require the Debtors to commit legally to what they had committed to do since before the Petition Date – specific asset sales to fund repayment in full of the Lenders.

23. [**REDACTED**].

24. For months, the Debtors and the Agent negotiated to amend the DIP Credit Agreement. Despite numerous drafts of an amendment being exchanged and numerous telephonic and face-to-face meetings, an agreement could not be reached. True and correct copies of drafts of an amendment and communications regarding such drafts are attached hereto as **Exhibit** I and incorporated herein by this reference.

25. In November 2002, the Debtors submitted two drafts of a plan of reorganization to the Agent for comment. I reviewed the first draft of the plan of reorganization and found it to be unacceptable. I was concerned that the plan failed to address with any specificity how and when payment of the Lenders' claims would occur. This was precisely the issue that I had repeatedly told the Debtors would be critical to the DIP Lenders review of any plan of reorganization. I was also concerned that the plan appeared to be more of an outline than a specific plan of reorganization. I was concerned that the plan evidenced no agreement with the other creditors as to the dividends to various classes or what relative priority existed between classes. I was also concerned that the plan did not indicate whether the Debtors would reorganize or liquidate. I was concerned that failure to address these issues would delay the payment of the Lenders' claims pursuant to a confirmed plan of reorganization. On November 11, 2002, counsel for the Agent sent a letter to the counsel for the Debtors outlining the Agent's concerns regarding the plan. A true and correct copy of such letter is attached hereto as **Exhibit J** and is incorporated herein by this reference.

26. I subsequently reviewed the second draft of the plan of reorganization submitted by the Debtors and also found it to be unacceptable. The second draft failed to address any of the concerns I had regarding the first draft or the concerns relayed to the Debtors by Agent's counsel. On November 25, 2002, counsel for the Agent sent a letter to counsel for the Debtors outlining the Agent's concerns regarding the second draft of the plan. A true and correct copy of such letter is attached hereto as **Exhibit K** and is incorporated herein by this reference. True and correct copies of further correspondence from counsel for the Agent to counsel for the Debtors regarding the revised plan of reorganization are attached hereto as **Exhibit L** and are incorporated herein by this reference.

27. I was informed that on November 27, 2002 the Debtors filed a plan of reorganization with the Court (the "Plan"). The Debtors did not submit the Plan to the Agent or the DIP Lenders for approval before it was filed.

28. The Plan did not address any of our stated concerns, but I recommended a reasonable forbearance to the DIP Lenders as I was eager to ensure that every reasonable effort was taken to reach a compromise before the Lenders felt compelled to declare an event of default. On November 27, 2002, the Agent, on behalf of the requisite DIP Lenders, temporarily waived compliance with Section 8.13 of the DIP Credit Agreement until the close of business on December 4, 2002, and subsequently extended such temporary waiver through the close of business on December 6, 2002, so as to permit the DIP Lenders to consider the Plan and explore whether an acceptable compromise could be reached. True and correct copies of the letters evidencing the waivers are attached hereto as **Exhibit M** and incorporated herein by this reference.

29. On November 29, 2002, Debtors delivered an officers certificate and an accountants certification letter from KPMG, LLP to the Agent. A true and correct copy of such is attached hereto as **Exhibit N** and incorporated herein by this reference. The certification letter contains a going concern exception in violation of Section 6.1(iii) of the DIP Credit Agreement.

30. I was further concerned when on December 4, 2002, counsel for the Official Committee of Unsecured Creditors sent a letter to the Debtors formally rejecting the Plan and terminating the Debtors' exclusive right to file a plan of reorganization as to the Committees. The letter emphasized to me that the Debtors had not agreed with their creditors on the key terms of a plan of reorganization and that the potential for a significant delay in paying the Lenders under a confirmed plan of reorganization was real. While this alone did not cause

my recommendation that the DIP Lenders deliver a notice of default, it certainly entered my consideration.

31. Again, negotiations over a waiver ensued. At one point, I obtained formal approval from the DIP Lenders for an amendment I believed the Debtors had indicated a willingness to sign, only to have the Debtors refuse. Notwithstanding nearly a week of day-long and constant efforts by myself and my subordinate Keith Alexander to reach an agreement after the filing of the Plan (and many other efforts before that), these efforts failed as the Debtors were unwilling to legally commit to accomplish what they had stated they would do – sell assets sufficient to pay the Lenders in full.

32. Other officers of the Agent, officers of other Lenders and I devoted hundreds of man-hours attempting to resolve the Debtors' default. All of this time diverted Mr. Alexander, other officers of the Agent, officers of other Lenders and me from pursuing other potential lending opportunities. The Agent, and to the best of my knowledge the other Lenders, make a significant portion of their income from entering into new lending relationships. I believe that this represents a significant lost opportunity cost to the Agent and the Lenders.

33. On December 9, 2002, after receiving requisite consent from the DIP Lenders, I sent the Debtors a notice of default on behalf of the DIP Lenders notifying the Debtors that the Plan was unacceptable and that the Debtors were in default under the DIP Credit Agreement. A true and correct copy of such letter is attached hereto as **Exhibit O** and incorporated herein by this reference.

34. Subsequent to the declaration of default, the Debtors and the DIP Lenders reopened negotiation of an amendment to the DIP Credit Agreement. The Debtors informed me that they needed to enter into an amendment by January 15, 2002 – the date by which they had to

file their 10-Q report. The Debtors indicated that it was essential that the report show a resolution of the declaration of default.

35. In early January 2003, Mr. Terry, Mr. Avila and Mr. Vance flew to Los Angeles to negotiate the terms of an amendment. Mr. Alexander and I met with them and reached agreement on the business terms for a waiver. On or about January 8, 2003, the Debtors and the Agent agreed to full written terms of the Amendment. [**REDACTED**].

36. At the request of the Debtors, the Agent obtained the requisite approval of the DIP Lenders for the Amendment on an extremely expedited basis to ensure that the Debtors would be able to report in their 10-Q that the Debtors and DIP Lenders had entered into an agreement waiving the event of default.

37. [**REDACTED**].

38. Despite the continuance of the event of default, the DIP Lenders have continued to this date to advance under the DIP Credit Agreement. However, the DIP Lenders have reserved at all times their rights to exercise any and all remedies in connection with the default.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my information, knowledge and belief. Executed this 17th day of February, 2003 at Los Angeles, California.

/s/ Albert Sun
Albert Sun