

So Ordered.

Dated: February 1st, 2017



Frederick P. Corbit

Frederick P. Corbit
Bankruptcy Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

IN RE:

TATOES, LLC
WAHLUKE PRODUCE, INC.
COLUMBIA MANUFACTURING,
INC., d/b/a/ COLUMBIA ONION,

Debtors.

Case No. 16-00900-FPC11
Case No. 16-00899-FPC11
Case No. 16-00898-FPC11

**ORDER APPROVING INTERIM
USE OF CASH COLLATERAL
THROUGH FEBRUARY 28, 2017
& SETTING FINAL CASH
COLLATERAL HEARING**



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

1
2 This matter came before the Court on January 31, 2017 for an interim
3 hearing on the *Motion for an Order (a) Authorizing Use of Cash Collateral*
4 *through April 30, 2017* (the “**Cash Collateral Motion**”) filed separately by
5 Tatoes, LLC (“**Tatoes**”), Wahluke Produce, Inc. (“**Wahluke**”), and Columbia
6 Manufacturing, Inc., dba Columbia Onion (“**Columbia**” and, collectively with
7 Tatoes and Wahluke, the “**Debtors**”) in each of the above-entitled Chapter 11
8 cases (the “**Cases**”).
9
10
11
12
13

14 The following appearances were made at the hearing: (a) Roger Bailey
15 and Josh Busey for Debtor Wahluke; Paul Williams for Debtor Tatoes; James
16 Hurley for Debtor Columbia; (b) Bruce Medeiros and Michael Johnson for
17 Rabo AgriFinance LLC (“**RAF**”); (c) Jim Perkins for the United States
18 Trustee; (d) Tom Bassett for Saddle Mountain Supply Company and Deere
19 Credit, Inc.; and (e) Kevin O’Rourke for the Unsecured Creditors Committee
20 in the Tatoes, LLC case.
21
22
23
24
25
26

27 In making its ruling on the Cash Collateral Motion, the Court reviewed
28 the pleadings filed in the Cases, received proffered evidence and testimony,
29 and heard the arguments and stipulations of counsel. Based upon the
30
31
32
33
34

BAILEY  **BUSEY**
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

-2-

1 foregoing, and good cause appearing therefore, IT IS HEREBY ORDERED as
2 follows:
3

4 1. Notice of the Cash Collateral Motion was proper pursuant to
5
6 FRBP 2002 and LBR 2002-1.
7

8 2. Except as modified by the terms of this Order, the Debtors are
9
10 authorized to use the 2016 crops grown by Tatoes, as well as the proceeds of
11 the 2016 crops and the packing and sale revenues of Wahluke and Columbia
12 arising from the packing and sale of the 2016 crops (collectively, the “**2016**
13 **Cash Collateral**”), for the period of February 1, 2017 through February 28,
14
15 2017 only, pursuant to the monthly budgets (“**Monthly Budgets**”) attached
16
17 hereto as Exhibit 1 (Tatoes), Exhibit 2 (Wahluke) and Exhibit 3 (Columbia
18
19 Onion), which Monthly Budgets are cash-basis budgets and not accrual
20
21 budgets or some combination thereof.
22
23

24 3. Without limiting the foregoing, the Debtors shall be entitled
25
26 during February, 2017 to expend an amount for any line item in their
27
28 particular Monthly Budgets not to exceed one hundred five percent (105%) of
29
30 the amount described in the Monthly Budgets *subject to the caveat* that this
31
32 paragraph shall not authorize the Debtors to use a cumulative amount of 2016
33
34

BAILEY  BUSEY
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

ORDER AUTHORIZING
USE OF CASH COLLATERAL

1 Cash Collateral, on either a monthly basis or a cumulative basis, which
2 exceeds the amounts described in the Monthly Budgets unless further
3 authorized by the Court after notice and a hearing. Notwithstanding the
4 foregoing authorization, the Debtors shall not pay any amount that is due and
5 payable for goods or services first delivered or for amounts first due prior to
6 the March 21, 2016 Petition Date, unless further authorized by the Court
7 pursuant to a separate written order.
8
9
10
11
12

13 4. The Debtors' authorization to use cash collateral under this
14 Stipulated Cash Collateral Order shall continue until the earliest to occur of
15 February 28, 2017, or the confirmation of a Chapter 11 plan in the Debtors'
16 Cases, and/or the dismissal or conversion of any of the Debtors cases (unless
17 terminated at an earlier date and time or extended to a later date and time by
18 either the unanimous written agreement of all interested parties or a
19 subsequent order of the Court) (the "**Cash Collateral Period**") provided,
20 however, that the terms and conditions of this Order and the rights and
21 adequate protection provided in this Order and in any prior orders of the Court
22 concerning the Debtors' use of cash collateral (including but not limited to all
23 rights and adequate protection identified and granted in the Court's *Final*
24
25
26
27
28
29
30
31
32
33
34

BAILEY  BUSEY
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

ORDER AUTHORIZING
USE OF CASH COLLATERAL

1 *Order Approving Use of Cash Collateral*, dated May 25, 2016 and *Final*
2 *Order Approving Use of Cash Collateral* dated November 10, 2016) shall
3 remain binding, valid and in full force and effect as to the 2016 Cash
4 Collateral used by the Debtors irrespective of whether:
5
6

