

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re:

BIRCH GROVE LANDSCAPING &  
NURSERY, INC.,

Case No.: 15-11984-CLB

Debtor.

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**TWELFTH INTERIM ORDER (1) AUTHORIZING DEBTOR'S  
CONTINUED USE OF CASH COLLATERAL; AND (2) ESTABLISHING  
DATE FOR FURTHER HEARING ON DEBTOR'S MOTION FOR  
CONTINUED AUTHORITY TO USE CASH COLLATERAL**

This matter having come before this Court upon the motion (the "Motion") of the Debtor-in-Possession, Birch Grove Landscaping & Nursery, Inc. (the "Debtor"), seeking the entry of Orders, pursuant to the Bankruptcy Code Section 363 and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure, authorizing the Debtor to use cash collateral in which the Bank of Akron ("BOA") and the Estate of Gordon E. Fisher ("Gordon Fisher Estate") (collectively, BOA and the Gordon Fisher Estate are referred to as the "Secured Creditors") have or claim liens and fixing adequate protection and seeking the entry of an Order, pursuant to Bankruptcy Code Section 542(a), directing the turnover to the Debtor of approximately \$367,534.50 in net auction proceeds (the "Auction Proceeds") previously held by auctioneer Roy Teitsworth, Inc. ("Teitsworth") [Docket No. 25],

AND, Teitsworth having thereafter delivered the Auction Proceeds to counsel for the Debtor, Andreozzi, Bluestein, Weber, Brown, LLP ("Andreozzi Bluestein") and the Court having previously directed that Andreozzi Bluestein hold the Auction Proceeds in escrow, pending further Order of this Court,

AND, this matter having thereafter come before this Court, from time-to-time, for interim hearings seeking authorizations to use cash collateral and seeking distributions of a portion of Auction Proceeds, and the Debtor's use of cash collateral having most recently been extended through September 30, 2016 by an Order entered on July 18, 2016 [Docket No. 171];

AND, this matter having come before this Court for a further interim hearing on September 26, 2016, and the Debtor having at that time requested that this Court authorize the Debtor's continued use of cash collateral for an additional period of 90 days;

NOW, upon all pleadings and proceedings had in this matter to date, and good cause appearing therefor, it is hereby

ORDERED, that the Debtor is hereby authorized and permitted to use cash collateral through December 31, 2016, consistent (within a 5 percent variance) with the budget which is attached hereto as Exhibit A; and it is

ORDERED, that as additional adequate protection to the Secured Creditors, the Secured Creditors are hereby granted "rollover" replacement liens in post-petition assets of the Debtor of the same validity, extent and relative priority and on the same types and kinds of collateral as they possessed pre-petition, as the same may ultimately be determined, to the extent of cash collateral actually used, effective as of the date of the filing of this case, without the necessity of any further public filing or other recordation to perfect such liens or security interests; and it is

ORDERED, that as additional adequate protection to BOA, the Debtor is authorized to make payments to BOA in the combined total amount of \$8,419.00 per month, an amount approximating: (1) monthly interest on the Debtor's secured pre-petition liabilities to BOA, at the rates set forth in the Debtor's loan agreements with BOA, in the combined total amount of

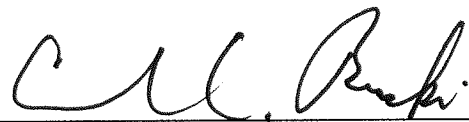
\$4,419.00 per month; plus (2) payments of principal, in the combined total amount of \$4,000.00 per month, on or before the 28<sup>th</sup> of the month; and it is

ORDERED, that nothing contained in this Order shall be deemed to constitute either a finding by this Court that those liens to be provided pursuant to this Order are themselves sufficient to adequately protect the Secured Creditors' secured claims, and the entry of this Order is without prejudice to the Secured Creditors' rights to oppose further use of cash collateral or, alternatively, asserting that they are entitled additional adequate protection of their secured claims, and the entry of this Order is without prejudice to the rights of the Debtor or any other party seeking to challenge the secured status of the claims of the Secured Creditors or to assert that the Secured Creditors' claims are less than fully secured, that the Secured Creditors should be entitled to lesser payments or protections as adequate protection of their claims; and it is

