

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION**

|   |   |
|---|---|
| <b>IN RE:</b><br><br><b>MCDONALD BROTHERS, INC.,</b><br><br><b>Debtor.</b>              | <b>Case No. 11-81363</b><br><b>Chapter 11</b> |
| <b>Order Authorizing Interim Use Of Cash Collateral And Providing Notice Of Hearing</b> |   |

This matter came before the Court after due notice and hearing to consider the “Motion for Authority to Use Cash Collateral” (the “Motion”) filed by McDonald Brothers, Inc. (the “Debtor”) pursuant to §363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure. A hearing was held at the United States Bankruptcy Court in Durham, North Carolina on September 13, 2011, and after considering the matters set forth in the Motion, the evidence presented, and the comments of parties in interest, the Court makes the following findings, conclusions and orders:

1. On August 22, 2011 (the “Petition Date”), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code. The Debtor continues in possession of its assets and operates its businesses as a debtor-in-possession.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, and this matter is a core proceeding under 28 U.S.C. §157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.
3. The Debtor is a building materials and services supplier that has been a family-owned and operated business since 1885. The Debtor has three business operations in North Carolina located in the towns of Southern Pines, Siler City, and West End. The Debtor sells its products and services throughout the south-central region of North Carolina and northeastern South Carolina.
4. On February 12, 2010, the Debtor entered into an Amended and Restated Loan Agreement with Branch Banking and Trust Company (“BB&T”) which provides for (i) a term loan in the principal amount of \$4,606,909 (“Term Loan”), and (ii) a revolving line of credit in

the maximum amount of \$3,000,000 (“Revolver Loan,” and with the Term Loan, collectively the “Loan”). The Loans are secured by the following assets (the “BB&T Collateral”):

- a. A first priority security interest in all of the Debtor’s existing and after-acquired accounts, inventory, equipment, deposit accounts, general intangibles and the proceeds thereof;
- b. Liens against certain real property owned by the Debtor, including any income, rents and profits generated by the property; and,
- c. Security Interests or liens against certain property owned by McDonald Family Farms, LLC, Angus A. McDonald, Jr. and/or his mother, Virginia C. L. McDonald.

5. As of the Petition Date, the outstanding principal, interest and fees owed under the Term Loan and the Revolver Loan totaled approximately \$4,434,000 and \$2,446,600, respectively.

6. As of the Petition Date, the Debtor has estimated the present fair market value of the BB&T Collateral to be in excess of \$17,000,000.

7. The Debtor’s initial assessment is that BB&T is properly perfected and has a first lien upon the Debtor’s assets pledged to secure the Loans. However, the Debtor reserves for itself, any Committee of Unsecured Creditors subsequently created, and any trustee subsequently appointed in this Chapter 11 proceeding or any subsequent Chapter 7 proceeding, any and all rights to challenge, avoid, object to, set aside or subordinate any of the aforesaid claims, liens, security interests or rights of setoff. The Debtor does not believe that any other creditors have or assert liens upon or security interests in the Debtor’s inventory or accounts receivable, or the proceeds thereof.

8. The proceeds of the accounts receivable and inventory and the rental income of the Debtor subject to the BB&T liens or security interests would constitute “cash collateral” as that term is defined in the Bankruptcy Code, the use of which is subject to the restrictions set forth in § 363.

9. The Debtor is dependent upon continued and uninterrupted use of (a) the proceeds from collections on its accounts receivable, (b) the funds or accounts generated by the sale of its inventory and (c) the rental income generated from rental property owned by the Debtor (the “Cash Collateral”).

10. While the Debtor may have some unrestricted cash in its accounts as of the Petition Date, the Debtor will need to receive and use Cash Collateral to pay on-going costs of operating, insuring, preserving, and protecting the business and property of the estate. If not permitted to use the Cash Collateral of BB&T to pay its ordinary operating expenses, the Debtor will have to close down operations forthwith. Such precipitous action, if required, would render reorganization impossible and severely reduce the fair market value of the estate, resulting in financial loss to all parties in interest.

