



FILED & JUDGMENT ENTERED  
Steven T. Salata  
  
November 7 2016  
  
Clerk, U.S. Bankruptcy Court  
Western District of North Carolina

J. Craig Whitley  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
(Shelby Division)

In re: ) Chapter 11  
)  
**JEFF BENFIELD NURSERY, INC.,** ) Case No. 16-40375  
)  
)  
Debtor. )

**THIRD INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL  
PURSUANT TO 11 U.S.C. §§ 361 AND 363 AND SCHEDULING FINAL HEARING**

On August 26, 2016, Jeff Benfield Nursery, Inc. (the “Debtor”), filed an *Emergency Motion of the Debtor for Authority to Use Cash Collateral, Pursuant to Sections 361 and 363 of the Bankruptcy Code* (the “Motion”). [Doc. 2]. Following hearings on August 30 and September 21, 2016, the Court entered orders authorizing the Debtor’s use of Cash Collateral on an interim basis and scheduling a further hearing on October 26, 2016. [Docs. 23, 47]. Based upon the evidence proffered at such hearing and with the consent of the interested parties as stated on the record, the Debtor’s further use of Cash Collateral on an interim basis in accordance with the terms and conditions set forth herein appears to be in the best interest of the estate and its creditors; accordingly, it is hereby **ORDERED** that:

1. The Debtor may use Cash Collateral during the period beginning at 12:00 a.m. on October 27, 2016 and continuing through the date of the Final Hearing (as defined below), in the ordinary course of business for the expenses specified in the budget (the “Budget”), which is attached hereto and incorporated herein by reference as **Exhibit A**. The Debtor may use Cash Collateral only for ordinary and necessary business expenses consistent with the specific items and amounts contained in the attached budget; provided, however, that the Debtor may vary from the Budget by 10% per line item on a cumulative basis.

2. The Debtor shall not use, sell or expend, directly or indirectly, Cash Collateral or any proceeds, products or offspring thereof, except as authorized in this interim order.

3. The Debtor’s authority to use Cash Collateral in accordance with the terms and conditions set forth herein shall terminate at 11:59 p.m. on the date of the Final Hearing, unless the Court further authorizes the use of Cash Collateral at the Final Hearing on the Motion or upon mutual consent of the affected parties.

4. Because the Lenders<sup>1</sup> may have an interest in inventory and accounts receivable of the Debtor and the proceeds therefrom (the “Cash Collateral”) within the meaning of 11 U.S.C. § 363, which may be used by the Debtor in accordance with this interim order, the Lenders shall be granted adequate protection as set forth in the following paragraph.

5. As adequate protection for the Lenders’ interest in Cash Collateral, to the extent the Debtor uses such Cash Collateral, the Lenders are granted valid, attached, choate, enforceable, perfected and continuing security interests in, and liens upon all post-petition assets of the Debtor of the same character and type, to the same extent and validity as the

liens and encumbrances of the Lenders attached to the Debtor's assets pre-petition (the "Post-Petition Collateral"). The Lenders' security interests in, and liens upon, the Post-Petition Collateral shall have the same validity as existed between the Lenders, the Debtor, and all other creditors or claimants against the Debtor's estate on the Petition Date.

6. The Debtor shall also comply with all reasonable requests for information from the Lenders and the Bankruptcy Administrator.

8. This interim order is without prejudice to the rights of the Lenders or other creditors to seek additional adequate protection or other relief available under the Bankruptcy Code, and entry of this interim order is without prejudice to the rights of the Lenders or other interested parties to challenge or otherwise contest entry of a final order authorizing the use of Cash Collateral.

9. This interim order is also entered without prejudice to: (a) the claims, rights, and defenses that the Debtor and/or any other party in interest may have to challenge the nature, validity, priority or extent of the liens asserted by the Lenders; and (b) any and all claims, rights, and defenses the Lenders may assert in any action to challenge the nature, validity, priority or extent of the liens it may assert.

10. A final hearing on the use of Cash Collateral shall be held on December 13, 2016 at 10:30 a.m. (the "Final Hearing"), in the United States Bankruptcy Court, Charles Jonas Federal Building, Courtroom 1-4, 401 West Trade Street, Charlotte, North Carolina.

11. Any party wishing to object to the relief granted herein being allowed on a final basis shall file such objection with the Court in accordance with the local rules of this Court, together with proof of service thereof, showing service upon all interested parties, so as to be received no later than three (3) days prior to the Final Hearing.

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<sup>1</sup> Unless indicated otherwise herein, capitalized terms have the meanings assigned in the Motion.  
MWH: 10343.001; 00016681.1

12. On or before December 6, 2016, the Debtor shall also provide a budget-to-actual cash usage comparison report to the Lenders and the Bankruptcy Administrator.

13. The Debtor is directed to serve a copy of this Order upon: (a) the Bankruptcy Administrator for the Western District of North Carolina, (b) the Debtor's twenty (20) largest unsecured creditors, (c) the Lenders, and (d) those parties requesting notice pursuant to Bankruptcy Rule 2002 within three (3) days after its entry and shall file a certificate of service specifying the manner and method of service.

**[EXHIBIT A FOLLOWS]**

This Order has been signed electronically. The Judge's signature and Court's seal appear at the top of this Order.	United States Bankruptcy Court
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## **Exhibit A**

**Jeff Benfield Nursery, Inc.**  
**Monthly CASH Budget**

	Budget	Budget	Budget
	October 2016	November 2016	December 2016
Customer deposits	-	-	125,000
Shareholder Loan			
Accounts receivable collections	420,655	370,000	285,000
Repayment of deposit	-	-	-
<b>Gross receipts</b>	<b>420,655</b>	<b>370,000</b>	410,000
<b>Operating Expenses</b>			
Material Expense (plants, seedlings, etc.)	52,500	32,500	30,000
Utilities	5,895	5,895	7,500
Insurance	21,361	22,003	24,000
Operating Expenses	3,000	3,000	4,500
Subcontract		4,742	-
Potting Soil/Containers		6,705	21,705
Fuel	15,000	9,500	5,500
Chemicals	12,000	5,000	5,000
Digging Supplies	12,500	15,500	16,400
Maintenance & Repairs	7,500	15,000	12,500
Payroll-Net	135,000	135,000	105,000
Payroll Tax Deposits	40,000	40,000	35,000
Land Leases	33,000	25,000	106,965
Professional Fee	35,000	25,000	25,000
Quarterly Fee Reserve	550	550	550
<b>Total Operating Expenses</b>	<b>373,306</b>	<b>345,395</b>	399,620
<b>Net increase in cash</b>	<b>47,349</b>	<b>24,605</b>	10,380