

In the United States Bankruptcy Court

for the Northern District of Iowa

BOCKES BROTHERS FARMS INC.
Debtor(s).

Bankruptcy No. 93-60889KW
Chapter 11

ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:	Chapter 11
BOCKES BROTHERS FARMS, INC.	Bankruptcy No. 93-60881KW
ROGER VAN BOCKES and BETH ELAINE BOCKES,	Bankruptcy No. 93-60883KW
ROBERT DEAN BOCKES,	Bankruptcy No. 93-60884KW
RICHARD DALE BOCKES and MARY SUSAN BOCKES,	Bankruptcy No. 93-60885KW
SHAWN MICHAEL BOCKES,	Bankruptcy No. 93-60886KW
MARY MATILDA BOCKES,	Bankruptcy No. 93-60889KW
Debtors.	

ORDER

This matter came on for hearing on May 24, 1993 on the respective debtors Emergency Application For Interim Order requesting authorization by the Debtor in possession to obtain post-petition financing on a secured basis pursuant to 11 U.S.C. §364(c) and to pay unsecured priority expenses pursuant to 11 U.S.C. §105(a). Evidence was presented and the Court took the matter under advisement.

APPEARANCES

Debtors appeared with Attorneys Dan Childers and Thomas Fiegen; Debtor Mary Bockes appeared by Attorney Thomas Hanson; the U.S. Attorney's Office was represented by Attorney Anna Maria Martel; the U.S. Trustee was represented by Attorney Janet Reasoner; Creditor Ag Services of America, Inc. was represented by Attorney Eric Lam; Creditor Farmland Financial Services

Corporation was represented by Attorney Rodney Kubat; Creditor Phelps Implement Company was represented by Attorney Michael Vestle.

FINDINGS

The Court finds the following facts;

1. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2) (D).
2. The respective Debtors filed for protection under Chapter 11 of the United States Bankruptcy Code on Wednesday, May 19, 1993. The Debtor has remained in possession of its' assets and is continuing to operate and manage its' business as a debtor in possession.
3. This Court has authority to hear Emergency Application for Interim Post-Petition Financing pursuant to 28 U.S.C. §157 and §1334.
4. The Debtor has provided actual written notice delivered by Courier or telephonic or facsimile transmission of the hearing on the Motion and the general terms of a proposed Order to all parties present at this hearing as well as all landlords of real estate to be farmed by the Debtor during crop year 1993, the twenty (20) largest unsecured creditors of the Debtor, and the U.S. Trustee for this District. The Court finds that under the present circumstances this notice is appropriate, adequate and proper.
5. The evidence establishes that the Bockes family has been farming in Iowa since the 1930's. The operation consists of the Bockes Brothers Farms, Inc. which is a corporation in which brothers Roger, Richard, and Robert are the shareholders. Additionally, the three brothers' mother, Mary Bockes, individually, is an owner of farm land and is involved in the overall farming operation, though her involvement has decreased over the years because of illness and she presently has granted a power of attorney. Also involved in the operation is Shawn Bockes, a grandson of Mary Bockes.
6. The various individuals and the corporation are involved in a massive farm operation which involves a soybean seed processing plant, a farrow to finish hog operation, fourteen (14) over-the-road trucks, as well as the raising of corn and soybeans on approximately 5,400 acres of farm ground located primarily in Grundy, Hardin and Tama County. The evidence reflects that the corporation and the parties actually own a small percentage of this farm ground and a great majority is leased ground on a year-to-year basis.
7. The evidence establishes that Bockes Brothers Farms, Inc. has title to the farm machinery, the hog business, the soybean plant and fourteen (14) over-the-road trucks. The corporation provides various functions for the individual Debtors and in return charges them for the services provided based on industry rates for comparable services. In addition to the foregoing, the corporation also farms 1,200 acres in its' own name.
8. The evidence establishes that in recent years Creditor Farmland Financial Services has been providing loans to the Debtors. Also, over the past years, Ag Services of America, Inc. has also been providing substantial financing to the Debtors. The evidence appears to establish that the Debtors are indebted to Farmland for approximately \$1.4 million. Ag Services of America, Inc. provided financing of between \$1.5 and \$2.0 million to the Debtors in 1992. There is also a substantial indebtedness to Norwest Bank of Des Moines in excess of \$750,000. It appears that the other major Creditor is Conrad Coop which is owed between \$700,000 and \$800,000.

