

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:	}	
COOL FROOTZ, LLC, a Delaware limited liability company EIN: 20-0873295	}	Case No. 18-18234 KHT
Debtor.	}	Chapter 11
	}	

**FINAL ORDER AUTHORIZING USE OF COLLATERAL
AND GRANTING ADEQUATE PROTECTION UNDER
SECTIONS 362, 363, AND 364 OF THE BANKRUPTCY CODE**

THIS MATTER comes before the Court on the *Motion for Authority to Use Cash Collateral* (the “Motion,” docket #13) filed by Debtor, seeking an order authorizing it to use collateral of its prepetition secured creditors (the “*Secured Creditors*”),¹ and the Objections thereto filed by DNS-Frootz, LLC (docket ##23, 58), CircleUp Credit Advisors LLC (docket #63), and Fruittrade International, Inc. (docket #70). The Court, having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; having found it may enter a final order consistent with Article III of the United States Constitution; and having found venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; determines the relief requested in the Motion is appropriate under the Bankruptcy Code and in the best interests of the Debtor, its estate, and its creditors. Upon the record herein and upon all of the proceedings had

¹ The Secured Creditors are CircleUp Credit Advisors LLC (“*CUC*”); DNS-Frootz, LLC, as collateral agent for the holders of secured convertible promissory notes made by the Debtor (the “*Notes Collateral Agent*”) and as holder of certain of such notes; and S2G Ventures Fund I, L.P.

before this Court, after due deliberation thereon, and good and sufficient cause appearing therefor, the Court hereby

ORDERS, ADJUDGES AND DECREES THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 361, 362(d), 363(c), and 364 of the Bankruptcy Code, the Debtor shall provide adequate protection for the interests of CUC in its prepetition collateral to the extent of any diminution in value of CUC's interests in such prepetition collateral from and after the Petition Date. CUC is hereby granted, to the extent of any diminution in value of their interests in their prepetition collateral, the following:

- (a) Adequate Protection Liens. Effective as of the Petition Date and perfected without the need for execution by the Debtor or recordation or filing of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by CUC of any of the Adequate Protection Collateral (as defined below), CUC is hereby granted valid, binding, continuing, enforceable, fully perfected, security interests in and liens on (the "***CUC Adequate Protection Liens***") any and all tangible and intangible pre- and post-petition property of the Debtor, whether existing before, on or after the Petition Date, together with any proceeds thereof, including, without limitation, any and all cash and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds (*provided, however*, that solely to the extent that any lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the leasehold interest, then in such event there shall only be a lien on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code), real property, deposit accounts (except for any account created to hold an adequate assurance deposit for utility providers, pursuant to separate order of this Court), securities accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents, accession and profits of the foregoing (collectively, the "***Adequate Protection Collateral***"); *provided, however*, that the Adequate Protection

Collateral shall not include claims or causes of action of the Debtor arising under sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code or the proceeds of any such claims or causes of action.

- (b) Priority of CUC Adequate Protection Liens. The CUC Adequate Protection Liens shall be (i) subject only to any liens on the Adequate Protection Collateral existing on the Petition Date (including any such liens that are perfected after the Petition Date in accordance with section 546(b) of the Bankruptcy Code) with priority over CUC's prepetition liens on its prepetition collateral or otherwise on assets not constituting its prepetition collateral, and (ii) *pari passu* with any other Adequate Protection Liens (as defined below) on any Adequate Protection Collateral that was unencumbered as of the Petition Date, in each case to the extent of any diminution in value of such prepetition collateral. Notwithstanding the language above or any other liens provided by this Order, CUC shall have a continuing first priority and senior lien in any accounts receivable generated postpetition from the customers whose accounts receivable were subject to CUC's prepetition liens, regardless of whether such accounts receivable were the result of sale of inventory or other property that may be subject to Adequate Protection Liens or any prepetition liens.

3. Notwithstanding any other provision of this order, to the extent CUC currently holds any accounts receivable funds received after September 24, 2018, CUC is authorized and granted relief from stay to apply 80% of such funds to its secured debt and is ordered to deliver the remaining 20% of such funds to the Debtor. As to all future accounts receivable received by CUC or generated by the Debtor, CUC is authorized and granted relief from stay to apply 80% of such funds to debt owed to CUC and after such application is ordered to deliver the remaining 20% to the Debtor.

