

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

In re: SUNBURST FARMS PARTNERSHIP, DEBTOR.	Case No. 17-11389-11
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**MOTION FOR ORDER AUTHORIZING SALE OF CROPS
AND INTERIM USE OF CASH COLLATERAL**

Debtor Sunburst Farms Partnership, by and through its counsel Eron Law, P.A., moves the Court pursuant to 11 U.S.C. § 363(c) for entry of an order authorizing the Debtor to sell certain harvested feed products, all grown and harvested in 2016 and 2017 (the “Crops”). Debtor routinely sells crops in the ordinary course of its farming operation. Debtor requests that the Court authorize the Debtor to use the proceeds generated by the sales in the amounts specified herein for the Debtor’s immediate needs in selling the existing crops and growing and harvesting the 2017 fall crops (milo and forage sorghum) and other necessary farm operating expenses. The Crops hold a value of approximately \$1,315,281.00. The 2017 fall crops will be worth approximately \$200,394.02 once harvested. Debtor’s only source of funds that can be used to harvest and market the existing crop and grow and harvest the 2017 fall crop are the revenues generated by the sales of the Crops. Debtor seeks authority to use cash proceeds which serve as the collateral of The Bank Oberlin Winona Branch (“The Bank”) for the expenses reflected on the attached budget.

1. On July 19, 2017 (“the Petition Date”), Debtor filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code.

2. Debtor presently has 1,765.92 acres of land that have been planted, including 1,360 acres wheat (“the Planted Wheat”), 155.92 acres milo, and 250 acres feed sorghum (collectively

the latter two referred to as the “2017 Crops”). Harvest of the Planted Wheat is ongoing. Harvest of the 2017 Crops should begin sometime in the fall of 2017. However, Debtor must invest continued time and money into the marketing of the Crops, harvesting and marketing the Planted Wheat, and planting, growing, and harvesting of the 2017 Crops. Therefore, Debtor requests Court authority to use current cash collateral and proceeds from the Crops and from the Planted Wheat and 2017 Crops as and when they are harvested consistent with the Debtor’s projected farm budget attached hereto as **Exhibit 1**.

3. The request to use cash collateral is brought pursuant to 11 U.S.C. §§ 363(c)(1) and (2), 363(e) and 361. Specifically, 11 U.S.C. § 363(c)(1) provides that if the business of the debtor is authorized to be operated under Bankruptcy Code § 1108, unless the Court orders otherwise, the trustee (and the debtor exercising the powers of a trustee under § 1107) may enter into transactions, including the sale or lease of property of the estate, and may use property of the estate, in the ordinary course of business, without notice or a hearing. Additionally, 11 U.S.C. § 363(c)(2) provides that the trustee may not use, sell or lease cash collateral under subparagraph (c)(1) unless each entity that has an interest in such cash collateral consents or unless the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of § 363.

4. 11 U.S.C. § 363(e) provides that on request of an entity that has an interest in property used, sold or leased or proposed to be used, sold or leased by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest. 11 U.S.C. § 361 provides that when adequate protection of an interest of an entity in property is required under §§ 362, 363 or 364, “such adequate protection may be provided by-- (1) requiring . . . a cash payment or periodic cash payments to such entity, to the extent that . . . the use, sale or lease under section 363 of this title . . . results in a decrease in the

value of such entity's interest in such property; or (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity's interest in such property; or (3) granting such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.”

5. Adequate protection must be determined on a case-by-case basis, permitting a debtor maximum flexibility in structuring its adequate protection proposal. See *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985); *In re George Ruggerie Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984). In this case, use of cash collateral is necessary to maximize the value of the Debtor’s existing assets, which Debtor intends to liquidate for the benefit of its creditors. Debtor is only seeking cash collateral usage for four months, as Debtor anticipates that all of its assets will be liquidated by that point.