9. Testimony provided by Debtor and stockholder Roger V. Bockes established that the basis for the Debtors financial problems relate to two events occurring in calendar year 1991. The first large loss occurred at the time of harvest in 1991 when between \$220,000 and \$230,000 in cash grain receipts were misappropriated by an employee having access to these funds. Secondly, an early frost in 1991 cut the soybean crop in approximately half. This loss of soybean yield created an approximately \$500,000 loss. Since that time, the Debtors have been attempting to restructure their operation. Negotiations continued through 1992 and into 1993. When a workout failed, the present Chapter 11 was filed.

10. From 1991 onward, certain efforts have been made by the Debtors to restructure their operation. The corporation and individual Debtors have sold 600 acres of land. After the payment of encumbrances, the net proceeds of approximately \$600,000 were paid to Norwest Bank. The corporation and the Debtors have been in the process of the liquidation of the hog operation. Roger Bockes testified to other attempts by the corporation and the individual Debtors to restructure their financial picture.

11. The corporation and the individual Debtors, pre-petition, discussed with the First State Bank of Conrad, the Grundy Center State Bank, Norwest Bank of Des Moines, Farmland Financial Services, and Ag Services of Cedar Falls, the possibility of obtaining financing to plant this years corn and soybean crop. None were willing to provide unsecured financing and only Ag Services of America, Inc. has expressed a willingness to provide secured financing for this crop year. The security sought by Ag Services of America, Inc. consists solely of post-petition assets. Ag Services seeks a first interest in the corn and soybean crop to be grown in calendar year 1993, an assignment of all final deficiency payments on this crop as well as a first interest in all crop insurance for this crop year.

CONCLUSIONS

The Debtors propose to borrow money post-petition in order to obtain post-petition assets. Their proposal envisions that they will collateralize this borrowing with only post-petition assets. It is the conclusion of this Court that Debtors have attempted and have been unable to obtain unsecured credit within which to finance planting of their crops for calendar year 1993. Hearing in this emergency application was held on May 24, 1993. The peak period for planting crops has passed and if a crop is to be planted in this calendar year, it is imperative that it be done so within the next week or ten days. The Debtors have no financial resources within which to acquire the seed, fertilizer, chemicals and other supplies necessary to plant the 1993 crop.

The Court has considered the proposed order presented by the Debtors. It proposes that Ag Services of America, Inc. will provide financing for the Debtors planting operations and will take a secured interest on the crops as well as deficiency payments and any insurance proceeds which might be paid as a result of crop loss. Ag Services of America also seeks a super priority as part of their loan package.

An analysis of the proposed interim order establishes that in a general context, the proposed post-petition financing secured by post-petition assets is not an unusual request. The major problem with the present situation is the existence of multiple Debtors. It is proposed as part of the interim order that Ag Services of America be provided a lien and security interest which will cross collateralize any and all post-petition advances extended to each and every Debtor subject to this Order. Creditor Farmland Financial Services Corporation objects to such a cross-collateralization clause. Farmland argues that such cross-collateralization is impermissible under 11 U.S.C. §364(c). See In the matter of Saybrook Manufacturing Company, Inc. 963 F.2d 1490 (11 Cir. 1992). It does not appear to this