7
8 A. A further order authorizing the continued use of 2016 Cash
9 Collateral Order is entered or, if entered, is on different terms than this Order
10 *provided however*, that this restriction shall not prevent the Court from altering
11 the terms of the use of 2016 Cash Collateral as to amounts that have not yet
12 been used pursuant to this Order; or
13
14
15

16
17 B. A Debtor's bankruptcy case is dismissed or converted to a
18 bankruptcy case under a different chapter or a Chapter 11 Trustee is appointed
19 *provided, however*, that such dismissal or conversion shall not terminate the
20 use of cash collateral with respect to any cases of any of the Debtors which are
21 not dismissed or converted. The terms and conditions of this Order and any
22 prior orders governing the use of cash collateral (including but not limited to
23 2016 Cash Collateral) and the rights and adequate protection provided in this
24 Order and any such prior orders shall remain binding, valid and in full force
25 and effect.
26
27
28
29
30
31
32
33
34



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

1 5. Notwithstanding the foregoing, the Debtors shall not use any
2
3 2016 Cash Collateral for any purpose after the conclusion of the Cash
4
5 Collateral Period unless either (a) specifically authorized in writing by RAF
6
7 and any other party with an interest in the 2016 Cash Collateral, or (b)
8 specifically authorized by Order of the Court after notice and a hearing.
9

10 6. During the Cash Collateral Period, and as partial adequate
11
12 protection to RAF, the Debtors are authorized and directed to (a) make an
13
14 interest only payment to RAF by no later than February 28, 2017 for the
15
16 period of February 1, 2017 through February 28, 2017. This interest only
17
18 payments shall be calculated using an interest rate of four and one-half percent
19
20 (4.5%) calculated based on a 360-day year, and the amount of the payments
21
22 shall be calculated based on the outstanding Petition Date claim amount
23
24 asserted by RAF of \$22,152,129.58, resulting in a per diem interest amount of
25
26 \$2,769.01619 based on a 360-day year as required by the RAF Loan and
27
28 Security Documents.

29 7. Subject to the terms of the Monthly Budgets, the Debtors are
30
31 authorized to perform their post-petition obligations pursuant to 11 U.S.C.
32
33 §365(d) on any existing, unexpired leases of non-residential real property and
34

BAILEY B BUSEY
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

1 on any existing, unexpired leases of personal property which were in existence
2 on the date of filing pending assumption or rejection of such leases, pursuant
3 to and as directed by 11 U.S.C. § 365(d). To the extent the Debtors assume, or
4 are required to assume any such non-residential real property or personal
5 property leases, the Monthly Budgets (to the extent they do not already
6 provide for such payments) shall be amended to provide for the payment of
7 any amounts required to be paid by the Debtors as a condition of the
8 assumption of such leases (to the extent that the Monthly Budgets do not
9 already contain a line item for any such possible payments), and such
10 amended budgets shall be filed with the Court. The authorization to make
11 lease payments granted herein shall apply only to payments on “true leases” as
12 opposed to disguised financing or secured transactions.
13
14
15
16
17
18
19
20
21

22 8. Subject to the terms of the Monthly Budgets, the Debtors are
23 authorized to perform any post-petition obligations under any executory
24 contracts to which the Debtors are parties pending assumption or rejection of
25 such contracts. In addition, the Debtors shall be authorized to make adequate
26 protection payments to any creditors who have obtained a Bankruptcy Court
27 order authorizing the making of adequate protection payments. To the extent
28
29
30
31
32
33
34



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

-7-

1 the Debtors are ordered to make such adequate protection payments, the
2 Monthly Budgets (to the extent they do not already provide for such
3 payments) shall be amended to provide for the payment of any amounts
4 required to be paid by the Debtors and such payments shall be allowed
5 pursuant to this Order.
6
7
8

9
10 9. With respect to real or personal property leases to be entered into
11 by the Debtors post-petition in the ordinary course of the Debtors' business,
12 the Debtors shall provide a copy of any such contemplated post-petition leases
13 to the United States Trustee, counsel for RAF and counsel for the Official
14 Committee of Unsecured Creditors prior to their execution by the Debtors.
15 The United States Trustee, RAF and the Official Committee of Unsecured
16 Creditors shall have five (5) business days to review the contemplated leases,
17 and provide written notice to the Debtors' counsel of any objections.
18
19
20
21
22
23

24 10. Barring the receipt of an objection, the Debtors may enter into
25 such contemplated leases without further notice or Order of the Court. In the
26 event a written notice of objection is received by the Debtors from the United
27 States Trustee, RAF or the Official Committee of Unsecured Creditors
28
29
30
31
32
33
34



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

1 concerning a post-petition lease, however, then the Debtors shall not enter into
2 such lease without first obtaining an Order from the Court.
3

4 11. Pursuant to a separate written order of the Court entered after
5 notice and opportunity for a hearing, the Debtors are authorized to make
6 adequate protection payments to creditors holding secured claims against the
7 property of the Debtors in an amount that is less than or equal to the amount
8 that would otherwise have been due to such creditors under their pre-petition
9 loan documents. The Monthly Budgets (to the extent they do not already
10 contain line items for such payments) shall be deemed automatically amended
11 to provide for such payments and within five (5) business days of the Court
12 ordering such additional payments, the Debtors shall file amended budgets
13 with the Court setting forth such payments. Further, the Debtors shall, within
14 three days of request by RAF, provide RAF with written proof that any
15 adequate protection payments either consented to by RAF, or ordered by the
16 Court, were, in fact, made by the Debtors.
17
18
19
20
21
22
23
24
25
26