11. On August 26, 2011, this Court entered an Order granting the use of Cash Collateral on an interim basis for the period through and including September 18, 2011, and setting September 13, 2011 as the date for a further hearing on the continued use of cash collateral.

12. At the September 13, 2011, BB&T consented to the continued use of its Cash Collateral on an interim basis for the period through and including October 16, 2011.

13. The Court finds that an order granting further interim relief, followed by a final hearing at some future date selected by the Court, would not prejudice the rights of BB&T, the only creditor asserting an interest in Cash Collateral, and BB&T will be adequately protected for such use by a replacement lien on post-petition accounts and inventory and the apparent equity cushion in the real property securing the Loan. The use of such funds is necessary to continue operations without interruption and will generate new receivables and preserve the value of the estate for creditors.

Based upon the foregoing, the Court concludes that the further interim use of Cash Collateral is necessary and that an Order granting further interim relief, followed by a final hearing upon due notice, would not prejudice the rights of BB&T, and for good and sufficient reasons appearing it is hereby **ORDERED** as follows:

1. The Debtor may use Cash Collateral on an interim basis and for the period through and including October 16, 2011, in an aggregate amount not to exceed \$688,762.31, for the purposes and subject to the sub-limits as set forth in the budget for such period, not to exceed 110% on a line-item cumulative basis, pending further orders of the Court after notice and hearing. A copy of the budget is attached hereto as **Exhibit A.**

2. The Debtor may not use Cash Collateral for any purpose other than operations in the ordinary course of business or the payment of allowed administrative fees, costs, or expenses,

irrespective of whether such purpose would be proper under applicable law, without further notice and hearing.

3. As adequate protection for the use of Cash Collateral:

a. BB&T shall have a continuing post-petition lien and security interest in all property and categories of property of the Debtor in which and of the same priority as said creditor held a similar, unavoidable lien as of the Petition Date, and the proceeds thereof, whether acquired pre-petition or post-petition (the “Post-petition Collateral”), equivalent to a lien granted under §§ 364(c)(2) and (3) of the Bankruptcy Code, but only to the extent of Cash Collateral used.

i. The validity, enforceability, and perfection of the aforesaid post-petition liens on the Post-petition Collateral shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule, or regulation.

ii. If BB&T hereafter requests the Debtor to execute and deliver financing statements or other such instruments or documents reasonably considered by said creditor to be necessary or desirable to further evidence the perfection of liens and security interest herein granted, the Debtor would be authorized and directed to execute and deliver such financing statements, instruments, and documents to BB&T without further notice, hearing, or order.

b. On each Friday during the period of this Interim Order, the Debtor is required to provide: 1) BB&T with a weekly borrowing base report similar to the weekly report provided to BB&T prior to the Petition Date, and 2) BB&T and the Bankruptcy Administrator with a budget-to-actual comparison for the preceding week.

c. Notwithstanding the lien therein granted to BB&T to secure the Debtor’s use of its Cash Collateral, such creditor shall not be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner/operator” with respect to the operation or management of the Debtor solely by virtue of any terms or conditions of the Order.

4. To the extent that BB&T has any objection to any of the items paid or provided for as set forth in the monthly reports or other reports of operations filed or furnished to said creditor, or objects to a proposed budget or to a specific manner in which Cash Collateral is being used, then said creditor may, upon two (2) days notice to the Debtor and opportunity to cure, seek on an expedited basis: (i) an order of the Bankruptcy Court restraining such payments or usage as not being in conformity with this Motion; or (ii) an Order terminating further authority to use Cash Collateral altogether.

