

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

In re: )  
 ) Chapter 11  
FARMHAND SUPPLY, LLC, )  
 ) Case No: 16-10742-399  
 )  
Debtor. )  
 ) Re: Docket Nos. 22  
 )

**STIPULATED ORDER CONCERNING THE USE OF CASH COLLATERAL  
PURSUANT TO 11 U.S.C. § 363**

Upon Rabo AgriFinance LLC fka Rabo AgriFinance, Inc.’s (“RAF”) Motion to Prohibit Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c) and Request for Adequate Protection Pursuant to 11 U.S.C. § 363(e) (the “Motion”); and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (M); and proper and relevant notice of the Motion having been given and no further notice need be given; and the Court having reviewed the Motion; and the Court having heard the Motion on January 9, 2017 and Farmhand Supply, LLC (“Debtor”) and RAF each having appeared by and through counsel; and Debtor and RAF having announced an agreement with respect to Debtor’s use of cash collateral; and upon consideration of the record and being fully apprised in the premises, the Court finds that good cause exists for entry of this Order; and Debtor and RAF stipulate and the Court hereby finds and determines that:

1. On or about August 16, 2013, John Dale Murphy and Linda Jo Murphy, as married spouses, Farmhand Supply, LLC, J Murphy Farms, James Howard Murphy and Janet Murphy, as married spouses, and Murphy Farms (collectively, “Borrowers”) executed and

delivered that certain *Credit Agreement* in favor of RAF (as modified and amended, the “Credit Agreement”).

2. Pursuant to the Credit Agreement, RAF made the following loans to the Borrowers:

- (a) A term loan, with an adjustable interest rate, in the original principal amount of \$6,100,000.00 (the “Real Estate Term Loan”). To evidence the funds advanced and the obligations incurred under the Real Estate Term Loan, Borrowers executed and delivered to RAF that certain *Real Estate Term Loan Note* dated as of August 16, 2013 in the original principal amount of \$6,100,000.00 (as modified and amended, the “Term Loan Note”).
- (b) A crop production line of credit loan in a principal amount not to exceed \$1,500,000.00 (the “Crop Production Line of Credit”). To evidence the funds advanced and the obligations incurred under the Crop Production Line of Credit, Borrowers executed and delivered to RAF that certain *Crop Production Line of Credit Note* dated as of August 16, 2013 in the original principal amount of \$1,500,000.00. On August 19, 2014, Borrowers executed and delivered the *Amended and Restated Crop Production Line of Credit Note* in the principal amount of \$1,575,000.00 (as modified and amended, the “Crop Production Note”).
- (c) A line of credit loan in a principal amount not to exceed \$500,000.00 (the “Line of Credit-1 Loan”). To evidence the funds advanced and the obligations incurred under the Line of Credit-1 Loan, Borrowers executed and delivered to RAF that certain *Line of Credit Note* dated August 16, 2013 in the original principal amount of \$500,000.00 (as modified and amended, the “Line of Credit-1 Note”).
- (d) A line of credit loan in a principal amount not to exceed \$1,000,000 (the “Line of Credit-2 Loan”). To evidence the funds advanced and the obligations incurred under the Line of Credit-2 Loan, Borrowers executed and delivered to RAF that certain *Line of Credit-2 Note* dated as of August 16, 2013 in the original principal amount of \$1,000,000.00 (as modified and amended, the “Line of Credit-2 Note,” and together with the Term Loan Note, Crop Production Note, and Line of Credit-1 Note, collectively, the “Notes”).

3. As of September 29, 2016, Borrowers owed *not less* than \$9,176,841.35, in the aggregate, under the Notes.

4. To secure payment and performance under the Notes and Termination Amount, certain Borrowers granted to RAF liens and security interests in various assets owned by Debtor

and/or Murphy Debtors (defined below), including but not limited to real estate, farm products, proceeds of crop insurance, price support or other government programs, profits, inventory, equipment, accounts, contract rights and general intangibles (collectively, the “Collateral”), evidenced by (1) that certain *Deed of Trust, Assignment of Rents and Security Agreement* from John Dale Murphy and Linda Jo Murphy, as married spouses, and James Howard Murphy and Janet Murphy, as married spouses, dated August 16, 2013 (the “Deed of Trust”); and (2) that certain *Security Agreement* from John Dale Murphy and Linda Jo Murphy, as married spouses, Farmhand Supply, LLC, J Murphy Farms, James Howard Murphy and Janet Murphy, as married spouses, and Murphy Farms dated August 16, 2013 (the “Security Agreement”) (collectively, the “Collateral Documents”).