27 12. The Debtors are authorized to make payments to estate
28 professionals approved by the Court or pursuant to the Court's Order
29 Approving Interim Payment of Professionals (Docket No. 118) in the Wahluke
30
31
32
33
34



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

1 case, dated June 15, 2016, up to the amounts described in the Monthly
2 Budgets.
3

4 13. As partial adequate protection, RAF and any other party (if any)
5 holding a valid, perfected, and unavoidable security interest or lien in the 2016
6 Cash Collateral that has not been avoided by a final order, is hereby granted a
7 valid, automatically perfected replacement lien against any 2017 crops grown
8 by the Debtors, and in any products, proceeds or insurance recoveries related
9 thereto, including but not limited to all 2017 farm products, feed, fertilizer,
10 supplies, inventory, accounts, proceeds from crop insurance, general
11 intangibles, and all products and proceeds thereof, for the full amount of the
12 2016 Cash Collateral which is utilized pursuant to this Order. The replacement
13 liens granted hereunder shall have the same validity, avoidability and priority
14 as the security interests and liens existing against the 2016 Cash Collateral as
15 of the date of this Order. The replacement liens granted hereunder shall be,
16 and they hereby are, declared to be valid and perfected without the need for
17 the execution, recording or filing of any further document or instrument or the
18 taking of any further act otherwise required under non-bankruptcy law. Any
19 statements or filings required to be filed to preserve or extend any lien held by
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

BAILEY B BUSEY
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

1 RAF or any other party with an interest in Cash Collateral may be filed or
2 recorded at any time during the pendency of this case without a stay relief
3 order or otherwise seeking or obtaining the permission of the Court.
4

5
6 14. Nothing contained herein is intended to adjudicate the validity,
7 avoidability or priority of the security interests and liens (including the
8 replacement liens granted hereunder) in the Debtors' 2016 crops or 2017 crops
9 or the proceeds or products thereof.
10

11
12
13 15. As additional adequate protection, during the Cash Collateral
14 Period, the Debtors shall continue to provide to RAF the following reports or
15 information on a monthly basis (collectively, the "**Monthly Reports**");
16

17
18 15.1 A monthly report detailing: (a) the expenses paid by each
19 of the Debtors during the preceding month on a cash basis; (b) a comparison
20 of the actual expenses paid to the expenses estimated in the Monthly Budgets
21 of the actual expenses paid to the expenses estimated in the Monthly Budgets
22 for such period; (c) the quantity of 2015, 2016 and 2017 Crops (to the extent
23 in existence) held by each of the Debtors as of the end of the monthly
24 reporting period; and (d) the amount of the Debtors' outstanding accounts
25 receivables as of the end of the monthly reporting period;
26
27
28
29
30
31
32
33
34

1 15.2 A monthly report detailing the beginning and ending cash
2 balance for each of the Debtors for each reporting period.
3

4 15.3 A monthly report listing accounts receivable for each
5 Debtor and aging of such receivables by vendor (the report should list aging as
6 current, 0-30 days, 31-60 days, 61-90 days and more than 90 days).
7

8 15.4 A monthly report listing separately prepetition and post-
9 petition accounts payable for each Debtor and aging the post-petition payables
10 by vendor (the report should list aging as current, 0-30 days, 31-60 days, 61-
11 90 days and more than 90 days).
12

13 15.5 Monthly financial statements for each Debtor, prepared by
14 either the Debtor or CFO Selections, to include an income statement, a balance
15 sheet, a statement of cash flows and notes to financial statements, as
16 necessary, prepared in accordance with GAAP, subject to such deviations
17 from GAAP as are: (a) agreed upon by the Debtors and RAF; or (b) approved
18 by the Court, on both a cash basis and an accrual basis.
19

20 15.6 A monthly 12-month rolling cash flow forecast, with actual
21 results compared to the previous month's forecast.
22
23
24
25
26
27



1 15.7 A monthly Asset Position Report (“APR”), in a form to be
2 submitted by RAF, which provides information concerning the Debtors’
3 assets, and the values thereof, in a unified document as to each Debtor
4 separately. The APR shall conform to the following reporting requirements:
5
6

7
8 A. Inventory of all crops grown, harvested, stored and shipped to a
9 Commission Agent processor shall be valued at the lower of cost or market.
10

11 B. Crops shall be reported as inventory until a sale is completed and
12 an invoice is generated and entered into the accounting system as an account
13 receivable, at which time it shall be reported as an account receivable.
14
15

16 C. Measurement of inventory in storage will be at gross tonnage less
17 shrinkage based on historical amounts or adjusted to reflect a greater amount
18 based on current conditions. Amount of shrink used must be acceptable to
19 RAF.
20
21

22 D. Cash invested in growing crops (“CIGC”) shall be valued based
23 on direct crop inputs only. Overhead, debt service on leases and loans shall
24 not be included in CIGC.
25
26

27 E. Accounts receivable greater than 90 days past invoice date or
28 shipping date, whichever is earlier, shall not be eligible collateral for the APR.
29
30
31
32
33
34

BAILEY  **BUSEY**
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

1 F. Costs for processing by a Commission Agent shall be reported as
2 an account payable by Tatoes and, if the Commission Agent is either Wahluke
3 or Columbia Onion, as an account receivable by the Commission Agent.
4

