

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

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In re:	*	Bankr. Case No. 17-40091
		Chapter 11
MIDWEST FARM, L.L.C.,	*	
EIN/ITIN: 26-2871748,		
EIN/ITIN: 37-1850745,	*	<b>DEBTOR’S MOTION FOR</b>
		<b>AUTHORITY TO USE</b>
Debtor.	*	<b>CASH COLLATERAL</b>
		<b>AND REQUEST FOR</b>
	*	<b>PRELIMINARY HEARING</b>
	*	

\* \* \* \* \*

**COMES NOW** the Debtor, Midwest Farm, L.L.C., by and through its attorneys of record, and hereby moves the Court pursuant to Section 363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure and Bankr. D.S.D.R. 4001-2, for an order authorizing Debtor’s use of cash collateral, and for a preliminary hearing and a final hearing, on this Motion, as needed, and in support thereof respectfully states:

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §157 and §1334. Venue is proper under 28 U.S.C. §1408 and §1409.
2. Debtor runs a grain farming and custom farming operation with facilities located in and around Aurora, South Dakota, and farms real estate located in Brookings County, South Dakota; Moody County, South Dakota; and Lincoln County, Minnesota.
3. On March 24, 2017, Debtor filed a petition seeking relief under Chapter 11 of the bankruptcy code. Pursuant to 11 U.S.C. §1203, §1107(a), and §1108, Debtor continues to operate its business and manage its affairs as Debtor in Possession.
4. Debtor initially filed a Motion for Use of Cash Collateral (June 1, 2017 through September 3, 2017) (doc. 71) on May 5, 2017, and received approval by the Court on May 23, 2017 to use a total of \$12,500.00 in September 2017 under the terms and conditions of said Motion.
5. However, Debtor has a repair on a combine that has arisen that needs to be fixed immediately so that Debtor can harvest. Debtor did not initially have said repair built into its approved cash flow. The repair is essential to the proper operation of the combine. The clip broke off the rotar transmission and the combine now only has second gear so this repair needs to be done before fall harvest, which starts in approximately a week. Debtor will have to pay for

the repair, which is expected to cost approximately \$2,500.00 to \$6,000.00 depending on if the warranty covers it; otherwise, the total cost to repair it will be \$12,112.00 so Debtor is requesting that repairs and maintenance be increased from \$2,500.00, which was initially approved, to \$14,612.00 to cover this expense. That is the only change to September's revised cash collateral request.

6. Therefore, Debtor revised its September cash collateral request and now Debtor proposes to use an additional \$12,112.00 as listed on the revised Exhibit 1, and intended to be a part hereof, in "cash collateral", as that term is defined under 11 U.S.C. §363(a), to maintain the operation of its business for the time period September 1, 2017, through September 30, 2017. Of the amount listed on Exhibit 1, Debtor requests preliminary authorization to use \$12,112.00 in cash collateral by September 12, 2017. The cash collateral proposed to be used includes post-petition proceeds from equipment rental and any funds issued under the warranty with CNH.

7. Plains Commerce Bank holds a first pre-petition security interest through an agricultural business blanket lien, a first pre-petition security interest in the pre-petition proceeds Debtor earns from its farming operation, and a first pre-petition mortgage position on real estate used in Debtor's operation.

8. Debtor will continue to run and operate in the ordinary course of business.

9. Because of the urgency of this necessary repair, Debtor was not able to make prior contact with the secured creditor or its attorneys of record regarding the preliminary authorization of cash use as requested above, so the secured creditor to this date neither refuses nor agrees to the use of cash collateral proposed herein.

10. Pursuant to Federal Rules of Bankruptcy Procedure 4002(b)(2) and Bankr. D.S.D. Rule 4001-2, Debtor requests preliminary authorization to use \$12,112.00 in cash collateral by September 12, 2017, as disclosed on revised Exhibit 1, when Debtor must pay for this repair so that Debtor can timely harvest. Debtor must be able to pay these expenses to maintain its operation. Debtor has attached, as revised Exhibit 1, details of the expenses that Debtor must meet prior to September 12, 2017, which is within the 17 day period following the filing of this motion. These funds are crucial to maintain operations uninterrupted.

11. Debtor is requesting preliminary authorization to pay this repair so that Debtor can avoid a delay in harvesting, which is detrimental to its operation.

12. As adequate protection, Debtor proposes to grant Plains Commerce Bank replacement liens, excluding any lien on the 2017 crops, crop products and proceeds, crop insurances, and government program proceeds or payments, in the same form and priority it held pre-petition for the time periods requested herein for the use of cash collateral to the extent such collateral is used. Furthermore, Debtor grants Plains Commerce Bank the right to inspect the collateral, upon reasonable notice, and Debtor agrees to keep the collateral insured and to maintain the collateral in its present condition, ordinary wear and tear accepted. Plains Commerce Bank is also adequately protected based upon a large equity cushion on all assets,

which Plains Commerce Bank is vastly oversecured by approximately \$3,000,000.00 with its position.

**WHEREFORE**, Debtor requests preliminary authorization to use cash collateral of an additional \$12,112.00 by September 12, 2017, in the operation of its business, upon the terms and conditions set forth in this Motion and the Exhibit attached thereto; and if any party objects to said Motion Debtor requests a hearing on the preliminary use on or before September 12, 2017; and for such other and further relief as appropriate in the premises.

Dated this 6<sup>th</sup> day of September, 2017.

GERRY & KULM ASK, PROF. LLC:

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