5. The Collateral Documents provide for, among other things, a security interest in all cash collateral, as that term is defined in 11 U.S.C. §363(a), including all proceeds, rents, or profits of the Collateral (the “Cash Collateral”).

6. On August 18, 2016, John Dale Murphy and Linda Jo Murphy (the “Murphy Debtors”) filed a voluntarily petition for relief under Chapter 11 of 11 U.S.C. §101 et al. (the “Bankruptcy Code”).

7. On September 9, 2016 (the “Petition Date”), Debtor filed a voluntary petition for relief in a separate proceeding under Chapter 11 of the Bankruptcy Code. The Murphy Debtors own and operate Farmhand Supply, LLC.

8. On November 21, 2016, RAF filed the Motion in this case and filed a substantially similar motion in the Murphy Debtors’ Chapter 11 proceeding.

9. At the hearing commenced on January 9, 2017, counsel for Debtor and RAF announced an agreement with respect to Debtor’s use of Cash Collateral, the terms of which are

set forth herein.

10. RAF has agreed to permit Debtor's use of Cash Collateral, but only on the terms and conditions set forth herein.

**DEBTOR AND RAF HEREBY STIPULATE AND AGREE AS FOLLOWS, WHICH STIPULATIONS AND AGREEMENTS THE COURT HEREBY RATIFIES, APPROVES, AND ORDERS:**

**I. USE OF CASH COLLATERAL**

1. In accordance with 11 U.S.C. §363(d), Debtor shall not use any of the Cash Collateral except on the terms and conditions set forth herein, or as hereafter consented to by RAF, or as may hereafter be authorized by an order of this Court after reasonable notice to RAF and an opportunity for RAF to be heard regarding the issuance of any such order.

2. Debtor is authorized to use Cash Collateral only in accordance with an operating budget (the "Operating Budget"), which shall be submitted and acceptable to RAF.

3. RAF hereby consents to the payment of the U.S. Trustee's quarterly fees assessed under 28 U.S.C. §1930(a)(6).

4. No Cash Collateral may be utilized for the payment of any pre-petition obligations or for any adequate protection payments to other creditors herein, absent the prior written consent of RAF or an order of this Court.

5. Except as set forth herein, or in the Operating Budget, no Cash Collateral may be utilized for the payment of fees and expenses of professionals employed pursuant to Court order.

6. Except as provided in the Operating Budget, no Cash Collateral may be utilized for any payment to any officer, director or agent of Debtor, any affiliate or insider of Debtor (as those terms are defined in 11 U.S.C. §101), or any officer, director, partner, relative or agent of such affiliate or insider, absent the prior written consent of RAF or order of this Court.

**II. THE OPERATING BUDGET**

7. The Operating Budget shall set forth the maximum amount of Cash Collateral which may be used by Debtor to pay its operating expenses during the period covered by the Operating Budget (the “Operating Period”). Debtor shall be authorized to use Cash Collateral to pay only those types of expenses specifically set forth in the Operating Budget for the Operating Period. For the Operating Period, actual payments for each line item shall not exceed the budgeted amounts. Further, the total payments made during the Operating Period shall not exceed the aggregate or total as set forth in the Operating Budget, except upon the prior written consent of RAF or an order of this Court.

**III. CONTINUATION OF LIENS**

8. Debtor hereby stipulates, agrees and acknowledges that the liens and security interests created under the Collateral Documents in and to the Collateral and Cash Collateral shall continue and remain in full force and effect to the same extent as existed on the Petition Date.