5. Notwithstanding any suspension or termination of the right to use Cash Collateral (a "Termination Date"), the Debtor shall be permitted to carve out from Cash Collateral or any replacement collateral and use, and the collateral of BB&T shall be subject to the Debtor's right to recover under Section 506(c) of the Bankruptcy Code, an aggregate amount necessary to pay all Permitted Trailing Expenses. As used herein, the term "Permitted Trailing Expenses" shall mean, on the Termination Date, the following expenses to the extent incurred post-petition and prior to such Termination Date but in an aggregate amount not to exceed one-hundred ten percent (110%) of the aggregate expenditures set forth in the approved budget through such Termination Date:

- a. The costs of operating and preserving the estate.
- b. Quarterly fees pursuant to 28 U.S.C. § 1930(a)(7).
- c. Professional fees and expenses (including expert witness fees and expenses) for professionals for the Debtor after application of any prepetition retainers, and for professionals for the Committee if one is duly formed, after any prepetition retainers have been exhausted.

6. The terms of this Order shall be binding upon any Committee (if formed), and upon any trustee subsequently appointed, including but not limited to a Chapter 7 trustee upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code; provided however, the findings, conclusions, or orders set forth herein are made on an interim basis, shall not constitute a final decision on any legal or factual issue, and are without prejudice to the right of any party to raise, contest, or seek the same or a different outcome at any subsequent hearing.

7. A further hearing (which may be a final hearing) on this Motion will be held at 10:00 o'clock a.m. on October 13, 2011, at the U.S. Bankruptcy Court, Venable Center, Dibrell

Building, 302 East Pettigrew Street, Durham, N.C., at which time the Court will further consider the Motion for Authorization To Use Cash Collateral.

8. Debtor's counsel shall serve a copy of this Order upon the Bankruptcy Administrator, the creditors asserting a lien on any property of the estate or an interest in cash collateral, and the creditors holding the 20 largest unsecured claims, and shall file a certificate of such service with the Clerk.

