

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO

In re:	)	
	)	
TV DAIRY, LLC	)	Case No. 09-21490 MER
EIN: 20-2226007	)	Chapter 11
	)	
Debtor:	)	

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**AGREED INTERIM ORDER AUTHORIZING DEBTOR'S USE OF CASH  
COLLATERAL AND PROVIDING ADEQUATE PROTECTION IN CONNECTION  
THEREWITH**

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This matter comes before the Court on the motion of TV Dairy LLC, as debtor in possession (the “Debtor”), for an interim order authorizing the Debtor to use Cash Collateral (as defined herein) for the purposes of funding its day-to-day business operations.

The Court, having reviewed the Motion, and having heard evidence and argument from all parties appearing before the Court on June 16, 2009, orders as follows:

**THE COURT HEREBY FINDS:**

A. On June 12, 2009, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue resides properly pursuant to 28 U.S.C. §§ 1408 and 1409.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

D. No request has been made for the appointment of a trustee or examiner.

E. As of the date of this Order, no official committee of unsecured creditors (the “Committee”) has been appointed in this case.

F. As of the Petition Date, the Federal Deposit Insurance Corporation as Receiver for New Frontier Bank (“FDIC-R”) asserts that that Debtor was indebted to FDIC-R in the amount of at least \$9,073,525.41 exclusive of accruing interest, fees, and costs, as may be allowed under the Bankruptcy Code.

G. FDIC-R asserts that it has valid, perfected liens and security interests in substantially all of Debtor’s property and assets and all proceeds (including insurance) thereof, (the “Prepetition Collateral”) including without limitation all cash collateral, as defined in Section 363(a) of the Bankruptcy Code (the “Cash Collateral”).

H. An emergency need exists for the Debtor to have immediate access to and use of the Cash Collateral of FDIC-R.

I. The Debtor has submitted a budget for the period starting June 15, 2009 and ending August 31, 2009, a copy of which is attached to this Agreed Order as Exhibit “A” (the “Budget”). The references to revenue and receipts for period after July 23, 2009 is for informational purposes only and are not approved or considered part of the Budget as such term is defined in this Order;

J. The Debtor has agreed that, absent further order of this Court, the Cash Collateral used pursuant to this Order shall be used solely in accordance with the terms of the Budget, subject to the variances as permitted herein.

K. The Debtor asserts that if this Court were to decline to allow the Debtor to use the Cash Collateral on an interim basis, the harm to the Debtor and its estate would suffer immediate and irreparable.

L. The Debtor asserts that it would therefore be in the best interests of the Debtor to and its estate to permit the Debtor to use the Cash Collateral on a further interim basis in accordance with the Budget and the terms set forth herein.

M. The Debtor has represented that within the last year no monies or properties have been or will be transferred between the Debtor and te Velde Holsteins, LLC; except that (i) the Debtor used to purchase calves from te Velde Holsteins, but the last such transaction was approximately one year ago and (ii) the FDIC, after taking over New Frontier Bank, transferred money from one entity's account to the other's and then reversed the transfer..

N. Certain individuals, Marvin te Velde and Sandra te Velde, who have guaranteed the FDIC-R's debt have consented to the entry of this Order.

**NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:**

1. The Debtor is authorized to use the Cash Collateral in accordance with the Budget, for the purpose of preserving and maximizing the value of the estate, up to the amounts set forth in the Budget plus the permissible variance hereinafter described, for the period from the date of this Order until July 23, 2009; provided however, that during the term of this Order, the Debtor shall also pay all statutory fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6)." Debtor shall not exceed the amount specified in the Budget by more than five percent (5%) in the aggregate, provided that the Debtor may exceed the expense items set forth in the Budget by more than five percent (5%) but less than ten percent (10%) in the aggregate if, for every dollar of expense in excess of 5 percent of the aggregate Budget in a given month, the Debtor has also realized not less than one dollar of additional revenue from milk sales during the same given month. The Debtor shall not be allowed to exceed the expenditures set forth in the