Court, however, that the term cross-collateralization as used in Saybrook, supra, is the same as is used in the present case. Saybrook and most, if not all of the others cases discussing cross-collateralization, interpret that term to mean a securing of pre-petition debt with pre-petition and post-petition collateral as part of a post-petition financing arrangement. In the present case, the Debtors are acting more in the capacity of guarantors and the cross-collateralization is only to the extent that post-petition assets which end up in the hands of each Debtor will be subject to any claim against any Debtor. It does not appear to this Court that this is the same situation condemned in Saybrook. Even so, assuming that the present situation would be considered cross-collateralization, cross-collateralization is not necessarily condemned in all contexts. A four part test was set up in In Re: Texlon Corp., 596 F.2d 1092 (2d Cir. 1979). While this Court does not feel that this is necessarily a classic cross-collateralization issue, the facts in the present case do satisfy all four parts of the Texlon analysis. First, it is clear that absent the present proposed financing, the business operations of Bockes Brothers Farms, Inc. will not survive. Secondly, the evidence establishes that the Debtors have been unable to obtain alternative financing on any type of acceptable terms. Third, Mr. Henry Jungling, the Chairman and CEO of Ag Services of America, Inc. testified that Ag Services would not accede to less preferential terms and the loan simply would not be made absent this type of guarantor or cross-collateralization mechanism. Finally, while at this early stage it is difficult, if not impossible, to state what is best for the business and the general creditor population, for the purpose of this hearing only and consistent with the general philosophy of Chapter 11, it appears best that the loan be allowed to proceed and the Debtor be allowed to plant the 1993 corn crop.

Based on all of the foregoing, the Court feels that Ag Services request for this interlocking type of security arrangement should be approved. However, the Court is also cognizant that the lending of \$600,000 to the various Debtors poses potential serious accounting problems in the future. Three of the Debtors (Roger, Richard and Robert Bockes) are also the sole shareholders in Bockes Brothers Farms, Inc. there is as of the time of hearing no written operating agreement as to how funds will be transferred from Ag Services of America, Inc. to the various Debtors. Ultimately, this is an extremely loose arrangement as to which Debtor shall receive how much money and how it will be accounted for. While each individual Debtor is accountable for their own finances, the history of this arrangement also establishes that the distinctions between these individuals and the corporation have periodically become blurred. It is the feeling of this Court that the interim financing can be approved at this time, however, prior to the final hearing a written operating agreement must be prepared defining more clearly for the Court how this cash flow shall occur, how the parties intend to account for cash transfers, and how the obligations will work among the Debtors inter se. Absent such a proposal in writing is the feeling of this Court that financial dealings of the Debtors among themselves could not appropriately be untangled if this matter should later be converted to a Chapter 7 bankruptcy.

ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The interim order proposed by the Debtor and Creditor Ag Services of America, Inc. is approved in its entirety except for those matters subsequently set out in this Order.
2. Paragraph 3 of the proposed interim order is approved except that the specific limitations on spending shall be that lease payments to Ag Services of America, Inc. shall not exceed \$300,000. Lease payments to third party lessors shall not exceed \$50,000 and payments to Ag Services of America, Inc. and other suppliers for seed, fertilizer, chemicals, etc. shall not exceed \$250,000. The borrowing ceiling under this paragraph is \$600,000.

3. Paragraph 4 of the proposed interim order is approved except that all post-petition advances shall be paid to and due and payable to Ag Services of America, Inc. on July 1, 1994.
4. Paragraph 9 of the proposed interim order is not approved. The Court feels that this provides the potential for intervening liens or for contravention of the appropriate recording and lien statutes. As such, the Court would approve a lien and security interest as provided under the Uniform Commercial Code or Bankruptcy Law.
5. As an additional condition of the interim order, the Court requires that the Debtors provide to the Court a written operating agreement prior to final hearing on this Motion. This written operating agreement shall contain the agreement of the parties as to how the borrowed funds shall be dispersed between the Debtors. This agreement shall also contain concrete agreement as to how these funds shall be payable between the parties.
6. Finally, the Court will require from the Debtors that a complete and full accounting of all of the funds be kept so that all transactions involving the borrowed funds can be traced from the lender, Ag Services of America, Inc., through every transaction to its ultimate destination.
7. The Court recognizes that though the interim proposed order has been approved in substance, certain changes have been mandated by the Court. The Court feels therefore that both the proposed lender, Ag Services of America, Inc. and the Debtor should be allowed an opportunity to reject this interim order as modified. If Ag Services of America, Inc. and the Debtors agree to these modified terms, the interim order can take effect immediately under those terms. If these modified terms are unacceptable to either the lender or the proposed Debtors, the Court shall be notified no later than the end of the business day on May 28, 1993.