4. Pursuant to sections 361, 362(d), 363(c), and 364 of the Bankruptcy Code, the Debtor shall provide adequate protection for the interests of the Notes Collateral Agent in its prepetition collateral to the extent of any diminution in value of the Notes Collateral Agent's interests in such prepetition collateral from and after the Petition Date. The Notes Collateral Agent, on behalf of itself and for the benefit of each of the holders of the secured convertible

promissory notes made by the Debtor (the “*Secured Notes*”), is hereby granted, to the extent of any diminution in value of their interests in their prepetition collateral, the following:

- (a) Adequate Protection Liens. Effective as of the Petition Date and perfected without the need for execution by the Debtor or recordation or filing of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the Notes Collateral Agent of any of the Adequate Protection Collateral (as defined below), the Notes Collateral Agent is hereby granted, for the benefit of itself and all holders of Secured Notes, valid, binding, continuing, enforceable, fully perfected, replacement security interests in and liens on (the “*Notes Adequate Protection Liens*”) the inventory acquired or produced by the Debtor post-petition and a lien junior to CUC on the Debtor’s accounts receivable.
- (b) Priority of Notes Adequate Protection Liens. Except as provided in section 2(b) above, the Notes Adequate Protection Liens shall be (i) subject only to any liens on the inventory and accounts receivable existing on the Petition Date (including any such liens that are perfected after the Petition Date in accordance with section 546(b) of the Bankruptcy Code) with priority over the Notes Collateral Agent’s prepetition liens on its prepetition collateral or otherwise on assets not constituting its prepetition collateral, and (ii) *pari passu* with any other Adequate Protection Liens on any Adequate Protection Collateral that was unencumbered as of the Petition Date in each case to the extent of any diminution in value of such prepetition collateral.
- (c) Adequate Protection Superpriority Claims. To the extent of any diminution in value in their prepetition collateral which is not covered by new post-petition collateral, the Notes Collateral Agent and CUC shall have superpriority administrative expense claims, senior to all other administrative expense claims, under section 507(b) of the Bankruptcy Code, except with respect to any post-petition claims paid post-petition through the use of cash collateral and any professional fees that are allowed for the Debtor’s professionals.
- (d) Budget. The Debtor delivered a 10-week cash flow forecast (the “*Budget*”) to the Notes Collateral Agent and CUC at the October 9, 2018, hearing. A copy of that Budget is attached hereto. The Debtor shall deliver updated 13-week cash flow Budgets to the Notes Collateral Agent and CUC on or before the last business day of each calendar month and file the same with the Court. The Notes Collateral Agent and CUC shall have the right to object to any such Budgets as being unreasonable within five (5) business days of the receipt thereof. If no such objection is raised, the Budget as proposed will be binding on the Debtor.

- (e) Reporting. The Debtor shall deliver biweekly cash flow reports to the Notes Collateral Agent and CUC in a form reasonably acceptable to the Notes Collateral Agent and CUC. The first such report, covering the period from the Petition Date through October 12, 2018, shall be delivered to the Notes Collateral Agent and CUC on or before October 19, 2018, and the Debtor shall deliver such reports every second Friday thereafter (or, if any such Friday is not a business day, the next subsequent business day) in each case covering the two-week period ended the immediately preceding Friday. The Debtor's use of prepetition collateral and Adequate Protection Collateral, including cash collateral, shall terminate immediately upon notice from the Notes Collateral Agent or CUC to the Debtor if the Debtor's financial results, as reported in such biweekly cash flow reports, indicate any negative variance in any line item, greater than ten percent (10%).
- (f) Insurance. The Debtor shall maintain complete insurance coverage applicable to all of its assets.

5. The Adequate Protection Liens shall not be subject to challenge and shall attach and become valid, perfected, enforceable, non-avoidable, and effective by operation of law as of the Petition Date, without any further action by the Debtor or any other party and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office, the U.S. Copyright Office, or the Library of Congress or other documents or the taking of any other actions. If any party granted Adequate Protection Liens by this Order hereafter requests that the Debtor execute and deliver to it financing statements, security agreements, collateral assignments, mortgages, or other instruments and documents considered by the Notes Collateral Agent or CUC to be reasonably necessary or desirable to further evidence the perfection of the Adequate Protection Liens, as applicable, the Debtor is hereby directed to execute and deliver such financing statements, security agreements, mortgages collateral assignments, instruments and documents, and the secured party is hereby authorized to file or record such documents in their discretion without seeking modification of the automatic

stay, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Order.

6. This Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, any of CUC's or the Notes Collateral Agent's rights with respect to any person or entity other than the Debtor or with respect to any other collateral owned or held by any person or entity other than the Debtor. Subject to the rights provided to the Debtor under the Bankruptcy Code, the rights of CUC and the Notes Collateral Agent are expressly reserved and entry of this Order shall be without prejudice to, and does not constitute a waiver, expressly or implicitly, of the following:

- (a) the Notes Collateral Agent's rights under the NPA and all related security, guarantee, and other documents or CUC's rights under its Commercial Loan Agreement and all related security, guarantee and other documents (collectively "CUC Loan Documents");
- (b) CUC's or the Notes Collateral Agent's rights to seek any other or supplemental relief in respect of the Debtor;
- (c) CUC's or the Notes Collateral Agent's rights to seek modification of the grant of adequate protection provided under this Order so as to provide different or additional adequate protection at any time;
- (d) CUC's or the Notes Collateral Agent's rights under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to: (i) request modification of or relief from the automatic stay; (ii) request dismissal of this chapter 11 case, conversion of this chapter 11 case to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with extended powers; or (iii) propose, subject to section 1121 of the Bankruptcy Code, a chapter 11 plan or plans;
- (e) CUC's or the Notes Collateral Agent's right to credit bid to the fullest extent provided for in section 363(k) of the Bankruptcy Code up to the full amount of any obligations under the Secured Notes in the sale of any its collateral, or pursuant to (i) section 363 of the Bankruptcy Code; (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code; or (iii) a sale or disposition by a chapter 7 trustee for the Debtor under section 725 of the Bankruptcy Code; or

- (f) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of CUC and the Notes Collateral Agent.