|   |                      |                     |                     |                     |                     |                     |                     |                     |
|---|----------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| <b>McDonald Brothers Inc.</b>                 |                      |                     |                     |                     |                     |                     |                     |                     |
| <b>Projected 8 Week Cash Flow</b>             | <b>Assumes a</b>     |                     |                     |                     |                     |                     |                     |                     |
|   | <b>Aug 22 Filing</b> |                     |                     |                     |                     |                     |                     |                     |
|   | Week 1               | Week 2              | Week 3              | Week 4              | Week 5              | Week 6              | Week 7              | Week 8              |
|   | <b>Projected</b>     | <b>Projected</b>    | <b>Projected</b>    | <b>Projected</b>    | <b>Projected</b>    | <b>Projected</b>    | <b>Projected</b>    | <b>Projected</b>    |
|   | <b>8/22/2011</b>     | <b>8/29/2011</b>    | <b>9/5/2011</b>     | <b>9/12/2011</b>    | <b>9/19/2011</b>    | <b>9/26/2011</b>    | <b>10/3/2011</b>    | <b>10/10/2011</b>   |
|   |                      |                     |                     |                     |                     |                     |                     |                     |
| <b>Cash Receipts:</b>                         |                      |                     |                     |                     |                     |                     |                     |                     |
| Cash Sales                                    | \$12,808.00          | \$14,088.00         | \$16,000.00         | \$20,000.00         | \$20,000.00         | \$24,000.00         | \$24,000.00         | \$26,000.00         |
| Accounts Receivable Collections               | \$160,000.00         | \$124,000.00        | \$190,000.00        | \$180,000.00        | \$140,000.00        | \$120,000.00        | \$120,000.00        | \$170,000.00        |
| Discount                                      |                      |                     |                     |                     |                     |                     | -\$900.00           |                     |
| Sales Tax                                     | \$11,664.54          | \$9,320.94          | \$13,905.00         | \$13,500.00         | \$10,800.00         | \$9,720.00          | \$9,720.00          | \$13,230.00         |
| Rental Income- Scooter's Café                 |                      | \$420.00            |                     |                     |                     |                     | \$420.00            |                     |
| Rental Income- KBRT                           |                      | \$2,350.00          |                     |                     |                     |                     | \$2,350.00          |                     |
| Rental Income- Furniture Siler City           |                      |                     |                     |                     |                     |                     | \$1,680.00          |                     |
| Rental Income- Trus Plant                     |                      | \$1,000.00          |                     |                     |                     |                     | \$1,000.00          |                     |
| Rental Income- House                          |                      |                     | \$1,500.00          |                     |                     |                     |                     | \$1,500.00          |
| Misc - Land Sale                              |                      |                     |                     |                     |                     |                     | \$160,000.00        |                     |
|   |                      |                     |                     |                     |                     |                     |                     |                     |
| <b>Total Cash Receipts</b>                    | <b>\$184,472.54</b>  | <b>\$151,178.94</b> | <b>\$221,405.00</b> | <b>\$213,500.00</b> | <b>\$170,800.00</b> | <b>\$153,720.00</b> | <b>\$318,270.00</b> | <b>\$210,730.00</b> |
|   |                      |                     |                     |                     |                     |                     |                     |                     |
| <b>Cash Disbursements:</b>                    |                      |                     |                     |                     |                     |                     |                     |                     |
| Inventory Purchases (Cost of Goods Sold)      | \$127,500.00         | \$56,500.00         | \$134,000.00        | \$147,500.00        | \$123,500.00        | \$72,500.00         | \$62,200.00         | \$138,000.00        |
| Inventory Purchases -discount                 |                      |                     |                     |                     |                     |                     |                     |                     |
| <b>Total Inventory Purchase disbursements</b> | <b>\$127,500.00</b>  | <b>\$56,500.00</b>  | <b>\$134,000.00</b> | <b>\$147,500.00</b> | <b>\$123,500.00</b> | <b>\$72,500.00</b>  | <b>\$62,200.00</b>  | <b>\$138,000.00</b> |
|   |                      |                     |                     |                     |                     |                     |                     |                     |
| <b>Employee Related Expenses:</b>             |                      |                     |                     |                     |                     |                     |                     |                     |
| Payroll                                       | \$36,570.00          | \$38,171.00         | \$19,951.69         | \$38,171.00         | \$19,952.00         | \$43,797.33         | \$58,123.20         |                     |
| Payroll Taxes                                 |                      | \$10,580.00         | \$9,627.00          | \$4,781.97          | \$9,627.00          | \$4,782.00          | \$14,164.53         | \$14,409.00         |
| Car Allowance                                 | \$1,987.50           | \$2,437.50          |                     | \$2,437.50          |                     | \$3,975.00          | \$2,437.50          |                     |
| Commissions                                   |                      | \$1,600.00          |                     |                     |                     |                     | \$1,890.00          |                     |
| Employee Benefits - 401(k) match              |                      | \$939.00            | \$898.13            | \$209.00            | \$898.13            | \$209.00            | \$1,431.47          | \$1,107.00          |
| Employee Benefits - Insurance                 |                      |                     | \$17,024.00         |                     |                     |                     |                     | \$17,024.00         |
| Workers' Comp Insurance                       |                      |                     | \$2,044.00          |                     |                     |                     |                     | \$2,044.00          |
| <b>Total Employee Related Expenses:</b>       | <b>\$38,557.50</b>   | <b>\$53,727.50</b>  | <b>\$49,544.82</b>  | <b>\$45,599.47</b>  | <b>\$30,477.13</b>  | <b>\$52,763.33</b>  | <b>\$78,046.70</b>  | <b>\$34,584.00</b>  |
|   |                      |                     |                     |                     |                     |                     |                     |                     |
| <b>Delivery and Warehouse Expenses:</b>       |                      |                     |                     |                     |                     |                     |                     |                     |
| Delivery Expenses - Fuel                      | \$3,700.00           | \$3,700.00          | \$4,000.00          | \$4,600.00          | \$4,000.00          | \$3,700.00          | \$3,700.00          | \$4,300.00          |
| Vehicle Expense                               | \$500.00             | \$500.00            | \$500.00            | \$500.00            | \$500.00            | \$500.00            | \$500.00            | \$500.00            |
| Forklift Expenses PM Maint                    |                      |                     | \$962.00            |                     |                     |                     |                     |                     |
| Forklift Expenses- Propane- Amerigas          |                      |                     | \$580.00            |                     |                     |                     |                     | \$1,160.00          |
| <b>Total Delivery and Warehouse Expenses</b>  | <b>\$4,200.00</b>    | <b>\$4,200.00</b>   | <b>\$6,042.00</b>   | <b>\$5,100.00</b>   | <b>\$4,500.00</b>   | <b>\$4,200.00</b>   | <b>\$4,200.00</b>   | <b>\$5,960.00</b>   |
|   |                      |                     |                     |                     |                     |                     |                     |                     |
| <b>General and Administrative Expenses:</b>   |                      |                     |                     |                     |                     |                     |                     |                     |