SO ORDERED this 25th day of May, 1993.

Paul J. Kilburg
Bankruptcy Judge

Exhibit 1:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:	Chapter 11
BOCKES BROTHERS FARMS, INC.	Bankruptcy No. 93-60881KW
ROGER BOCKES and BETH BOCKES	Bankruptcy No. 93-60883KW
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RICHARD BOCKES and MARY
SUSAN BOCKES,

Bankruptcy No. 93-60885KW

SHAWN MICHAEL BOCKES,

Bankruptcy No. 93-60886KW

MARY MATILDA BOCKES,

Bankruptcy No. 93-60889KW

Debtors.

INTERIM ORDER AUTHORIZING
DEBTOR TO OBTAIN POST-PETITION FINANCING, GRANT LIENS
AND SECURITY INTERESTS AND PROVIDE SUPERIORITY CLAIM
STATUS AND ADEQUATE PROTECTION

This matter came before the Court for a hearing on the Emergency Motion (the "Motion") of the above-named Debtor⁽¹⁾ and Debtor-in-Possession ("Debtor"), pursuant to 11 U.S.C. § 364 for an interim order (1) authorizing the Debtor to obtain post-petition financing, (2) granting liens and security interests, and (3) providing superiority claim status and adequate protection. The Court, having considered the Motion and after due deliberation and being fully advised in the premises, finds that sufficient cause exists for granting the Motion and, consistent therewith, makes the following findings, conclusions of law, and Orders.

THE COURT FINDS THAT:

A. On May 19, 1993 (the "Petition Date"), the Debtor commenced the instant case under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Case") in this Court. Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor has remained in possession of its assets and is continuing to operate and manage its business as a Debtor-in-Possession.

B. An immediate need exists for the Debtor to obtain funds in order to continue the operation of its business. Without such funds, the Debtor will not be able to plant crops, pay wages, salaries, and operating expenses or purchase inventory and supplies. The Debtor does not have the unencumbered funds necessary to meet such necessary expenses for the continued operations of its business.

C. Ag Services of America, Inc. ("ASA") has indicated a willingness to advance funds to the Debtor on a secured basis pursuant to (i) the terms and conditions of the ASA Security Agreements and related documents, agreements, and instruments (collectively, the "ASA Loan Documents" or "Loan Documents") and (ii) the terms and conditions of this Order. Additionally, ASA as landlord is willing to lease to the Debtor as tenant several parcels of real estate described in Exhibit _____ attached hereto.

D. The Debtor is unable pursuant to §§ 364(a) or (b) of the Bankruptcy Code to obtain unsecured credit allowable as an administrative expense under §503(b) (1) of the Bankruptcy Code and the ability of the Debtor to continue the operation of its business, to remain a viable entity and to reorganize under Chapter 11 of the Bankruptcy Code, depends upon the Debtor's obtaining advances and other financial accommodations of the nature sought from ASA pursuant to the ASA Loan Documents and the terms and conditions of this Order.

E. The relief requested in the Motion is necessary, essential and appropriate for the continued operation of the Debtor's business and the management and preservation of its assets and is otherwise necessary to avoid immediate irreparable harm to the estate pending a final hearing thereon.