7. If this chapter 11 case is dismissed, converted, or substantively consolidated, such dismissal, conversion, or substantive consolidation shall not affect the rights of CUC or the Notes Collateral Agent under this Order, and all of their rights and remedies thereunder shall remain in full force and effect as if this chapter 11 case had not been dismissed, converted, or substantively consolidated. If an order dismissing this chapter 11 case is at any time entered, such order shall provide or be deemed to provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that CUC's and the Notes Collateral Agent's prepetition liens and security interests and Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Order.

8. Upon the occurrence of any of the following events (each, a "***Termination Event***"), the Debtor's authority to use any prepetition collateral or Adequate Protection Collateral of the Notes Collateral Agent or CUC shall terminate:

- (a) the breach by the Debtor of any provision of this Order that is not cured within five business days of notice from the Notes Collateral Agent or CUC to the Debtor of such breach, provided that no such cure period shall apply if the applicable breach is not capable of being cured;
- (b) this Order ceases to be in full force and effect in any material respect, or the Debtor asserts so in writing, or the Adequate Protection Liens created by this Order cease in any material respect to be enforceable and of the same effect and priority purported to be created hereby or the Debtor asserts so in writing;

- (c) the Court shall have entered an order appointing a chapter 11 trustee, responsible officer or any examiner with enlarged powers relating to the operation of the Debtor's business in this chapter 11 case;
- (d) the Court shall have entered an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to permit foreclosure or the granting of a deed in lieu of foreclosure or the like on any of the Debtor's assets which have an aggregate value in excess of \$25,000; or
- (e) the Court shall have entered an order dismissing this chapter 11 case or converting it to a case under chapter 7 of the Bankruptcy Code.

9. For the avoidance of doubt, no Adequate Protection Liens shall encumber any property not constituting assets of the Debtor's estate under section 541 of the Bankruptcy Code, including any property subject to a statutory trust imposed by the United States Perishable Agricultural Commodities Act.

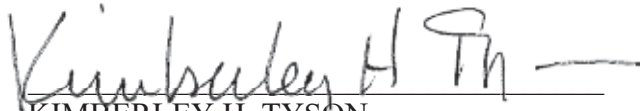
10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

11. The requirements of Bankruptcy Rule 4001(b) are satisfied.

12. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: October 11, 2018
Denver, Colorado


KIMBERLEY H. TYSON
UNITED STATES BANKRUPTCY JUDGE

FROOZER

Rolling Cash Flow Forecast
For the Week, Beginning 09/17/2018

Cash Flow / Balance Sheet Forecast		10/1/18	10/8/18	10/15/18	10/22/18	10/29/18	11/5/18	11/12/18	11/19/18	11/26/18	12/3/18
Cash Forecast											
Beginning Cash		\$31,493	\$27,523	\$5,933	\$29,385	\$33,066	\$36,519	\$25,210	\$19,131	\$14,309	\$6,434
Cash Receipts		0	0	0	38,361	0	0	0	0	0	0
Orders paid in advance		0	0	0	38,361	0	0	0	0	0	0
Forecasted Accounts Receivable		20,500	2,258	15,617	15,617	15,165	15,165	15,355	15,355	15,355	15,355
CircleUp AR Loan - Final Pmt		0	6,112	22,823	7,690	11,534	0	0	6,297	0	0
Total Cash Receipts		\$20,500	\$8,370	\$38,439	\$61,668	\$26,700	\$15,165	\$15,355	\$21,651	\$15,355	\$15,355
Cash Disbursements											
Payroll		0	23,000	0	18,000	0	12,000	0	12,000	0	12,000
Rent		0	0	0	0	8,773	0	0	0	8,773	0
Marketing		0	0	0	0	0	0	0	0	0	0
Ingredients (payment plan to Ingrid)		0	0	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Shipping/Storage		0	0	2,000	2,000	2,000	2,000	2,000	2,000	2,000	0
Insurance		0	6,960	0	25,000	0	0	6,960	0	0	0
Packaging		0	0	0	0	0	0	0	0	0	0
Overhead		0	0	0	0	0	0	0	0	0	0
Forecasted Accounts Payable		20,000	0	11,987	11,987	11,474	11,474	11,474	11,474	11,457	11,457
Total Cash Disbursements		\$20,000	\$29,960	\$14,987	\$57,987	\$23,247	\$26,474	\$21,434	\$26,474	\$23,230	\$24,457
Ending Cash		\$27,523	\$5,933	\$29,385	\$33,066	\$36,519	\$25,210	\$19,131	\$14,309	\$6,434	(\$2,668)
Change in Cash		(\$3,970)	(\$21,590)	\$23,452	\$3,681	\$3,453	(\$11,308)	(\$6,079)	(\$4,822)	(\$7,875)	(\$9,102)