6. Courts have held that the existence of an equity cushion in collateral suffices as ample adequate protection to allow a debtor to use cash collateral. See, e.g., *In re Las Torres Dev., L.L.C.*, 413 B.R. 687, 696 (Bankr. S.D. Tex. 2009); *In re Triplett*, 87 B.R. 25, 27 (Bankr. W.D. Tex. 1988); *In re McCombs Properties VI, Ltd.*, 88 B.R. 261, 266 (Bankr. C.D. Cal. 1988); *In re Harrington & Richardson, Inc.*, 48 B.R. 431, 433- 34 (Bankr. D. Mass. 1985). The court in *In re Steffen*, 275 B.R. 570, 577 (Bankr. D. Colo. 2002), held that an equity cushion of 20% was sufficient to eliminate any requirement for adequate protection payments to a secured creditor.

7. In this case, The Bank holds a claim for \$1,935,071.98. Some or all of this claim is secured by the Crops, Planted Wheat, the 2017 Crops, the Debtor’s farm equipment and inventory, and certain funds held on deposit. The collective value of Debtor’s encumbered assets securing these claims (after deducting senior liens) exceeds \$4,000,000.00. Thus, The Bank hold an equity

cushion of more than 200%. Moreover, the only way to realize the value of this collateral, which includes the projected value of the 2017 Crops already planted, is to continue to invest the Crop proceeds into the marketing, sale, growing and harvesting of the remaining crops.

8. Prohibiting use of the cash collateral would destroy Debtor's ability to continue operations while preparing to liquidate property for the benefit of its creditors.

9. Debtor requests authority to use proceeds to be generated from the Crops, as necessary, to fund all expenses listed in the Budget. To the extent necessary, Debtor also requests authority to use any current funds held on deposit to fund the expenses listed on the Budget. Debtor requests that such usage be authorized in the amounts designated by month, with a variance of up to two months, as weather and market conditions fluctuate.

10. Debtor proposes to deposit the proceeds from sales of the Crops into a segregated bank account that will hold only crop proceeds and be used solely to fund the expenses listed on the Budget. Debtor requests authority to sell the Crops, deposit any proceeds into the segregated bank account, collect and deposit existing receivables from sales in the same fashion, and use the proceeds as designated in the attached Budget, subject to a variance of up to 10% on any given line item in any given month.

11. Debtor also requests an order authorizing Debtor to deposit and use the proceeds therefore as set forth above. Debtor requests that any order granting this Motion compel The Bank to countersign any checks representing proceeds from the Crops, the Planted Wheat, or the 2017 Crops to the extent necessary, but purchasers of the collateral are authorized to make checks payable solely to the Debtor. Furthermore, Debtor's debtor-in-possession depository account institution should be authorized to deposit such checks into the debtor-in-possession account without requiring The Bank's countersignature, even if The Bank is listed as a payee on the check.

12. Any order granting this Motion shall be without prejudice to any party in interest filing a motion with the Court to terminate the continued use of cash collateral on these terms.

13. The Bank will retain all of its liens on any replacements thereof, accessions thereto, and proceeds therefrom, to the same extent as the value of those liens as they existed on the Petition Date, together with a replacement perfected lien under section 361(2) of the Bankruptcy Code on the 2017 Crops, any crop insurance, and/or governmental program payments (i) to the extent the cash collateral is used by Debtor, and (ii) to the extent and with the same priority as existed in the Crops. The replacement lien that Debtor proposes to grant to The Bank shall be deemed to be perfected automatically upon entry of an order granting this Motion. See *Small v. Beverly Bank*, 936 F.2d 945, 948-49 (7th Cir. 1991). Finally, Debtor shall be required to submit to The Bank monthly reports reflecting all farming income and expenses.

14. As further adequate protection, Debtor proposes to provide The Bank with a superpriority claim, except for the Carve Out, which shall have priority over all administrative expenses and unsecured claims against the Debtor and its estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code and, upon entry of a final order, all claims pursuant to Section 506(c) of the Bankruptcy Code. “Carve Out” means the following amounts:

- a) statutory fees payable to the U.S. Trustee;
- b) pursuant to Section 726(b) of the Bankruptcy Code, claims allowed by a final order of the Bankruptcy Court under Section 503(b) of the Bankruptcy Code that are incurred after the conversion of the Chapter 11 case to a case under Chapter 7 of the Bankruptcy code in an amount not to exceed \$5,000;
- c) the allowed and paid professional fees and disbursements incurred by the Debtor in

an amount not to exceed \$50,000; and

d) up to \$10,000 of other professional fees and disbursements incurred prior to the entry of the Final Order and, subsequent to the entry of a Final Order, such amounts as are provided in the Budget, by an Statutory Committee for any professionals retained by final order of the Court or for any certified public accountants retained by the Debtors and appointed by the Court.