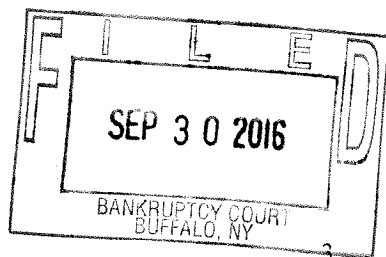
ORDERED, that a further hearing on the Debtor's use of cash collateral after December 31, 2016 will be held on December 19, 2016, at 10:00 a.m., at the United States Bankruptcy Court, Part II, Olympic Towers, 300 Pearl Street, Third Floor, Buffalo, New York 14202-2501; and it is

ORDERED, that the Debtor, Secured Creditors and/or the Office of the United States Trustee may seek a hearing prior to December 19, 2016 regarding the Debtor's continued use of cash collateral upon appropriate notice to the Debtor, Secured Creditors and/or the Office of the United States Trustee.

Dated: Buffalo, New York.  
September 29, 2016



Hon. Carl L. Bucki  
Chief United States Bankruptcy Judge



# **EXHIBIT A**

Rolling 13 Week Cash Forecast

Auto Pymts

Week Beginning	Budget	Budget	Budget	Budget	Budget	Budget
	Week 55 9/26/2016	Week 56 10/3/2016	Week 57 10/10/2016	Week 58 10/17/2016	Week 59 10/24/2016	Week 60 10/31/2016
<b>Operating Sources of Cash</b>						
Collections/Receipts	17,352.00	13,000.00	3,500.00			
Sale of Assets						
Retainage	-	-	-	-	-	-
Misc.					16,000.00	8,000.00
Other - (HELOC)						
<b>Total Sources of Cash</b>	<b>17,352.00</b>	<b>13,000.00</b>	<b>3,500.00</b>	<b>-</b>	<b>16,000.00</b>	<b>8,000.00</b>
<b>Payroll</b>						
Payroll	8,500.00	8,000.00	5,500.00	6,000.00	6,000.00	6,000.00
Blue Cross Blue Shield		-	750.00		-	750.00
Workers Comp (NYSIF)				2,350.00		
Other						
Miscellaneous	27.00	25.00	25.00	25.00	25.00	25.00
<b>Suppliers</b>						
Buffalo Crushed Stone		-			-	
County Line Stone/Gernatt	-	-	-	-	-	-
Lelyn equipment rental						
Preferred Seed/Lakeside	-	-	-	-	-	-
Reisdorf	-					
Russells Trees						
Misc AP Plan commitments						
COD/CIA						
Misc.	-	-	-	-	-	-
<b>Subs</b>						
Imperial Concrete						
<b>Insurance Policies</b>						
C.N.A / Aliance / Cincinnati/liazon	2,500.00			-	2,500.00	
Lovell Safety Mgmt	-			150.00		
Northwest Mutual key man life		-			-	
<b>Other Fees</b>						
BK court fees		-	-		-	-
highway tax		-	-		-	-
<b>Utilities</b>						
National Fuel	50.00					
Time Warner business class			100.00			100.00
NYSEG						
Verizon Wireless			500.00			400.00
Modern Disposal						
			75.00			65.00
<b>Other</b>						
Other TAXES adjustments						
<b>Total Operating Expenditures</b>	<b>11,077.00</b>	<b>8,025.00</b>	<b>6,950.00</b>	<b>8,525.00</b>	<b>8,525.00</b>	<b>7,340.00</b>
<b>Net Operating Cash before Financing</b>	<b>6,275.00</b>	<b>4,975.00</b>	<b>(3,450.00)</b>	<b>(8,525.00)</b>	<b>7,475.00</b>	<b>660.00</b>
<b>Financing Repayment</b>						
Revolving Credit						
Amex Credit Card working acct	-	-	-	-	-	-
Chase Credit Card working acct						
Bank of the West						
Toyota Financial		-	-		-	-
CAT Finance for trailers	720.00	-	-	-	720.00	-
CAT Finance for CTL machines		-	-	-	-	-
Element Financial for Doosan	2,601.50	-	-	-	2,601.50	-
Citizens One Auto Finance		-	-	632.71	-	-
DeLage Landen copier lease						
CitiBank Credit Card						
Lowe's/Home Depot						
M&T Credit Card						
Master Card Credit Card						
Bank of Akron - Long Term	856.00	361.00	-	1,928.00	361.00	-
Bank of Akron - LOC				1,274.00		
Lelyn Rent						
<b>Total Financing Expenditures</b>	<b>4,177.50</b>	<b>361.00</b>	<b>-</b>	<b>3,834.71</b>	<b>3,682.50</b>	<b>-</b>
<b>Total Cash Used:</b>	<b>15,254.50</b>	<b>8,386.00</b>	<b>6,950.00</b>	<b>12,359.71</b>	<b>12,207.50</b>	<b>7,340.00</b>
<b>Net Cash Flow from All Sources</b>	<b>2,097.50</b>	<b>4,614.00</b>	<b>(3,450.00)</b>	<b>(12,359.71)</b>	<b>3,792.50</b>	<b>660.00</b>
<b>Beginning Cash - Bank of Akron checking</b>	<b>4,641.16</b>	<b>6,738.66</b>	<b>11,352.66</b>	<b>7,902.66</b>	<b>(4,457.05)</b>	<b>(664.55)</b>
<b>Ending Cash - Bank of Akron checking</b>	<b>6,738.66</b>	<b>11,352.66</b>	<b>7,902.66</b>	<b>(4,457.05)</b>	<b>(664.55)</b>	<b>(4.55)</b>