5
6 G. The APR for each Debtor shall separately identify related-party
7 accounts receivable and accounts payable on each APR.
8

9
10 15.8 At the same time that the Debtors submit their Monthly
11 Reports to RAF, the Debtors also shall submit a cumulative report, for the
12 period from the Petition Date through the time period corresponding to the
13 applicable Monthly Reports (i.e., from the Petition Date through October 31,
14 2016), which sets forth: (a) the expenses paid by each of the Debtors, broken
15 down by month, on a cash basis; (b) a comparison of the actual expenses paid
16 to the expenses estimated in the cash collateral budgets for such time periods;
17 (c) for each month, the quantity of 2015, 2016 and 2017 Crops (to the extent
18 in existence) held by each of the Debtors as of the end of the monthly
19 reporting period; (d) the amount of the Debtors' outstanding accounts
20 receivables as of the end of the monthly reporting period (AR report should
21 separately list AR aging as current, 0-30 days, 31-60 days, 61-90 days and
22 over 90 days, and should identify account debtors/vendors by name); (e) the
23
24
25
26
27
28
29
30
31
32
33
34


411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

1 amount of the Debtors' outstanding accounts payable as of the end of the
2 monthly reporting period (AP report should separately list AP aging as
3 current, 0-30 days, 31-60 days, 61-90 days and over 90 days, and should
4 identify vendors owed by name); and (f) the amount of each Debtor's ending
5 cash balance as of the last day of each month for all periods from the Petition
6 Date forward.
7
8
9
10

11 16. The Monthly Reports shall be provided to correspond with the
12 time periods described in the Monthly Budgets (i.e., for monthly calendar
13 periods such as, for example, February 1 – February 28, 2017, etc.). The first
14 Monthly Reports shall be due by the 20th day of the month following the
15 month described in the Monthly Budgets, with subsequent reports due by the
16 20th day of each subsequent month during the Cash Collateral Period. The
17 Monthly Reports shall be provided to RAF and its counsel by electronic
18 transmittal to: (a) wayne.graffis@raboag.com; (b)
19 Justin.linderman@raboag.com; (c) mjohnson@rqn.com; (d)
20 dmonson@rqn.com; and (e) bmedeiros@dbm-law.net.
21
22
23
24
25
26
27
28

29 The Monthly Reports shall also be transmitted, upon request, to the U.S.
30 Trustee, counsel for any unsecured creditor's committee; and to counsel for
31
32
33
34



1 any other party claiming a lien or security interest in the 2016 Cash Collateral
2 or the Debtor's 2016 or 2017 crops.

3
4 17. As additional adequate protection, by no later than April 30,
5 2017, the Debtors shall provide RAF with CPA-reviewed consolidated
6 financial statements for Tatoes, Wahluke, Columbia, and non-debtor related
7 parties U12B253, LLC, Terra Management, LLC and EZ Fixing Foods, LLC
8 for the fiscal year ending December 31, 2016, along with a Compliant
9 Certificate as of the end of that period. The Debtors shall be entitled to use the
10 2016 Cash Collateral to pay the costs of preparing and providing the financial
11 statements called for herein and the costs of preparing and providing such
12 financial statements shall be added to the Monthly Budgets.
13
14
15
16
17
18
19

20 18. As additional adequate protection, during the Cash Collateral
21 Period, the Debtors shall provide RAF with any financial reports or tax returns
22 prepared by either CFO Selections or the Debtors' tax accountants or any
23 other financial professional employed by the Debtors, with such reports and
24 returns to be delivered to RAF within three (3) business days of their delivery
25 to the Debtors.
26
27
28
29
30
31
32
33
34

BAILEY  **BUSEY**
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

**ORDER AUTHORIZING
USE OF CASH COLLATERAL**

1 19. As additional adequate protection for the use of 2016 Cash
2 Collateral authorized hereunder, the Debtors shall provide bi-monthly written
3 reports (the “**Input Reports**”) to RAF, Saddle Mountain Supply and any other
4 party making a written request for such reports which details the amount of all
5 inputs, including, but not limited to seed, drip lines, fumigants, chemicals,
6 fertilizers and any other supplies which the Debtors will purchase, have
7 purchased or contracted to purchase pursuant to the Budgets attached to this
8 Order. The Input Reports shall further detail by owner name, parcel number
9 and other relevant identifying information which properties any all inputs,
10 including, but not limited to seed, drip lines, fumigants, chemicals, fertilizers
11 and any other supplies have been applied upon or used upon, and (a) if
12 payment has already been made, when and how payment was made and to
13 whom payment was made for the all inputs, including, but not limited to seed,
14 drip lines, fumigants, chemicals, fertilizers and any other supplies used, or (b)
15 if payment has not yet been made, when payment is due, to whom payment is
16 due, and the amount of such payment. The Input Reports shall be provided for
17 the following periods and by the following dates:
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

ORDER AUTHORIZING
USE OF CASH COLLATERAL

1 A. For the period of February 1, 2017 through February 15, 2017,
2 the Input Report shall be provided by no later than February 21, 2017, at 5:00
3 p.m.;

4
5
6 B. For the period of February 16, 2017 through February 28, 2017,
7 the Input Report shall be provided by no later than March 6, 2017, at 5:00
8 p.m.;

