

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In Re:) Case No. 17-40375-JDP
) (Chapter 11)
T & S FARMS, a Partnership,)
)
Debtor.)

ORDER APPROVING AMENDED MOTION TO INCUR SECURED DEBT
AND FOR USE OF CASH COLLATERAL

THE MATTER of debtor’s Amended Motion for Use of Cash Collateral and Motion to Incur Secured Debt (Doc. 26) (the “Motion”) came before the Court for hearing on May 24, 2017. Appearing at said hearing were Brent T. Robinson, on behalf of the debtor, Brent Wilson on behalf of J. R. Simplot Company dba Simplot Growers Solutions (“Simplot”), Brian Tucker on behalf of The Bank of Commerce, Ron Kerl on behalf of Deere & Co/Deere Credit, Inc., and Mary Kimmel on behalf of the U.S. Trustee. The Court, having reviewed and considered the debtor’s motion, being fully advised in the premises, and good cause appearing therefore, enters its Order as follows:

INCURRING SECURED DEBT

IT IS HEREBY ORDERED that debtor seek confirmation of the following plan terms for the secured pre-petition obligation owed to Simplot, as more fully identified above: The Debtor shall pay the Simplot Obligation, as more fully identified in the Motion, in no less than five (5) equal annual payments to commence in 2017 and paid on the following subsequent twelfth (12th) month thereafter, to accrue interest at Prime plus 2.7%, based upon the Wall Street Journal Rate (“Plan Terms”);

- a. The Simplot Obligation will continue to be secured by the Collateral, as more fully identified in the Motion;
- b. Provided there are no defaults under the credit documents, as modified by the terms of the Motion, nor the Motion, then Simplot shall provide credit advances for

the fertilizers and chemical products purchased from Simplot for the growing of the 2017 crops, to the amount necessary not to exceed Seven Hundred Thousand Dollars (\$700,000) ("Post-Petition Financing"). The outstanding principal obligation of the Post-Petition Financing shall accrue interest at Prime plus 3%, based upon the Wall Street Journal Rate, and shall be paid the earlier of when and as the 2017 Crops are sold or July 31, 2018.

c. The Post-Petition Financing shall be secured in a first position priority lien at all times in all Crops that are generated or grown by the Debtor, or in which the Debtor acquired any interest in 2017 ("Post-Petition Collateral" or "2017 Crops").

d. Other parties in interest claiming an interest in the collateral: Bank of Commerce.

e. The purpose of the loan is to obtain fertilizer and chemical for the Debtor to generate and grow crops in 2017.

IT IS FURTHER ORDERED that the right of the Debtor to obtain the Post-Petition Financing will terminate immediately and automatically upon any of the following occurrences, each of which is referred to hereinafter as an "Event of Default":

- a. The dismissal of the Debtor's Chapter 11 case or conversion to Chapter 7;
- b. The entry of an Order granting any person or entity a lien on or a claim in the Post-Petition Collateral that is senior or prior to the rights of Simplot;
- c. Except as for the Bank of Commerce, the entry of an Order granting any person or entity a lien on or a claim in the Collateral or the Cash Collateral that is senior or prior to the rights of Simplot;
- d. The entry of an Order granting Simplot, relief from the automatic stay under § 362;

e. The failure to abide by the terms of the Amended Motion and Order regarding the Authority for Post-Petition Financing or the Use of Cash Collateral;

f. The failure to obtain a confirmed plan setting forth the agreed upon Plan terms with Simplot;

g. The failure to abide by the terms of the Budget; and/or,

h. Any discontinuance of the operations of the business.

IT IS FURTHER ORDERED that the Debtor is authorized to incur secured debt with respect to the transactions described above, and the budget attached hereto and incorporated herein by reference with respect to incurring secured debt.

USE OF CASH COLLATERAL

IT IS HEREBY ORDERED that, effective at the conclusion of the May 24, 2017 hearing, the debtor was and is authorized to use cash collateral.

IT IS FURTHER ORDERED that said cash collateral shall be used to pay only those items set out in the budget attached hereto and incorporated herein by reference. Attached hereto as Exhibit "A" is the budget attached to the Supplement to Amended Motion for Use of Cash Collateral and to Incur Secured Debt (Doc. 30). Attached as Exhibit "B" is the budget based on changes to the budget that occurred before the Order was entered.

IT IS FURTHER ORDERED that Simplot and The Bank of Commerce shall retain their liens with the same priority and to the extent they existed pre-petition, except as to the Post-Petition Collateral. As to the Post-Petition Collateral, Simplot has a first secured position to the extent of the Post-Petition Financing and the Bank of Commerce has a second lien position.

IT IS FURTHER ORDERED that in consideration for the use of cash collateral, those parties who claim an interest in the cash collateral to be used are granted a post-petition adequate protection lien in all new accounts receivable and income to the same extent and in the same priority as their pre-petition liens existed on the date of filing, but only to the extent of cash collateral used.

IT IS FURTHER ORDERED that in the event any creditors' names appear on any checks received from the sale of crops, livestock, and livestock products, said parties are required to endorse the same. However, Bank of Commerce and Simplot are not required to endorse the checks evidencing the proceeds from the 2016 Crops if the debtor is not in compliance with the respective credit documents as modified.