Rolling 13 Week Cash Forecast

Auto Pymts

Week Beginning	Budget	Budget	Budget	Budget	Budget	Budget
	Week 61 11/7/2016	Week 62 11/14/2016	Week 63 11/21/2016	Week 64 11/28/2016	Week 65 12/5/2016	Week 66 12/12/2016
<b>Operating Sources of Cash</b>						
Collections/Receipts		17,000.00	10,000.00	32,000.00	50,000.00	
Sale of Assets						
Retainage	-	-	-	-	-	-
Misc.	13,000.00	-	-	-	-	-
Other - (HELOC)						
<b>Total Sources of Cash</b>	<b>13,000.00</b>	<b>17,000.00</b>	<b>10,000.00</b>	<b>32,000.00</b>	<b>50,000.00</b>	<b>-</b>
<b>Payroll</b>						
Payroll	7,000.00	7,000.00	5,500.00	5,500.00	5,500.00	5,500.00
Blue Cross Blue Shield		-	-		-	750.00
Workers Comp (NYSIF)	2,350.00			2,350.00		
Other						
Miscellaneous	25.00	25.00	25.00	25.00	25.00	25.00
<b>Suppliers</b>						
Buffalo Crushed Stone		-			-	
County Line Stone/Gernatt	-	-	-	-	-	-
Lelyn equipment rental			-			-
Preferred Seed/Lakeside	-	-	-	-	-	-
Reisdorf	-			-		
Russells Trees						
Misc AP Plan commitments						
COD/CIA						
Misc.	-	-	-	-	-	-
<b>Subs</b>						
Imperial Concrete						
<b>Insurance Policies</b>						
C.N.A / Aliance / Cincinnati/liazon	-	2,500.00		-	2,500.00	
Lovell Safety Mgmt	150.00			150.00		
Northwest Mutual key man life		-			-	
<b>Other Fees</b>						
BK court fees		-	-		-	-
highway tax		-	-		-	-
<b>Utilities</b>						
National Fuel	50.00		100.00	50.00		100.00
Time Warner business class		-	-		-	-
NYSEG			250.00			500.00
Verizon Wireless			-		-	-
Modern Disposal			65.00			65.00
<b>Other</b>						
Other TAXES adjustments						
<b>Total Operating Expenditures</b>	<b>9,575.00</b>	<b>9,525.00</b>	<b>5,940.00</b>	<b>8,075.00</b>	<b>8,025.00</b>	<b>6,940.00</b>
<b>Net Operating Cash before Financing</b>	<b>3,425.00</b>	<b>7,475.00</b>	<b>4,060.00</b>	<b>23,925.00</b>	<b>41,975.00</b>	<b>(6,940.00)</b>
<b>Financing Repayment</b>						
Revolving Credit						
Amex Credit Card working acct	-	-	-	-	-	-
Chase Credit Card working acct						
Bank of the West						
Toyota Financial		-	-		-	-
CAT Finance for trailers	720.00	-	-	720.00	-	-
CAT Finance for CTL machines		-	-		-	-
Element Financial for Doosan	2,601.50	-	-	2,601.50	-	-
Citizens One Auto Finance		632.71	-		-	632.71
DeLage Landen copier lease						
CitiBank Credit Card						
Lowe's/Home Depot		-	-		-	-
M&T Credit Card						
Master Card Credit Card		-	-		-	-
Bank of Akron -Long Term		1,928.00	-	856.00	-	1,928.00
Bank of Akron - LOC		1,274.00	-		-	1,274.00
Lelyn Rent		-	-		-	-
<b>Total Financing Expenditures</b>	<b>3,321.50</b>	<b>3,834.71</b>	<b>-</b>	<b>4,177.50</b>	<b>-</b>	<b>3,834.71</b>
<b>Total Cash Used:</b>	<b>12,896.50</b>	<b>13,359.71</b>	<b>5,940.00</b>	<b>12,252.50</b>	<b>8,025.00</b>	<b>10,774.71</b>
<b>Net Cash Flow from All Sources</b>	<b>103.50</b>	<b>3,640.29</b>	<b>4,060.00</b>	<b>19,747.50</b>	<b>41,975.00</b>	<b>(10,774.71)</b>
<b>Beginning Cash - Bank of Akron checking</b>	<b>(4.55)</b>	<b>98.95</b>	<b>3,739.24</b>	<b>7,799.24</b>	<b>27,546.74</b>	<b>69,521.74</b>
<b>Ending Cash - Bank of Akron checking</b>	<b>98.95</b>	<b>3,739.24</b>	<b>7,799.24</b>	<b>27,546.74</b>	<b>69,521.74</b>	<b>58,747.03</b>