**IV. GRANT OF REPLACEMENT LIENS**

9. In consideration and substitution for the existing rights and interests of RAF in the Cash Collateral and to secure repayment of all Cash Collateral used hereunder, and in order to provide complete or partial protection to RAF for any decrease in the value of its interest in the Cash Collateral as a result of the use of Cash Collateral hereunder, to the extent thereof, and notwithstanding Section 552 of the Bankruptcy Code, Debtor shall be, and hereby is, authorized to and does hereby grant RAF the following, valid, enforceable and duly perfected security interests and liens, superior to all other security interests and liens, in accordance with 11 U.S.C. §363:

- a. Retroactive to the Petition Date, replacement liens on or replacement security

interests in all property of Debtor of the kind or type which was subject to RAF's pre-petition liens and security interests, including but not limited to real estate, farm products, proceeds of crop insurance, price support or other government programs, profits, inventory, equipment, accounts, contract rights and general intangibles, and all proceeds of, all additions and accessions to, the collateral.

10. The replacement liens granted hereunder shall be: (a) in addition to all security interests, liens and rights existing in favor of RAF on the Petition Date; and (b) except as expressly noted to the contrary herein, senior at all times to the rights of Debtor, any successor debtor-in-possession, receiver or trustee.

11. The liens and security interests granted hereunder shall extend to Debtor's property, whether owned or existing on the Petition Date, or acquired or arising subsequent thereto, and shall not be limited or affected by the expiration or termination of Debtor's authorization to use Cash Collateral under this Order.

12. The security interests granted to RAF in this Order: (i) shall not extend to cash or proceeds of properties representing recoveries of preferential transfers, fraudulent conveyance claims or other causes of action asserted under Sections 544, 545, 546, 547, 548 and/or 549 of the Bankruptcy Code or under any applicable state law remedy; and (ii) shall be subject to the fees of the United States Trustee assessed under 28 U.S.C. §1930(a)(6). Nothing herein, however, shall impair, affect, diminish, limit or compromise RAF's liens and security interests in the Collateral created under the Collateral Documents, which, pursuant to, paragraph II(8), remain in full force and effect.

13. All of the liens and security interests granted in this Order arise and are perfected

by operation of law on approval hereof by the Court, and RAF shall not be required to file or record financing statements, mortgages, notices of lien or similar instruments in any jurisdiction or to take any other action in order to validate and perfect the security interests and liens granted. If RAF, in its sole discretion, chooses to file or record such financing statement, mortgages, notice of lien or similar instruments or otherwise confirm perfection of such security interests and liens, all such documents shall be deemed to have been filed or recorded at the time and on the date of the entry of this Order.

14. Debtor is authorized and directed to do and perform all acts, to make, execute and deliver to RAF all instruments and documents (including without limitation, the execution of security agreements, mortgages or financing statements) which may be required or necessary to evidence, confirm or perfect the interests granted hereunder.

15. Notwithstanding anything to the contrary contained herein, if RAF shall have a claim against Debtor arising from or concerning the use of Cash Collateral, such claim against Debtor shall be granted priority in Debtor's case under 11 U.S.C. §§503(b)(1)(A) and 507(a)(1), and shall have priority under 11 U.S.C. §507(b) over all other administrative claims.

**V. DEBTOR'S OBLIGATION TO PROVIDE INFORMATION**

16. Debtor shall deliver to RAF: (1) copies of its Monthly Operating Report as filed with the Court and the Office of the U.S. Trustee; (2) a monthly listing and aging of Debtor's accounts receivable; (3) a monthly inventory report; and (4) a monthly cash flow, profit and loss, income statement and balance sheet, as well as other financial statements as and when prepared.

17. Debtor shall keep operating books, records, information and documents relating to the operation of Debtor's business and Debtor's financial dealings. RAF may inspect Debtor's business records on 24 hours advance notice.

18. Debtor shall make available for inspection or copying to RAF, upon reasonable notice and request, copies of all back-up documentation used to prepare any financial reports prepared by Debtor or its employees or agents, including without limitation, bank statements, invoices, and canceled checks.

19. Upon reasonable notice to Debtor, Debtor shall permit or cause to permit representatives of RAF to visit and inspect the Collateral and with respect thereto or to any portion of the Collateral, to examine and photocopy any or all of Debtor's books of account, all of Debtor's bank records, and related business records and to discuss Debtor's affairs, business, finances and accounts, all at reasonable times. RAF shall have the continuing right to make physical inspections of the Collateral and to verify the accounting required hereunder. In the event Debtor fails to comply with any obligation in this paragraph, RAF may apply to the Court for enforcement of such obligation or for such other relief as the Court may order.