F. The Debtor has provided actual written notice delivered by courier or telephonic or facsimile transmission of the hearing on the Motion and the general terms of this order to ASA, Norwest Bank N.A., Farmland Financial Services Company of Kansas City, Missouri, Conrad Cooperative of Conrad, Iowa, all landlords of real estate to be farmed by the debtor during crop year 1993, the 20 largest unsecured creditors of the Debtor, and the U.S. Trustee for this district. Such notice is appropriate, adequate, and proper under the circumstances of the Chapter 11 Case as set forth in the Motion and as presented to the Court.

G. The post-petition financing arrangement described in the Motion and set forth herein is entered into by ASA and the Debtor in good faith (as such term is defined in § 364(e) of the Bankruptcy Code).

H. In order to obtain agreement of ASA to provide the post-petition financing arrangement described in the Motion and set forth herein, ASA has been and is hereby granted certain forms of adequate protection and other relief as further set forth below.

I. Good, adequate and sufficient cause has been shown to justify the granting of the relief requested herein, pending a final hearing on the Debtor's Motion.

IT IS THEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted subject to the terms and conditions hereinafter set forth.

2. The Debtor is hereby authorized and directed to continue to maintain with ASA's approval such general deposit and other types of accounts as may be required by the Debtor to comply with the terms and conditions of this Order and to conduct its ongoing business operation in the ordinary course of business. The Debtor shall deposit immediately upon receipt, and thereafter maintain, all of its funds, monies, cash, deposit accounts, or other cash equivalents in the ASA approved accounts. Any and all such accounts shall be opened and maintained by the Debtor.

3. The Debtor shall be authorized, subject to the terms and conditions of this Order and a final order upon final hearing on the Debtor's motion pursuant to applicable rules, to lease real estate from ASA and other landlords and to incur the post-petition financing (the "Post-Petition Financing") set forth in this Order. Amounts advanced by ASA after the Petition Date (the "Post-Petition Advances") shall bear interest at the rate set forth in, shall be subject to the terms and conditions of lending set forth in, and shall otherwise be governed by the provisions of, the ASA Loan Documents, except to the extent that such provisions are modified in this Order. The amount of the Post-Petition Advances will accrue interest as provided in the Loan Documents. Upon entry of a final order (in form and substance satisfactory to ASA) pursuant to final hearing on the Debtor's motion and to applicable rules, the Debtor may borrow the lesser of either \$1,100,000 or such amount as may be authorized to be loaned to the debtor after application of ASA's regulations and policies governing credit extension. The borrowing may be in the form of cash or products, and such borrowing may be used solely for the purpose of crop input (including but not limited to seed, fertilizer, chemicals, fuel, cash advances and/or rents and the like) on real estate farmed by the debtor during crop year 1993, all as more fully described in Exhibit _____ attached hereto. Additionally, the rent due ASA on parcels of real estate to be leased from ASA to the Debtor is included and is part of the post-petition advances subject to

this and any final order. For purposes of this Interim Order, and to prevent irreparable and immediate harm to the estate, the Debtor is authorized to borrow approximately \$600,000 of the total authorized borrowing, which approximate \$600,000 shall be used by the Debtor to pay rent to various landlords (including ASA as landlord relative to real estate parcel described in Exhibit _____ attached hereto) and to acquire sufficient products (such as seed, chemicals, fertilizers, etc.) to plant the 1993 crop during the next approximately 30 days.

4. Irrespective of any provision in any plan that may be confirmed, all post-petition advances (including principal, interest, costs, expenses, charges, attorney fees and expenses) shall be repaid according to the terms of the Loan Documents, but in any event all post-petition advances shall be paid to and due and payable to ASA on December 31, 1993. All funds received by ASA from time to time shall be applied by ASA first to the payment of any legal or other professional fees and expenses and other costs or charges incurred by ASA under the ASA Loan Documents or in connection with the Motion, this Order or otherwise in the Chapter 11 Case (unless ASA agrees in writing to a different order of priority with respect to any particular statement of professional fees and expenses), second to the payment of any accrued and owing interest owing by the Debtor to ASA on any outstanding post-petition obligations of the Debtor to ASA, and third to the principal of the post-petition Advances until all such obligations are paid in full.