Rolling 13 Week Cash Forecast

Auto Pymts

	Budget	
	Week 67	Week 68
	12/19/2016	12/26/2016
Week Beginning		
<b>Operating Sources of Cash</b>		
Collections/Receipts	10,000.00	20,000.00
Sale of Assets		
Retainage	-	-
Misc.		
Other - (HELOC)		
<b>Total Sources of Cash</b>	<b>10,000.00</b>	<b>20,000.00</b>
<b>Payroll</b>		
Payroll	5,500.00	5,500.00
Blue Cross Blue Shield		-
Workers Comp (NYSIF)	2,350.00	
Other		
Miscellaneous	25.00	25.00
<b>Suppliers</b>		
Buffalo Crushed Stone		-
County Line Stone/Gernatt	-	-
Lelyn equipment rental		
Preferred Seed/Lakeside	-	-
Reisdorf	-	
Russells Trees		
Misc AP Plan commitments		
COD/CIA		
Misc.	-	60,000.00
<b>Subs</b>		
Imperial Concrete		
<b>Insurance Policies</b>		
C.N.A / Aliance / Cincinnati/liazon	-	
Lovell Safety Mgmt	150.00	
Northwest Mutual key man life		-
<b>Other Fees</b>		
BK court fees		-
highway tax	-	-
<b>Utilities</b>		
National Fuel	50.00	
Time Warner business class		-
NYSEG	-	
Verizon Wireless	-	
Modern Disposal		
<b>Other</b>		
Other TAXES adjustments		
<b>Total Operating Expenditures</b>	<b>8,075.00</b>	<b>65,525.00</b>
<b>Net Operating Cash before Financing</b>	<b>1,925.00</b>	<b>(45,525.00)</b>
<b>Financing Repayment</b>		
Revolving Credit		
Amex Credit Card working acct	-	-
Chase Credit Card working acct		
Bank of the West		
Toyota Financial		-
CAT Finance for trailers	720.00	-
CAT Finance for CTL machines	-	-
Element Financial for Doosan	2,601.50	-
Citizens One Auto Finance		632.71
DeLage Landen copier lease		
CitiBank Credit Card		
Lowe's/Home Depot	-	-
M&T Credit Card		
Master Card Credit Card		
Bank of Akron -Long Term	856.00	361.00
Bank of Akron - LOC	-	-
Lelyn Rent	-	-
<b>Total Financing Expenditures</b>	<b>4,177.50</b>	<b>993.71</b>
<b>Total Cash Used:</b>	<b>12,252.50</b>	<b>66,518.71</b>
<b>Net Cash Flow from All Sources</b>	<b>(2,252.50)</b>	<b>(46,518.71)</b>
<b>Beginning Cash - Bank of Akron checking</b>	<b>58,747.03</b>	<b>56,494.53</b>
<b>Ending Cash - Bank of Akron checking</b>	<b>56,494.53</b>	<b>9,975.82</b>