9
10
11 C. For the period of March 1, 2017 through March 15, 2017, the
12 Input Report shall be provided by no later than March 21, 2017, at 5:00 p.m.;

13
14
15 D. For the period of March 16, 2017 through March 31, 2017, the
16 Input Report shall be provided by no later than April 4, 2017, at 5:00 p.m.;

17
18
19 E. For the period of April 1, 2017 through April 15, 2017, the Input
20 Report shall be provided by no later than April 21, 2017, at 5:00 p.m.;

21
22
23 F. For the period of April 16, 2017 through April 30, 2017, the Input
24 Report shall be provided by no later than May 4, 2016, at 5:00 p.m.; and

25
26
27 G. For the period of May 1, 2017 through May 15, 2017, and
28 notwithstanding the fact that the Cash Collateral Period shall have already
29 expired, the Inputs Report shall be provided by no later than May 22, 2017, at
30 5:00 p.m.
31
32
33
34



1 20. As additional adequate protection, during the Cash Collateral
2
3 Period, RAF shall continue to have the adequate protection granted to it under
4
5 the previous cash collateral orders entered by the Court in the Debtors' cases.

6 21. With respect to any fumigants, chemicals, fertilizers, supplies,
7
8 seed, inputs or labor (collectively "**Advances**") provided to the Debtors by
9
10 Saddle Mountain Supply Company, Windflow or any other supplier (the
11
12 "**Supplier[s]**") pursuant to this Order or for which the Debtors will use 2016
13
14 Cash Collateral, the Debtors shall pay the Suppliers for such Advances no
15
16 later than thirty (30) days after the Advances are invoiced to the Debtors. If
17
18 any Supplier agrees in writing in a form acceptable to RAF that said Supplier
19
20 has no lien, will not assert a lien, or will subordinate its lien to RAF, statutory,
21
22 contractual or based on any other theory of law ("**Lien**"), on the 2017 crops as
23
24 a result of providing the Debtors with Advances, the Debtors may enter into an
25
26 agreement with such Suppliers to pay for such Advances later than thirty (30)
27
28 days after the Advances are applied or used or a debt to such Suppliers is
29
30 otherwise incurred by the Debtors, provided that Debtors shall provide RAF
31
32 with a copy of any agreements with such Suppliers more than five (5) business
33
34 days prior to entering into such agreements and will not enter into such


411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

1 agreements with any Supplier without prior written consent of RAF and prior
2 written approval of RAF of the form of the written agreement to subordinate
3 the Supplier's Lien to RAF. Proof of payment to Suppliers under such
4 agreements shall also be provided to RAF within five (5) days of such
5 payments being made.
6
7
8

9
10 22. Upon request of RAF, the Debtors shall provide RAF with proof
11 of adequate insurance coverage for RAF's collateral and the Debtors'
12 operations.
13

14
15 23. The Debtors shall not make any payments to any creditors by
16 transferring in-kind any portion of their crops or any other assets.
17

18
19 24. The Debtors shall at all times during the Cash Collateral Period
20 remain compliant with the Perishable Agriculture Commodities Act and the
21 regulations issued pursuant thereto ("PACA") concerning the procedures for
22 creating and preserving the benefits of the statutory trust on commodities and
23 sales proceeds thereof under 7 U.S.C. § 499a et seq. and the regulations issued
24 pursuant thereto.
25
26
27
28

29
30 25. The Debtors shall cooperate with RAF in such inspections and
31 appraisals of RAF's personal property collateral as RAF deems necessary and
32
33
34

BAILEY B BUSEY
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

1 appropriate, with RAF to pay its own costs related to such inspections or
2 appraisals. RAF shall provide the Debtors with at least three (3) business
3 days' advanced notice of any such inspections or appraisals. Further, the
4 Debtors shall allow RAF access to inspect its collateral, including taking
5 photographs, at any reasonable time of RAF's choosing. The Debtors also
6 shall allow a person designated by RAF reasonable and regular access to their
7 books and records for the purpose of reviewing and copying the same and
8 reasonable and regular access to the Debtors' managers, principals, officers,
9 employees, management and accountants for the purpose of answering
10 questions concerning the Debtors' operations, financial standing and/or
11 records.
12
13
14
15
16
17
18
19

20 26. Whether the Debtors are in default under the terms of this Order
21 shall be determined based upon the terms of this Order (and to the extent
22 applicable the Emergency Order, the Interim Order, the Court's Final Cash
23 Collateral entered May 25, 2016 and the Court's Final Cash Collateral Order
24 entered on November 10, 2016) and not the terms of any creditors' loan
25 documents. Nothing set forth in this Order shall prevent or prejudice the US
26 Trustee or any secured creditor from requesting the Court, on an emergency
27
28
29
30
31
32
33
34


411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

1 basis, to terminate the use of 2016 Cash Collateral, or from seeking any other
2 relief including, without limitation, stay relief or dismissal or conversion of
3 this case or appointment of an Examiner or Chapter 11 Trustee.
4