Budget by 10% in the aggregate unless the FDIC-R consents in writing, in its sole and absolute discretion. For purposes of this Interim Order, Debtor and FDIC-R reserve their rights with respect to the question of whether Debtor's professional fees may be paid from Cash Collateral as set forth in the Budget, with determination of that question reserved by the Court pending the final hearing hereinafter scheduled for July 23, 2009. The Debtor shall not pay any items that are not described in the Budget or that fall within categories described in the Budget, but the Debtor shall have discretion in allocating its resources among Budget line items so long as it does not exceed the aggregate permissible variance set forth above and does allocate or make payments on account of professional fees without further Court order approving the same. The Debtor shall not pay any prepetition debts or obligations of the Debtor or its estate without further order of the Court; provided, however, that on or about June 17, 2009, a payment will be made to Scott and Susan Busker pursuant to a deduction from the Debtor's DFA milk check. The Debtor's use of Cash Collateral is also conditioned on the Debtor collecting no less than 90% of the revenue set forth in the Budget. Nothing herein shall be deemed an approval, authorization or in any way authorize or validate any of items in the Budget, which relate to payments or transfers of any type or kind occurring prior to the Petition Date but listed on the Budget. The Debtor and its estate, expressly reserve any and all rights and remedies with respect to those and all other prepetition transfers.

2. As used herein, the term "Cash Collateral Use Amount" includes all Cash Collateral used by the Debtor after the Petition Date. To provide FDIC-R with the adequate protection required by Sections 361 and 363(e) of the Code to the extent of the Cash Collateral Use Amount:

a. FDIC-R shall have a first priority lien, to the same extent, validity and priority as its pre-petition liens, upon all post-petition property of the Debtor, including, but not limited to any and all accounts, cash, cattle, chattel paper, contract rights, depository accounts, documents, equipment, farm products, fixtures, general intangibles (including, but not limited to patents and trademarks), goods, instruments, inventory, investment property, instruments, intangibles, instruments, letter of credit rights, livestock, real property, supporting obligations, vehicles, and all proceeds and products thereof (collectively the “Adequate Protection Property”), subject only to validly perfected and enforceable senior prepetition liens. The security interests and liens granted to the FDIC-R shall not be subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. Notwithstanding anything to the contrary herein, Adequate Protection Property shall not include any and all rights and claims arising under chapter 5 of the Bankruptcy Code.

b. This Order shall be sufficient and conclusive evidence of the validity and perfection of the FDIC-R’s adequate protection liens and security interests in the Adequate Protection Property granted to the FDIC-R hereunder, but only to the same extent, validity and priority of the FFDIC-R’s pre-petition liens, and the FDIC-R shall not be obligated to file or record any document or take any other actions to create, attach, and perfect FDIC-R’s liens and security interests in the Adequate Protection Property.

c. Subject to any subsequent ruling by the Court that the FDIC-R’s liens are subordinate or invalid or that the granting of a super-priority administrative claims

pursuant to this paragraph 2(c) is unwarranted, for purposes of this Interim Order, FDIC-R is hereby granted an allowed super-priority administrative claim pursuant to Sections 507(b) of the Code for all of the Cash Collateral Use Amount, which shall have priority over any and all other indebtedness, all administrative expenses and priority expenses of any kind except for up to \$7,500 for fees, costs, and expenses of any chapter 11 or chapter 7 trustee. However, the United States Trustee, the Debtor and other parties in interest shall retain the right to object to the granting of an allowed super-priority administrative claim in favor of the FDIC-R at the final hearing to be held on July 23, 2009 and as part of a final order.

d. Debtor is authorized and directed to establish and maintain insurance coverage on all of the Debtor's assets and on all Adequate Protection Property for the full replacement value therefore and to cause the FDIC-R to be named as a loss payee of the insurance policies. Debtor shall also maintain adequate casualty and general liability insurance and shall name FDIC-R as an additional insured on all insurance policies. Debtor shall provide FDIC-R copies of all insurance policies within 5 business days after the entry of this Order.

e. The FDIC-R's liens upon the security interests in the Prepetition Collateral shall continue in the proceeds and profits of the Prepetition Collateral as provided in section 552(b) of the Bankruptcy Code without exception.