|   |                |                |                |                |                |                |                |                |
|---|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Bank Charges  | \$500.00       |                |                |                |                |                |                |                |
| Lease and Contract Expense                            |                |                |                |                |                |                |                |                |
| Epicor/Activant Computer Service                      | \$808.00       | \$808.00       | \$808.00       | \$808.00       | \$808.00       | \$808.00       | \$808.00       | \$808.00       |
| Sage Payroll- Key Finance                             |                |                | \$460.15       |                |                |                |                | \$460.15       |
| Great American Lease - Falcon DataBase Server         |                |                | \$608.00       |                |                |                | \$608.00       |                |
| Navistar - 5 Trucks                                   |                |                | \$1,720.00     |                |                |                |                | \$1,720.00     |
| Ford Motor Credit - 2 trucks                          |                |                | \$700.00       |                |                |                |                | \$700.00       |
| BB&T Equipment  |                |                | \$891.00       |                |                |                |                | \$891.00       |
| Waste Management                                      |                |                | \$557.00       |                |                |                |                | \$557.00       |
| Smith Water Service                                   | \$150.00       | \$150.00       | \$150.00       | \$150.00       | \$150.00       | \$150.00       | \$150.00       | \$150.00       |
| Office Expenses - Postage-Paper-Toner(Printer&Copier) | \$950.00       | \$200.00       | \$200.00       | \$300.00       |                | \$700.00       | \$300.00       | \$300.00       |
| Xerox   |                | \$198.00       |                |                |                |                | \$198.00       |                |
| Pitney Bowes lease                                    |                | \$1,800.42     |                |                |                |                | \$1,800.00     |                |
| Property and Casualty Insurance                       |                | \$12,500.00    |                |                |                | \$12,500.00    |                |                |
| Property Taxes  |                |                |                |                |                |                |                |                |
| Sales Taxes   | \$11,664.54    | \$9,320.94     | \$13,905.00    | \$13,500.00    | \$10,800.00    | \$9,720.00     | \$9,720.00     | \$13,230.00    |
| Telephone - Century Link                              |                |                |                |                |                |                |                | \$586.00       |
| Telephone - Century Link Data                         |                |                |                |                |                |                |                | \$2,019.00     |
| Telephone - Sprint Cellular                           |                |                |                |                |                |                |                | \$2,000.00     |
| Connect NC  |                | \$150.00       |                |                |                |                |                |                |
| Utilities   |                |                |                |                |                |                |                |                |
| Central Electric Coop                                 |                |                |                |                |                |                |                | \$1,300.00     |
| Progress Energy                                       |                |                |                |                |                |                |                | \$3,750.00     |
| Windstream  |                |                |                |                |                |                |                | \$50.00        |
| City of Sanford                                       |                |                |                |                |                |                |                | \$30.00        |
| City of Siler City                                    |                |                |                |                |                |                |                | \$30.00        |
| PSNC Energy   |                |                |                |                |                |                |                | \$30.00        |
| Utility Deposits                                      |                | \$11,405.00    | \$11,405.00    |                |                |                |                |                |
| <b>Total General and Administrative Expenses</b>      | \$14,072.54    | \$36,532.36    | \$31,404.15    | \$14,758.00    | \$11,758.00    | \$23,878.00    | \$13,584.00    | \$28,611.15    |
| <b>Total Operating Cash Disbursements</b>             | \$184,330.04   | \$150,959.86   | \$220,990.97   | \$212,957.47   | \$170,235.13   | \$153,341.33   | \$158,030.70   | \$207,155.15   |
| <b>Net Operating Cash Flow</b>                        | \$142.50       | \$219.08       | \$414.03       | \$542.53       | \$564.87       | \$378.67       | \$160,239.30   | \$3,574.85     |
|   |                |                |                |                |                |                |                |                |
| <b>Cash Rollforward</b>                               |                |                |                |                |                |                |                |                |
| <b>Beginning Balance</b>                              | \$68,000.00    | \$68,142.50    | \$68,361.58    | \$68,775.61    | \$69,318.14    | \$69,883.01    | \$70,261.68    | \$230,500.98   |
| Cash Receipts   | \$184,472.54   | \$151,178.94   | \$221,405.00   | \$213,500.00   | \$170,800.00   | \$153,720.00   | \$318,270.00   | \$210,730.00   |
| Cash Disbursements                                    | \$184,330.04   | \$150,959.86   | \$220,990.97   | \$212,957.47   | \$170,235.13   | \$153,341.33   | \$158,030.70   | \$207,155.15   |
| <b>Ending Balance</b>                                 | \$68,142.50    | \$68,361.58    | \$68,775.61    | \$69,318.14    | \$69,883.01    | \$70,261.68    | \$230,500.98   | \$234,075.83   |
|   |                |                |                |                |                |                |                |                |
| <b>Accounts Receivable Rollforward</b>                |                |                |                |                |                |                |                |                |
| <b>Beginning Balance</b>                              | \$2,929,424.16 | \$2,961,616.16 | \$2,933,861.49 | \$2,941,528.16 | \$2,973,194.83 | \$3,012,861.49 | \$3,000,528.16 | \$2,974,461.49 |
| <b>Sales</b>  | \$192,192.00   | \$96,245.33    | \$197,666.67   | \$211,666.67   | \$179,666.67   | \$107,666.67   | \$93,933.33    | \$193,000.00   |