5
6 27. Nothing set forth herein shall be construed or interpreted as a
7 waiver or modification of any rights or arguments of the Debtors, RAF or any
8 other creditors or parties-in-interest concerning any matters or issues regarding
9 the allowance or treatment of any claims or interests in the Debtors'
10 bankruptcy cases or the treatment and payment of any such claims or interests
11 in the Debtors' bankruptcy cases, whether under a confirmed Chapter 11 plan
12 or otherwise, including the allowed amounts of such claims or interests or the
13 appropriate pre- or post-confirmation interest rates allowed thereon. Further,
14 nothing set forth herein shall be construed or interpreted as a waiver or
15 modification of any rights that RAF or any other creditors have or may assert
16 against any non-debtor co-borrowers or guarantors.
17
18
19
20
21
22
23
24
25

26 28. The Monthly Reports provided by the Debtors hereunder shall be
27 prepared in accordance with GAAP subject to such departures from GAAP as
28 are either: (a) agreed to by RAF & the Debtors; or (b) approved by the Court.
29 Further, any and all Monthly Reports provided by Debtors hereunder shall also
30
31
32
33
34



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

ORDER AUTHORIZING
USE OF CASH COLLATERAL

-22-

1 be signed by the Manager for the particular Debtor issuing the Monthly
2 Reports.
3

4 29. If the Debtors, or any of them, default in their financial and/or
5 reporting obligations under the terms of this Order, then the US Trustee, RAF
6 or any other person or entity having an interest in 2016 Cash Collateral may,
7 but shall not be required to, deliver a written Notice of Default to the Debtors
8 by e-mail delivery of such Notice of Default to each of the Debtors' counsels
9 of record, those being Roger Bailey (roger.bailey.attorney@gmail.com),
10 Joshua Busey (joshua.busey.attorney@gmail.com), Paul Williams
11 (phwatlaw@yahoo.com) and James P. Hurley (jamesphurley@hotmail.com),
12 with copies of the Notice of Default also being emailed to James D. Perkins of
13 the Office of the United States Trustee (james.perkins@usdoj.gov), Kevin
14 O'Rourke, counsel for the Official Committee of Unsecured Creditors in the
15 Tatoes case (kevin@southwellorourke.com) and RAF and its counsel to the
16 email addresses noted in paragraph 17 of this Order (if RAF is not the party
17 that delivers such Notice of Default). The Debtors and the party asserting the
18 default shall attempt in good faith to informally resolve or rectify the default.
19 If the Debtors and the objecting party are unable to informally resolve the
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

BAILEY  **BUSEY**
411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

1 default within three (3) business days of the delivery of the Notice of Default
2 (“**Resolution Period**”) then the Debtors’ authority to use Cash Collateral as
3 authorized by this Order shall cease two (2) business days after the expiration
4 of the Resolution Period, unless, prior to that date, the Debtors either (a) cure
5 the Notice of Default to the satisfaction of the party sending the Notice of
6 Default, or (b) file a motion with the Court requesting that their authority to
7 use Cash Collateral continue, and obtain and notice out a hearing on the
8 motion for a date that is no more than 24 days from the date of filing of the
9 motion. If such a motion is filed with the Court and noticed out for hearing as
10 required herein, then the Debtors’ authority to use and spend Cash Collateral
11 pursuant to the terms of this Order shall continue pending the Court’s decision
12 on the motion.
13
14
15
16
17
18
19
20
21

22 30. Any and all objections or responses to the Motion not specifically
23 addressed herein are nonetheless deemed withdrawn and/or resolved by the
24 terms of this Order, except as to objections to the use of cash collateral beyond
25 February 28, 2016 or the other dates referenced in paragraph 4 above.
26
27
28

29 31. The Court hereby sets a final hearing on the Debtors’ Motion to
30 extend the use of cash collateral through April 30, 2017 for February 28, 2017
31
32
33
34



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

1 10:00
2 at ~~10:30~~ a.m. The hearing shall be held at the United States Bankruptcy
3 Court for the Eastern District of Washington, located at 904 W. Riverside
4 Ave., Suite 304, Spokane, WA 99201.
5

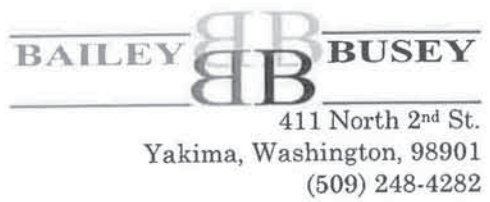
6 / / / END OF ORDER / / /
7
8
9

10 Presented By:

11
12 /s/ Roger W. Bailey
13 ROGER W. BAILEY (WSBA 26121)
14 JOSHUA J. BUSEY (WSBA 34312)
15 Bailey & Busey PLLC
16 Counsel for Wahluke Produce, Inc.
17

18
19 /s/ Paul H. Williams
20 Paul H. Williams (WSBA 31684)
21 Law Offices of Paul H. Williams
22 Counsel for Tatoes, LLC
23

24 /s/ James P. Hurley
25 James P. Hurley (WSBA 6615)
26 Hurley & Lara
27 Counsel for Columbia Onion
28
29
30
31
32
33
34



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Approved as to Form:

/s/ Bruce K. Medeiros
BRUCE K. MEDEIROS (WSBA 16380)
Davidson Backman Medeiros
Counsel for RAF

/s/ Michael R. Johnson
MICHAEL R. JOHNSON (*Pro Hac Vice*)
DOUGLAS M. MONSON (*Pro Hac Vice*)
Ray Quinney & Nebeker, P.C.
Counsel for RAF