#### **VI. INSURANCE**

20. Debtor shall keep the Collateral adequately insured at all times with responsible insurance carriers in accordance with the Collateral Documents and shall promptly furnish or cause to be furnished to RAF evidence, in form and substance satisfactory to RAF, of the maintenance of all insurance required by this paragraph to be maintained, including, but not limited to, such copies as RAF may request of policies, certificates of insurance, riders and endorsements relating to such insurance and proof of premium payments. RAF shall be named as loss payee or beneficiary on all policies so maintained.

#### **VII. ADDITIONAL PROVISIONS**

21. Costs of Administration. Except as provided in paragraph I(3), no costs or expenses of administration which have been or may be incurred in these proceedings, any



conversion of the proceedings pursuant to Section 1112 of the Bankruptcy Code, or in any proceedings related hereto, and no priority claims are, or will be, prior to or on parity with the claim of RAF, if any, against Debtor arising out of the use of Cash Collateral hereunder, or with the security interest of RAF in the Pre- and Post-Petition Collateral, and no such costs or expenses or administration shall be imposed against RAF or its collateral, except as may be authorized by the Court under 11 U.S.C. §506(c).

22. Compliance with Bankruptcy Code and Orders of Court. All limitations contained herein on the powers of Debtor as debtor-in-possession shall be in addition to, and not in lieu of, any such limitations imposed by the Bankruptcy Code and/or any other order of the Court, and nothing herein shall be deemed to authorize any action or inaction by Debtor inconsistent with the Bankruptcy Code or any such order. The parties agree to comply at all times and in all respects with the Bankruptcy Code and all such orders.

23. Reservation of Rights. This Order is not intended and shall not be deemed to affect or waive any of Debtor's or RAF's rights or remedies under applicable law, including, without limitation, any party's right to request adequate protection, to seek relief from the automatic stay, to seek dismissal of this case, to seek conversion of this case to a Chapter 7 case, to seek appointment of an examiner or a trustee, to make any contention respecting methods of valuation, to seek proper application of adequate protection payments made hereunder, to take any other action that may be necessary to protect their respective interests, or to bring any claim against Debtor, its officers, employees or agents. Additionally, the entry of this Order is without prejudice to the right of RAF, in its sole and absolute discretion, to terminate its consent to Debtor's use of Cash Collateral hereunder by providing ten (10) days prior written notice of such termination to Debtor, through its counsel. Such termination shall be without prejudice to the

right of Debtor to request authority from this Court to use Cash Collateral pursuant to 11 U.S.C §363(c)(2)(B) and the right of RAF to object in any respect to Debtor's request.

24. Default. In the event of a material and substantial default of this Order by Debtor, RAF shall give written notification of such default to Debtor, through its counsel. Upon receipt of such notice by its counsel, Debtor shall have five (5) days to cure any default. If any default is not cured within the time specified in this paragraph, this Order shall immediately expire and terminate by its own terms, and Debtor shall be prohibited from further using Cash Collateral without obtaining the prior approval of RAF and order of the Court.

25. No Finding of Adequate Protection. Nothing contained in this Order shall be deemed a finding with respect to adequate protection of the interest of RAF in the Collateral.


26. Binding Effect. The provisions hereof and the effect of any actions taken hereunder shall survive issuance and entry of any order: (a) appointing a trustee or examiner for Debtor; (b) converting this case to one under Chapter 7 of Title 11 of the United States Code; or (c) dismissing this case. The priorities, liens, and security interests granted herein shall continue in this or any superseding case under Title 11 of the United States Code, and any such liens and security interests shall maintain their priority as provided herein until satisfied and discharged.

27. Bankruptcy Court Approval. This Order shall be effective immediately upon approval by the Bankruptcy Court.

It is further ORDERED that counsel to the Debtor shall serve a copy of this Order no later than three (3) business days after entry of this Order, and shall file a Certificate of Service no later than two (2) days after service.

DATED: February 8, 2017  
St. Louis, Missouri

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Barry S. Schermer  
United States Bankruptcy Judge

**CONSENTED TO AND APPROVED BY:**

For Farmhand Supply, LLC

/s/ J. Michael Payne

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