Under the circumstances, the adequate protection provided herein is reasonable and sufficient to protect the interests of the FDIC-R. Provided however, the FDIC-R expressly

retains its rights to seek additional adequate protection or to seek relief from the automatic stay with respect to any or all assets in which it claims an interest.

3. Debtors are authorized and directed to segregate all trust fund taxes from the debtor-in-possession operating account and to pay all post-petition federal and state payroll, withholding, sales, use, personal property, real property and other taxes and assessments of any kind when due and owing under applicable law. FDIC-R shall not be responsible for the payment of such taxes and assessment.

4. Notwithstanding anything herein to the contrary, the Debtor's right to use Cash Collateral on an interim basis pursuant to the terms of this Order shall terminate on the earlier of (i) this Court's appointment of a Chapter 11 trustee or examiner; (ii) conversion of the Debtors' Chapter 11 cases to Chapter 7 cases; (iii) Debtor's failure to comply with the requirements set forth in paragraph 1; including but not limited to the Debtor making expenditures in excess of the limitations established by paragraph 1; (iv) Debtor's failure to cure, within three business days, any default notice issued by the FDIC-R in accordance with the provisions set forth in Paragraph 7; or (v) a material adverse change in the Debtor's financial condition or business operations.

5. The provisions of this Order shall inure to the benefit of Debtor, the Debtor's estate, its creditors and the FDIC-R and shall be binding upon Debtor, its estate, its creditors and any successors or assigns of the foregoing, including, without limitation, any chapter 11 or chapter 7 trustee. The provisions of the Order shall survive entry of any order which may be entered converting this case to a chapter 7 case or any order which may be entered confirming or consummating any plan of reorganization of Debtor. Notwithstanding anything to the contrary

herein, this Order shall not impair the right, if any, of any party to challenge the extent, validity or priority of the FDIC-R's prepetition liens.

6. Within 5 business days after the entry of this Order, Debtor shall account to FDIC-R for all cash, checks, notes, drafts, instruments, acceptances or other property representing cash or other proceeds of Prepetition Collateral in Debtor's possession or control (collectively, "Cash Proceeds"). All Cash Proceeds in the possession of Debtor or in any accounts of Debtors in financial or other institutions, including any lock box, brokerage or escrow, pledge or depository accounts, as of the Petition Date, shall constitute proceeds of the Prepetition Collateral to the extent, if any, that FDIC-R has a valid, perfected security interest therein. Furthermore, FDIC-R will endorse any checks relating to sales of livestock as referenced in the Budget and made jointly payable to the Debtor and FDIC-R or New Frontier Bank.

7. Debtor is authorized and directed to provide to FDIC-R the information, reports, schedules, insurance policies and endorsements, and other documents as well as the access, audit, inspection and other rights which Debtor is required to provide to the FDIC-R under the loan documents executed by the Debtor. Debtor shall also comply with the following reporting requirements:

A. Commencing on Monday, June 22, 2009 at 5:00 p.m. (MST) and by 5:00 p.m. each Monday thereafter, Debtor shall provide FDIC-R with the following information for the seven day period for the prior Saturday through Friday: (a) a weekly report or business records detailing all cash on hand and all checks and other disbursements made by the Debtor identifying the payee, the amount transferred and identifying the category of expense using the expense



categories set out in the Budget; (b) a weekly report or business records detailing by category and head count all livestock in the Debtor's possession, and which report shall identify all leased and other livestock which is not owned by the Debtor; (c) a weekly report or business records detailing feed on hand identifying by feed type: (i) a good faith estimate of beginning inventory, (ii) amount of feed received during the week, (iii) a good faith estimate of amount of feed fed during the week, (iv) a good faith estimate of ending inventory, and (v) a good faith estimate of number of days of feed on hand with respect to each component of feed fed; (d) copies of all DFA milk checks and supporting summaries within three business days receipt of same; (e) a weekly report or business records detailing with respect to cows on hand the: (i) a number of cows milked, (ii) amount of milk produced, (iii) number of cows – dry, (iv) number of cows – fresh, (v) number of cows – dead listed by each animal type, (vi) number of cows/heifers – bred, and (vii) number of cows sold.