\\Diane-pc1\USB 3.0 PC Card Adapter\WAHLUKE PRODUCE-355\Bankruptcy\Pleadings\Cash Collateral\2017 Cash Collateral\Motion to Extend Use of Cash Collateral - 013117 - submittal version.doc



411 North 2nd St.
Yakima, Washington, 98901
(509) 248-4282

ORDER AUTHORIZING
USE OF CASH COLLATERAL

EXHIBIT 1

TATOES BUDGET

Tatoes

	A ₁	Jan-17	Feb-17	Mar-17	Apr-17
Grower Return - Potatoes		489,038.03	574,287.32	613,318.17	570,368.15
Less outside growers - Potatoes		-	-	-	-
Grower Return - Onions		375,855.07	630,735.06	750,675.88	647,038.61
Total Return		864,893.09	1,205,022.37	1,363,994.05	1,217,406.75

Crop Expenses

Wages		69,465.46	81,277.45	166,519.77	153,059.00
Employee Benefits		4,000.00	4,000.00	4,000.00	4,000.00
Depreciation		-	-	-	-
Dues & Fees		281.58	77.50	579.04	1,564.27
Business Tax		-	16,675.14	-	48,244.00
Seed		-	200,000.00	150,000.00	517,000.00
Chemicals		-	126,000.00	20,000.00	48,897.76
Fertilizer		-	8,763.42	72,661.04	397,693.79
Irrigation		-	-	110,000.00	110,000.00
Charitable Contribution		-	-	-	-
Application		2,821.50	-	-	-
Fuel & Oil		21,267.45	20,000.00	20,000.00	20,000.00
Soil Testing		-	43.00	41.00	-
Insurance		4,937.00	4,937.00	4,937.00	4,937.00
RAF payment		56,149.33	25,844.19	-	56,149.33
Account Chgs/Fees		500.00	500.00	500.00	500.00
Custom Hire		-	-	-	-
Bank Charges		779.74	-	440.46	-

TATOES BUDGET

License Fees	300.00	2,000.00	5,000.00	4,800.00
Sales Tax	-	-	-	-
Miscellaneous	3,000.00	3,000.00	3,000.00	3,000.00
Legal	-	-	-	-
Office Supplies/Exp	200.00	200.00	200.00	200.00
Payroll Taxes	8,335.86	9,753.29	19,982.37	18,367.08
Professional Fees	25,000.00	25,000.00	25,000.00	25,000.00
Legal - Unsecured Creditors	10,000.00	10,000.00	10,000.00	10,000.00
Rent Property	12,675.00	12,675.00	12,675.00	745,925.00
Rent Equipment	-	-	300,000.00	200,000.00
Repairs/Maintenance	70,000.00	40,000.00	40,000.00	13,000.00
Deere - Excess Use		29,227.43	29,227.43	29,227.43
Deere - Adequate Protection		27,200.93	27,200.93	27,200.93
Deere - Personal Property (est)		15,000.00		
Tools	300.00	300.00	300.00	300.00
Supplies	13,000.00	2,000.00	6,000.00	2,600.00
Utilities	20,330.66	20,000.00	17,000.00	23,000.00
Drip Irrigation/Mapping	-	-	110,000.00	138,846.96
Utilities - Communication	421.00	450.00	409.00	579.97
Transportation	-	-	-	-
Suspense	-	-	-	-
Total Expenses	\$323,764.58	\$684,924.36	\$1,155,673.04	\$2,604,092.52
Net Income	\$ 541,128.52	\$ 520,098.02	\$ 208,321.02	\$ (1,386,685.77)

EXHIBIT 2

WAHLUKE PRODUCE

Wahluke Produce

	Jan-17	Feb-17	Mar-17	Apr-17
2016 Crop				
Potatoes				
Gross Tons Shrunk	4,278.47	3,978.85	3,334.77	3,280.13
Fresh Price	\$ 221.58	\$ 221.58	\$ 221.58	\$ 221.58

Grower sales 2015	\$ -	\$ -	\$ -	\$ -
Grower sales	\$ 887,691.55	\$ 948,022.61	\$ 881,633.58	\$ 738,918.65
Purchased Produce	-	-	-	-
Scale	-	-	-	-
Supplies	-	-	-	-
Recorder	1,750.00	1,750.00	1,750.00	1,750.00
Pallet	12,000.00	12,000.00	12,000.00	12,000.00
Inspections	2,000.00	2,000.00	2,000.00	2,000.00
Misc				
Gross Revenue	\$ 903,441.55	\$ 963,772.61	\$ 897,383.58	\$ 754,668.65

Wahluke Produce

Labor	\$ 113,273.22	\$ 110,421.99	\$ 130,365.94	\$ 103,772.80
Payroll Taxes	13,592.79	13,250.64	15,643.91	12,452.74
Employee Benefits	700.00	700.00	700.00	700.00
Medical Insurance	6,000.00	6,600.00	6,600.00	6,600.00
Contract Labor	-	-	-	-
Packing Supplies	160,673.53	149,421.73	125,234.01	123,182.10
Freight	2,000.00	2,000.00	2,000.00	2,000.00
Pallets	12,000.00	12,000.00	12,000.00	12,000.00
Fumigation	200.00	200.00	200.00	200.00
Business Insurance	5,431.69	5,431.69	5,431.69	5,431.69
Business Taxes	-	-	-	14,000.00