|                                     |                |                |                |                |                |                |                |                |
|-------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>Cash Receipts AR Collections</b> | \$160,000.00   | \$124,000.00   | \$190,000.00   | \$180,000.00   | \$140,000.00   | \$120,000.00   | \$120,000.00   | \$170,000.00   |
| <b>Ending Balance</b>               | \$2,961,616.16 | \$2,933,861.49 | \$2,941,528.16 | \$2,973,194.83 | \$3,012,861.49 | \$3,000,528.16 | \$2,974,461.49 | \$2,997,461.49 |
|                                     |                |                |                |                |                |                |                |                |
| <b>Inventory Rollforward</b>        |                |                |                |                |                |                |                |                |
| <b>Beginnng Balance</b>             | \$2,601,630.00 | \$2,575,380.00 | \$2,549,130.00 | \$2,522,880.00 | \$2,496,630.00 | \$2,470,380.00 | \$2,444,130.00 | \$2,417,880.00 |
| Purchases                           | \$127,500.00   | \$56,500.00    | \$134,000.00   | \$147,500.00   | \$123,500.00   | \$72,500.00    | \$62,200.00    | \$138,000.00   |
| Cost of Sales - percentage of sales | \$153,750.00   | \$82,750.00    | \$160,250.00   | \$173,750.00   | \$149,750.00   | \$98,750.00    | \$88,450.00    | \$164,250.00   |
| <b>Ending Balance</b>               | \$2,575,380.00 | \$2,549,130.00 | \$2,522,880.00 | \$2,496,630.00 | \$2,470,380.00 | \$2,444,130.00 | \$2,417,880.00 | \$2,391,630.00 |