IT IS FURTHER ORDERED that all agreements, security interests, and liens, including but not limited to the Post-Petition Liens, contemplated by the Amended Motion, are effective and perfected without further filing by Bank of Commerce or Simplot, or compliance with state or federal law. Bank of Commerce and Simplot are not required to file financing statements or other documents in any jurisdiction or to take any other action in order to perfect the security interests and liens granted to it under and pursuant to the Amended Motion and this Order approving the same. If Bank of Commerce or Simplot, in its sole discretion, chooses to file or record such financing statements or otherwise confirm perfection of such security interests and liens, all such financing statements, assignments, or similar documents shall promptly be executed by the debtor upon request of Bank of Commerce or Simplot.

IT IS FURTHER ORDERED that debtor maintain, keep, and preserve the Collateral and all of the terms of the Security Agreements and other credit documents (except any terms which are inconsistent with the terms of the Amended Motion and/or the Bankruptcy Code, if any) and uses its best effort in collecting all income generated by operation of the debtor's business and by use of the Collateral and in maximizing the debtor's profitability.

IT IS FURTHER ORDERED that Bank of Commerce and Simplot shall have access, with reasonable notice, to the debtor's business premises to review and evaluate the physical condition of the Collateral and inspect the financial records and all other records of the debtor concerning its operations, and for review of the debtor's overall financial condition, the expenditure of funds generated

from the Debtor's operations, the accrual of expenses relating thereto and any and all other records reasonably relating to the operations of the debtor.

IT IS FURTHER ORDERED, except to the limited extent modified by a confirmed Plan, all of the terms of the agreements between the debtor and Bank of Commerce and between the Debtor and Simplot shall remain in full force and effect.

IT IS FURTHER ORDERED that debtor shall provide the Bank of Commerce's counsel, Simplot's counsel, and the United States Trustee, via fax or email, the following financial information and reports:

- a. Not later than 120 days after and at the end of Debtor's fiscal year 2017, and each fiscal year thereafter, combined reviewed financial statement of the Debtor on a consolidated and consolidating basis with all of Debtor's subsidiaries (if any) prepared in accordance with GAAP by a Certified Public Accountant acceptable to Bank, to include balance sheet, income statement, statement of cash flows, statement of member's equity, management report, reviewer/auditor's report, and all supporting schedules and footnotes;
- b. Not later than 15 days after and as of the end of each month, a financial statement of Debtor, prepared by Debtor, to include an income statement and balance sheet;
- c. Not later than 15 days after and as of the end of each month, a one month rolling cash flow forecast, with actual results compared to the previous months forecast;
- d. Not later than 15 days after and as of the end of the last business day of each month, a current position report of all crops on hand and sold during the month.
- e. Not later than 15 days after and as of the end of the last business day of each month, accounts receivable and accounts payable aging reports;
- f. Financial reports prepared by or received by Debtor's accountant within one day of when received by Debtor;
- g. A copy of all reports filed with the U.S. Trustee on the same day the reports are filed with the U.S. Trustee;
- h. Such other information as Bank of Commerce, Simplot, or the U.S. Trustee may reasonably request.

IT IS FURTHER ORDERED that debtor provide Bank of Commerce and Simplot with proof of adequate insurance coverage for its collateral and the debtor's operations.

IT IS FURTHER ORDERED that the Bank of Commerce and Simplot are expressly reserved any rights they have under Section 507(b) of the Bankruptcy Code to seek super priority administrative expense claim in the event the proposed adequate protection for the use of cash collateral is not sufficient.

IT IS FURTHER ORDERED that the proceeds from the sale of crops be used to pay operating expenses.

IT IS FURTHER ORDERED that such proceeds shall be segregated into a separate bank account in accordance with the requirements of 11 U.S.C. § 363(c)(4).

IT IS FURTHER ORDERED that the cessation of the right of the debtor to obtain Post-Petition Financing or the right to use of cash collateral will not in any way impair any right, interest or lien granted to Simplot or the Bank of Commerce.

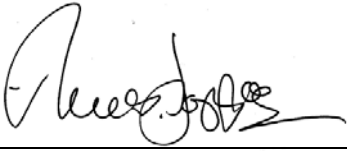
IT IS FURTHER ORDERED that the Debtor's right to use cash collateral ceases upon an Event of Default, provided the Debtor has first had 15 days' written notice of said Event of Default and has not cured that default within the 15 days.

IT IS FURTHER ORDERED that the lenders are granted a security interest in the debtor's 2017 Crops and proceeds, which security interest and liens as specified above.

IT IS FURTHER ORDERED that the Debtor is to take reasonable efforts to collect accounts receivables owing to debtor and to file seed liens under Idaho Code §45-301 et seq. to protect its ability to collect receivables related to seed potatoes.

IT IS FURTHER ORDERED that all creditors refrain from disturbing the debtor and the secured parties in the planting, tilling, harvesting, and marketing of the 2017 Crops. \\end of text\\

Dated: July 19, 2017



Honorable Jim D. Pappas
United States Bankruptcy Judge



APPROVED AS TO FORM:

/S/ Brent Wilson

Brent Wilson
Attorney for J. R. Simplot Company
dba Simplot Growers Solutions
Dated: July 18, 2017

/S/ May P. Kimmel

Mary P. Kimmel
Office of the U. S. Trustee
Dated: July 18, 2017

/S/ Brian Tucker

Brian Tucker
Attorney for The Bank of Commerce
Dated: July 18, 2017