B. Every other Monday, commencing on Monday, June 22, 2009, the Debtors shall provide FDIC-R with the following information for the 14 day period immediately prior to that Monday: (a) a bi-weekly accounts receivable aging and (b) a bi-weekly accounts payable aging.

C. On the 5<sup>th</sup> day of each month beginning with July 5, 2009 and every month thereafter, the Debtor shall provide the FDIC-R with the following information; (a) a monthly listing with respect to calves identifying: (i) estimated number of calves born; (ii) estimated number of bull calves born; (iii) estimated number of calves under 400 pounds; (iv) estimated number of calves 400-650 pounds; (v) estimated number of calves 650-900 pounds; (vi) estimated number of heifers bred; and (vii) estimated number of calves sold. In addition, on or before the 5<sup>th</sup> of each month, the Debtor shall provide FDIC-R with a budget comparison report

showing for each line item set forth in the Budget, the approved budget amount, the actual amount and a variance of budget compared to actual.

D. At such time as FDIC-R requests, at FDIC-R's expense, Debtor shall permit agents and persons designated by FDIC-R to enter onto Debtor's business premises and inventory all feed, cows and calves. During such inspections, all communications shall be with Marvin te Velde, Mike te Velde or Shawn te Velde.

E. Debtor shall provide FDIC-R with reasonable access to its books, records and physical premises, and shall timely supply FDIC-R with copies of its Schedules, Statements of Financial Affairs, and Monthly Operating Reports contemporaneously with the filing of same. If Debtor fails to provide the information set forth above, the FDIC-R may deliver via Email, in care of the Debtor's legal counsel, a default notice, identifying any alleged reporting deficiency. Thereafter, the Debtor shall have three business days to cure such alleged reporting default. If the Debtor fails to timely cure such reporting default, the Debtors authority to use Cash Collateral pursuant to this Agreed Order shall cease. If a Committee is appointed in this case, the Debtor will send to the Committee's counsel copies of those reports to be given to the FDIC-R which are requested by the Committee.

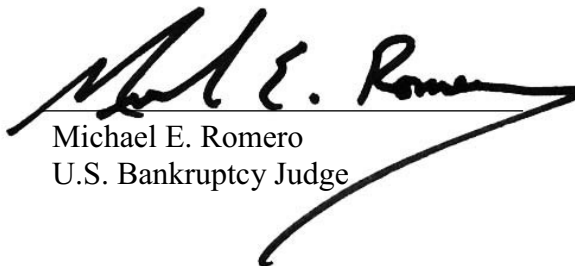
8. FDIC-R is consenting to Debtor's use of Cash Collateral in reliance on this Order. The adequate protection replacement liens and security interests granted to FDIC-R under Paragraph 2 hereunder and the rights of FDIC-R pursuant to this Order shall not in any way be altered, impaired, modified, or otherwise adversely affected.

9. The Final Hearing is scheduled on July 23, 2009 at 1:30 p.m. or as soon thereafter as counsel may be heard, with notice of said hearing being provided to all creditors. Debtors

will, on or before June 22, 2009, mail copies of this Order to: (i) any other party that has filed a request for notices pursuant to Bankruptcy Rule 2002, (ii) the debtor's twenty largest unsecured creditors, (iii) all creditors known to Debtor who may have a lien against Debtors' assets, and (iv) the Internal Revenue Service and Department of Revenue for the State of Colorado providing to all of those parties notice of the Final Hearing as scheduled above and providing notice that if any of such parties shall object to any further use of Cash Collateral, they shall file with the Court and provide Debtors' counsel and counsel for the FDIC-R **written notice of such objection(s) on or before July 10 , 2009.**

DATED this 18th day of June, 2009.