5. In addition to all of the other limitations on the Debtor's ability to borrow the post-petition Advances that are set forth in this order, and unless specifically waived by ASA: (a) The Debtor will furnish to ASA not later than the _____ day of each calendar month (or if such day is non-business day, on the next succeeding business day) a budget for the Debtor, signed by an appropriate employee or officer of the Debtor, in form and substance satisfactory to ASA, of all projected cash receipts and cash disbursements of the Debtor for the next calendar month. In connection herewith, the initial Budget for the period from petition date through June _____, 1993 is attached as Exhibit _____ hereto and (b) on or before the Friday (or if such day is not a business day, on the next succeeding business day) after its receipt of a Budget, ASA shall notify the Debtor as to whether ASA will, in the exercise of its reasonable discretion, authorize expenditure by the Debtor of any or all of the amounts proposed to be expended by the Debtor pursuant to such budget. ASA may approve or may veto any item of proposed expenditure set forth in a Budget provided, however, that ASA will not veto any ordinary and necessary expenses that are consistent with Debtor's ordinary course of business, and the aggregate of items approved or deemed approved by ASA in a budget shall constitute an "Approved Budget." The aggregate expenditures by the Debtor for any calendar month shall not in any event exceed the aggregate amount budgeted therefor in such calendar month's Approved Budget, without consent of ASA.

6. In the event of (i) failure of the Debtor to fully perform any of its obligations as provided in this Order (including, without limitation, the Debtor's obligation to pay timely all principal sums, accrued and unpaid interest, charges, costs, expenses, attorney fees and expenses owing with respect to the ASA Post-Petition Advances on the dates and at the times set forth therefor in the ASA Loan Agreement (as modified by the terms of this Order), or the Debtor's obligation to provide a Budget for a particular calendar month when required pursuant to the Provisions of Paragraph 5 hereof and to stay within the limitations on types and amounts of expenditures for any budgetary period set forth in such Paragraph 5), (ii) any fraudulent act, fraudulent conduct or fraudulent omission by the Debtor, (iii) the existence of any Event of Default (as such term is defined in the ASA Loan Documents), (iv) appointment of a trustee or of an examiner with enhanced powers for the Debtor or the property of the estate of the Debtors, (v) conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, (vi) dismissal of the Chapter 11 case or any subsequent case under Chapter 7 of the

Bankruptcy Code, or (vii) confirmation of a Chapter 11 plan of reorganization for the Debtor (collectively "Default Event"); then and upon the occurrence of any of the foregoing, and at all times thereafter, ASA shall be entitled to terminate the post-petition financing (including any discretionary right to make subsequent post-petition advances) and to immediately move for and request relief from and termination of any stay, including without limitation, the automatic stay of 11 U.S.C. § 362. ASA may also request expedited immediate hearing on such motion, and the Debtor shall not resist the request for immediate and expedited hearing. The Debtor's defenses or resistances, which shall be filed on or before five business days after the service of ASA's motion on the Debtor, to such motion are limited to (i) denial of the occurrence of default event and/or (ii) impossibility of performance of an obligation giving rise to the default, which impossibility result from causes beyond the Debtor's reasonable control. Upon the entry of an order granting the relief requested by ASA, ASA may immediately seek enforcement of its liens and security interests granted to it pursuant to this order and the ASA loan documents, and ASA shall be and is hereby authorized, at its sole discretion (and without notice to the debtor or to any other party), to take any and all actions and remedies that are commercially reasonable and that ASA may deem appropriate to proceed against and realize upon the ASA collateral, all upon entry of an order from this court granting ASA's motion as described herein.