WAHLUKE PRODUCE

Chemicals	1,500.00	1,500.00	1,500.00	1,500.00
Fuel	2,500.00	2,500.00	2,500.00	2,500.00
Officer Life Insurance	24,913.00			24,913.00
Office Expense	3,000.00	3,000.00	3,000.00	3,000.00
Inspection Fees	6,000.00	6,000.00	6,000.00	6,000.00
Licenses, Fees, Permits	173.78	1,051.00	58.75	257.00
Professional Fees	35,000.00	35,000.00	35,000.00	35,000.00
Accrued Professional Fees	-	-	-	-
Purchased Produce Costs	-	-	-	-
Recorders	1,000.00	1,000.00	1,000.00	1,000.00
Rents	-	6,312.00	-	-
Rep/Maint. - Bldg & Grounds	925.00	925.00	925.00	925.00
Repairs & Maintenance	7,000.00	7,000.00	7,000.00	7,000.00
RAF payments	56,149.33	25,844.19		56,149.33
Service Chgs & Fees	500.00	500.00	500.00	500.00
Supplies	4,000.00	4,000.00	4,000.00	4,000.00
Misc	-	-	-	-
Tools	175.00	175.00	175.00	175.00
Dues & Subscriptions	4,565.00	800.00	800.00	800.00
Travel	-	-	-	-
Utilities	8,300.00	8,300.00	8,300.00	8,300.00
	<u>469,572.34</u>	<u>403,933.24</u>	<u>368,934.30</u>	<u>432,358.65</u>
Net Before Grower Return	433,869.21	559,839.37	528,449.28	322,310.01
Grower Return 2015				
Grower Return 2016	(489,038.03)	(574,287.32)	(613,318.17)	(570,368.15)
Net Income	<u>\$ (55,168.81)</u>	<u>\$ (14,447.95)</u>	<u>\$ (84,868.89)</u>	<u>\$ (248,058.14)</u>
Cumulative	\$ (55,168.81)	\$ (69,616.76)	\$ (154,485.66)	\$ (402,543.79)

EXHIBIT 3

COLUMBIA BUDGET

Columbia Onion

	Jan-17	Feb-17	Mar-17	Apr-17
Gross Tons Run (less shrink)	3,579.89	3,085.66	4,791.81	2,666.16
Grower Sales	\$ -	\$ -	\$ -	\$ -
Grower Sales 2015				
Grower Sales 2016	\$ 909,050.07	\$ 1,081,915.38	\$ 932,547.64	\$ 1,448,180.96
Packing Revenue				
Purchased Produce	-	-	-	-
Pallet Income	12,000.00	12,000.00	12,000.00	12,000.00
Recorder Income	560.00	560.00	560.00	560.00
Inspections	1,600.00	1,600.00	1,600.00	1,600.00
Gross Revenue	\$ 923,210.07	\$ 1,096,075.38	\$ 946,707.64	\$ 1,462,340.96

Columbia Onion

	Jan-17	Feb-17	Mar-17	Apr-17
Labor	\$ 109,384.26	\$ 98,777.75	\$ 169,240.68	\$ 89,775.10
Payroll Taxes	13,126.11	11,853.33	20,308.88	10,773.01
Employee Benefits	325.00	325.00	325.00	325.00
Medical Insurance	1,216.00	1,216.00	1,216.00	1,216.00
Packing Supplies	46,824.97	40,360.38	62,676.83	34,873.33
Pallets	16,109.51	13,885.45	21,563.13	11,997.70
Freight	-	-	-	-
Business Insurance	4,937.90	4,937.90	4,937.90	4,937.90
Business Taxes	420.00	420.00	420.00	11,000.00

COLUMBIA BUDGET

Chemicals	750.00	750.00	750.00	750.00
Commission Cost	-	-	-	-
Fuel	2,000.00	2,000.00	2,000.00	2,000.00
Office Expense	2,269.51	2,269.51	2,269.51	2,269.51
Inspection Fee	3,293.50	2,838.80	4,408.46	2,452.86
Licenses, Fees, Permits	4,397.00	-	-	-
Professional Fees	8,000.00	8,000.00	8,000.00	8,000.00
Accrued Professional Fees	-	-	-	-
Purchased Produce Costs	-	-	-	-
Recorders	300.00	300.00	300.00	300.00
Rents	42,018.00	198.74	0.00	
Rep/Maint. - Bldg & Grounds	1,650.00	1,650.00	1,650.00	1,650.00
Repairs & Maintenance	4,000.00	4,000.00	4,000.00	4,000.00
RAF Payment	56,149.33	25,844.19		56,149.33
Service Chgs & Fees	500.00	500.00	500.00	500.00
Supplies	2,000.00	3,000.00	2,800.00	1,600.00
Misc	2,000.00	2,000.00	2,000.00	2,000.00
Tools	100.00	100.00	100.00	100.00
Travel	-	-	-	-
Utilities	14,000.00	8,000.00	7,000.00	7,000.00
Total Expenses	335,771.08	233,227.05	316,466.39	253,669.75
Net Before Return to Grower	587,438.98	862,848.33	630,241.25	1,208,671.22
Return to Grower 2015				
Return to Grower	\$ 375,855.07	\$ 630,735.06	\$ 750,675.88	\$ 647,038.61
Cash Flow after Gwr ret	\$ 211,583.91	\$ 232,113.27	\$ (120,434.63)	\$ 561,632.61