BY THE COURT:



Michael E. Romero  
U.S. Bankruptcy Judge

AGREED AND APPROVED AS TO FORM AND CONTENT:

TV DAIRY, LLC

By David P. Hutchinson  
Its Attorney

FDIC AS RECEIVER FOR  
NEW FRONTIER BANK

By: John F. Young  
Its Attorney

By: \_\_\_\_\_  
Guarantor

By: \_\_\_\_\_.  
Guarantor

TV Dairy

	<u>June 15th-30th</u>		<u>July</u>		<u>August</u>	
Lactating Cows	1464		1525		1525	
Dry Cows/Close Heifers	400		400		400	
<b>Mature Cows</b>	<b>1864</b>		<b>1925</b>		<b>1925</b>	
Milk per Cow	80		80		80	
Percent in Tank	96%		96%		96%	
<b>CWT Shipped</b>	<b>16,865</b>		<b>36,307</b>		<b>36,307</b>	
Milk Price(Denver Blend Projected)	11.90		11.79		12.47	
Other Income	0.60	10119.17	1.00	36307.20	1.00	36307.20
Heifers Sold	0		0		0	
<b>TOTAL INCOME</b>	<b>210,816</b>		<b>464,369</b>		<b>489,058</b>	
		<u>Total Cost</u>		<u>Total Cost</u>		<u>Total Cost</u>
Operating Expense	2.56	43,175.12	2.45	88,952.64	2.45	88,952.64
Supplies	0.70	11,805.70	0.70	25,415.04	0.70	25,415.04
Repairs and Maintenance	0.33	5,565.54	0.33	11,981.38	0.33	11,981.38
Bedding	0.00	0.00	0.10	3,630.72	0.10	3,630.72
Utilities	0.00	0.00	0.36	13,070.59	0.36	13,070.59
Veterinary Services	0.15	2,529.79	0.15	5,446.08	0.15	5,446.08
Semen	0.21	3,541.71	0.21	7,624.51	0.21	7,624.51
Dairy Rent/Assignments	0.64	10,793.78	0.00	0.00	0.00	0.00
Insurance	0.00	0.00	0.07	2,541.50	0.07	2,541.50
Fuel	0.18	3,035.75	0.18	6,535.30	0.18	6,535.30
Miscelanous Expense	0.35	5,902.85	0.35	12,707.52	0.35	12,707.52
DFA	3.76	63,413.45	1.88	68,257.54	1.88	68,257.54
Feed per CWT	6.15	103,721.47	6.35	230,550.72	7.10	257,781.12
Forage	1.50	25,297.92	1.60	58,091.52	1.60	58,091.52
Grain	4.40	74,207.23	4.50	163,382.40	4.50	163,382.40
Replacements	0.25	4,216.32	0.25	9,076.80	1.00	36,307.20
Labor	0.00	0.00	1.38	50,103.94	1.38	50,103.94
Labor	0.00	0.00	1.20	43,568.64	1.20	43,568.64
Payroll Taxes/Benefits	0.00	0.00	0.18	6,535.30	0.18	6,535.30
Purchased Heifers	0.00	0.00	0.00	0.00	0.00	0.00
Professional Services	0.00	0.00	0.42	15,249.02	0.42	15,249.02
Interest Expense	0.00	0.00	0.00	0.00	0.00	0.00
<b>TOTAL EXPENSE</b>	<b>12.47</b>		<b>12.48</b>		<b>13.23</b>	
<b>NET INCOME/LOSS</b>	<b>506</b>		<b>11,255</b>		<b>8,714</b>	
Days	15		31		31	