7. In order (a) to protect and secure ASA in connection with the post-petition financing to be extended pursuant to the terms and conditions of the Loan Documents and of this Order and all amendments hereto (including, without limitation, any and all Post-Petition Advances and accrued and unpaid interest thereon and fees and expenses incurred in connection therewith), and (b) to provide ASA with adequate protection in respect to the value of its interest in the ASA Collateral, ASA shall continue to have, and hereby is granted, a lien, to the extent of post-petition advances actually borrowed (plus applicable interest, late charges, costs, expenses, and attorney fees and expenses), against and security interest in all and each of the debtor's post-petition farm products, crops, corn, beans, wheat, oats, crop insurance, government program payments (in kind, in cash, or otherwise, arising from programs such as, but not limited to, deficiency program or disaster payments), general intangibles, accounts, accounts receivables, contract rights, grain processing income and payments, together with all proceeds and products of all of the foregoing (the "ASA collateral"). Such lien and security interest shall be a first, paramount, and prior lien on and security interest in the aforesaid property, assets, and rights of the Debtor. The lien and security interest granted herein does and will cross-collateralize any and all post-petition advances extended to each and every Debtor subject to this order.

8. The Post-Petition Advances (including, without limitation, any accrued and unpaid interest thereon and fees and expenses incurred in connection therewith), as well as the full amount of any adequate protection claim of ASA, shall be granted and given a lien status under Section 364(c)(2) of the Bankruptcy Code and additionally an administrative priority claim status superior to and prior to any and all other administrative priority claim that may be allowed or imposed by the Bankruptcy Code or this Court. No costs or expenses of administration which have been or may be incurred in these proceedings, or in any other proceeding related hereto, and no priority claims, are or will be prior to or on a parity with the Post-Petition Advances and adequate protection claims of ASA. ASA's extension of the Post-Petition Financing pursuant to the terms of this Order shall not constitute a joint venture or partnership of any kind between the parties.

9. The liens and security interest granted to ASA pursuant to paragraph 7 hereof shall be valid and perfected, as of the date of the commencement of this case, without the need for the execution or filing of any further document or instrument otherwise required to be executed or filed under applicable non-bankruptcy law. Notwithstanding that no documents need be executed or filed to create or perfect the liens and security interest granted hereunder, the Debtors, and if applicable its

officers on its behalf, are hereby directed to execute and deliver such further documents as ASA may request to evidence and give notice of the liens granted hereunder.

10. The Debtor shall not sell or otherwise dispose of any of the ASA Collateral (except in the ordinary course of its business) without: (a) the consent of ASA unless the Debtor can provide, and this Court then specifically finds that the Debtor can provide or has so provided, adequate protection of ASA's interest in the property sought to be sold or otherwise disposed of, and (b) approval of this Court after notice to ASA and application pursuant to §363(b) of the Bankruptcy Code.

11. ASA shall be entitled to the full protection of the Bankruptcy Code with respect to debts, obligations, liens, and security interests created or authorized in this Order in the event that this Order or any authorization contained herein is vacated, reversed, or modified on appeal or otherwise in any Court of competent jurisdiction.

12. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any Order confirming any Chapter 11 plan or which may be entered converting the Chapter 11 case from Chapter 11 to Chapter 7 and the terms and provisions of this Order, as well as the priorities in payment, liens, and security interests granted pursuant to this Order shall continue in this or any superseding case under the Bankruptcy Code and such priority and payments, liens and security interests shall maintain their priority as provided by this Order.