WHEREFORE, Debtor prays for entry of an order authorizing sale of the Crops, the Planted Wheat, and the 2017 Crops in the ordinary course of Debtor's business, authorizing deposit of proceeds from sales into a segregated bank account, authorizing use of the sale proceeds and post-petition use of cash collateral to fund expenses as specifically set forth herein, and for such other and further relief as the Court deems proper.

Respectfully Submitted by:

ERON LAW, P.A.
Attorneys for Debtor

/s/ David Prella Eron
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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2017 a true and correct copy of the foregoing was electronically filed with the Court using the CM/ECF system, which sent notification to the Office of the U.S. Trustee and to all parties of interest participating in the CM/ECF system.

/s/ Margaret R. Spangler
MARGARET R. SPANGLER
Assistant to David Prella Eron

EXHIBIT 1--PROJECTED FARM BUDGET for SUNBURST FARMS PARTNERSHIP

Income	Aug-17	Sep-17	Oct-17	Nov-17	TOTAL
2016 wheat contracted	\$ 336,000.00	\$ 336,000.00			\$ 672,000.00
2016 Wheat unsold			\$ 224,000.00		\$ 224,000.00
2016 Liquidation Proceeds	\$ 336,000.00	\$ 336,000.00	\$ 224,000.00	\$ -	\$ 896,000.00
2017 Wheat unsold		\$ 224,000.00	\$ 73,425.00		\$ 297,425.00
2017 Wheat to be harvested			\$ 121,856.00		\$ 121,856.00
2017 Grain Sorghum (Milo)				\$ 44,788.02	\$ 44,788.02
2017 Forage Sorghum				\$ 33,750.00	\$ 33,750.00
2017 Crop Income	\$ -	\$ 224,000.00	\$ 195,281.00	\$ 78,538.02	\$ 497,819.02
Total Income	\$ 336,000.00	\$ 560,000.00	\$ 419,281.00	\$ 78,538.02	\$ 1,393,819.02

Expenses	Aug-17	Sep-17	Oct-17	Nov-17	TOTAL
Insurance	\$ 3,174.00	\$ 3,174.00	\$ 3,174.00		\$ 9,522.00
Chemicals	\$ 3,000.00	\$ 1,000.00	\$ 1,000.00		\$ 5,000.00
Custom Harvest				\$ 42,080.00	\$ 42,080.00
Sale of Equipment		\$ 5,000.00			\$ 5,000.00
Gas/Fuel/Oil	\$ 11,000.00	\$ 5,000.00	\$ 2,500.00		\$ 18,500.00
Crop Insurance				\$ 2,169.00	\$ 2,169.00
Rent on Bag Extractor	\$ 3,860.00	\$ 3,860.00			\$ 7,720.00
Repairs/Maintenance	\$ 8,000.00	\$ 7,000.00	\$ 1,500.00		\$ 16,500.00
Supplies/Utilities/Office/Adv.	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00		\$ 18,000.00
Labor*	\$ 64,620.67	\$ 15,000.00	\$ 5,000.00		\$ 84,620.67
Carol Bloesser Management Fee	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	
Work Comp	\$ 800.00	\$ 800.00	\$ 600.00		\$ 2,200.00
Total Farm Expenses	\$ 102,954.67	\$ 49,334.00	\$ 22,274.00	\$ 46,749.00	\$ 221,311.67
US Trustee Fees			\$ 6,500.00		
Attorney Fees		\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 15,000.00
Accountant Fees		\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 3,000.00
Total Other Expenses	\$ -	\$ 6,000.00	\$ 12,500.00	\$ 6,000.00	\$ 24,500.00
TOTAL EXPENSES	\$ 102,954.67	\$ 55,334.00	\$ 34,774.00	\$ 52,749.00	\$ 245,811.67

*Labor in August includes amounts requested in Motion to Pay Pre-Petition Expenses and post-petition July wages