13. Without limiting ASA's rights under the ASA Loan Agreement, ASA and its agents, upon 48 hours' telephonic notice of each requested access, shall be given continuous access during reasonable business hours to all the books, records and documents of the Debtor and its affiliates that are not subject to an attorney-client privilege, including, without limitation, the following:

Books of original entry, subsidiary Journals and records:

Checks registers (general disbursements, other disbursements)

Sales journals

General ledgers

Journal entries

Payroll journals

Shipping registers

Disbursement distribution registers

Cash activity reports

Aged accounts receivable

Aged accounts payable

Bank reconciliations

Source documentation and support:

Invoices and purchase orders

Cancelled checks

Bank debit and credit advises

Bank statements

Shipping documents

Contracts

14. The terms and provisions of this Order shall be binding upon the Debtor and its successors and assigns, including, but not limited to, a receiver, trustee, or examiner appointed in this case, in any superseding case or in any case related hereto, and shall survive to ASA's and the Debtor's benefit.

15. This Order shall not prejudice or limit ASA's right to request or seek other or additional protection with respect to the ASA Collateral.

16. Nothing contained in this Order shall limit or otherwise impair the rights, claims, or liens of ASA against any joint obligor or guarantors of the Debtor's obligations to ASA or against any collateral securing any of such guarantees or against any other party. Consistent with the foregoing, such guarantors (if any) have reaffirmed such joint liability or guarantees (including the applicability thereof to the Post-Petition Advances) by writings executed and delivered by them to ASA.

17. The Debtor shall submit to ASA, unless specifically waived by ASA, on or before the _____ day (or if such day is not a business day, on the next succeeding business day) of each calendar month, a detailed report, in a form substantially similar to the monthly report form required to be filed or submitted by the United States Trustee, on (a) the use and application of the funds expended by the Debtor during the previous calendar month pursuant to that Approved Budget for the previous calendar month, and a reconciliation, including a line-by-line item comparison of budgeted to actual expenditures setting forth in reasonable detail an explanation of any differences between budgeted and actual amounts, of funds used and expended by the Debtor during said budget period and (b) the amount of the Debtor's sales during the previous calendar month. The Debtor shall serve ASA, or its counsel, with a copy of each report, pleading, or other document filed by either of them in connection with the Chapter 11 case.

18. [Intentionally left blank.]

19. If any or all of the provisions of this Order are hereafter modified, vacated, or stayed by subsequent order of this or any other Court, such termination, stay, modification or vacation shall not affect the validity of any obligation of the Debtor to ASA incurred pursuant to this order prior to the effective date of such termination, stay, modification or vacation; nor shall such termination, stay, modification or vacation affect the validity or enforceability of the security interest and lien granted and authorized hereby relative to the adequate protection provided to ASA.

20. A final hearing on the Motion, pursuant to applicable F.R.B.P., shall be held before this court on _____, 1993, at _____ a.m/p.m in the United States Bankruptcy Court, 8th floor, The Center, Cedar Rapids, Iowa.

21. Service of this order (including notice of the date, time, and place of the final hearing on the Motion), the Motion, and any exhibits, by the debtor upon (i) counsel for the official unsecured creditors' committee, if any, (ii) all parties who have requested notice pursuant to F.R.B.P. 2002, (iii) the 20 largest unsecured creditors of the debtor, (iv) counsel for ASA, Farmland, Conrad Coop, Norwest, and any landlords, (v) the United States Trustee, by first class mail on or before _____, 1993, shall constitute good and sufficient notice thereof. Objections, if any, to the relief sought in the Motion shall be in writing, shall set forth with particularity the grounds for such objection, shall be filed with the Clerk of this court, and shall be served on counsel for the debtor, Childers & Fiegen P.C., P.O. Box 5430, 3d floor, The Center, Cedar Rapids, and counsel for ASA, Eric W. Lam, P.O. Box 1943, Cedar Rapids, IA 52406, and on the United States Trustee, 6th floor, The Center, Cedar Rapids, IA 52401.

ALL DONE AND ORDERED this _____ day of _____, 1993.

United States Bankruptcy Judge

Order prepared by
Eric W. Lam 7610
Attorney for ASA

1. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context. The term "debtor" shall mean and includes each and every debtor described in the caption of this order, and each and every provision of this order, including the imposition of obligations and the granting of liens and security interests, applies to each and every debtor described in the caption.