

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.



Charles M. Caldwell  
United States Bankruptcy Judge

Dated: August 02, 2005

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re  
UNITED PRODUCERS, INC.  
Debtor and Debtor-in-Possession

Case No. 05-55272  
Joint Administration  
Chapter 11  
Judge: Charles M. Caldwell

**ORDER GRANTING MOTION OF UNITED PRODUCERS, INC. FOR AN ORDER AUTHORIZING: (1) THE SALE OF CERTAIN REAL PROPERTY FREE AND CLEAR OF INTERESTS, LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO § 363(b) AND (f) OF THE BANKRUPTCY CODE; AND (2) THE LEASEBACK OF SAID REAL PROPERTY PURSUANT TO A CERTAIN LEASE AGREEMENT**

Upon consideration of the above captioned Motion of United Producers, Inc. (“UPI” or “Debtor”) For an Order Authorizing (1) The Sale of Certain Real Property Free and Clear of Interests, Liens, Claims and Encumbrances Pursuant to §363(b) and (f) of the Bankruptcy Code; and (2) The Leaseback of Said Real Property Pursuant to a Certain Lease Agreement (the “Motion”), as more fully set forth in the Motion; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that this Court has jurisdiction to

consider the matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties-in-interest; and due and adequate notice of the Motion having been given under the particular circumstances; and it appearing that the objection to the Motion filed by the United States Trustee was withdrawn upon the record at the hearing to consider the Motion and that the only other objection to the Motion was not prosecuted by the parties having filed same; and upon due deliberation and good and sufficient cause appearing therefore; it is hereby

FOUND AND DETERMINED THAT:<sup>1</sup>

A. The statutory predicates for the relief sought in the Motion are sections 105(a), 363(b), (f), and (m), and 1146(c) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) and Fed. R. Bankr. P. 2002 and 6004.

B. Adequate and sufficient notice of the Motion has been provided in accordance with 11 U.S.C. §§ 102(1), 363 and Fed. R. Bankr. P. 2002 and 6004, and such notice was good and sufficient, and appropriate under the particular circumstances, and no other or further notice of the Motion is or shall be required.

C. Approval of the sale of the Properties (as defined in the Motion) and consummation of the transactions contemplated by the Purchase Contract and Lease are in the best interests of the Debtor, its creditors, its estate and other parties in interest.

D. The Debtor has demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the sale of the Properties and the entering of the Lease.

E. A reasonable opportunity to object or be heard with respect to the Motion has

---

<sup>1</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

been afforded to all interested persons and entities.

F. The Purchase Contract for the sale of the Properties and the Lease for leaseback of the Properties were negotiated, proposed and entered into by the parties without collusion, in good faith, and from arm's-length bargaining positions. The Buyer (as defined in the Motion) is/are a good faith purchaser under 11 U.S.C. § 363(m) and, as such, is entitled to all of the protections afforded thereby.

G. The purchase price for the Properties is fair and reasonable and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

H. The sale of the Properties must be consummated promptly to preserve certain tax attributes that are important to the Buyer.

I. The transfer of the Properties will be a legal, valid and effective transfer of the Properties, and will vest Buyer with all right, title, and interest of the Debtor to the Properties free and clear of all interests, liens, claims and encumbrances with the exception of real estate taxes due and payable on the closing of the Purchase Contract (collectively, "Interests").

J. The Debtor may sell the Properties free and clear of all Interests because one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. Those holders of alleged liens, claims or encumbrances who did not object to the Motion, are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). CoBank, ACB has consented to the sale of the Properties and to the release of its Interests in the Properties in exchange for receiving the net proceeds payable to Debtor under the Purchase Contract and the Interests of CoBank, ACB in the Properties is adequately protected by having their Interests attach to the cash proceeds of the Purchase Contract.

K. The sale of the Properties is in contemplation of a plan and accordingly, a transfer pursuant to 11 U.S.C. § 1146(c), which shall not be taxed under any law imposing a stamp tax or similar tax.

L. The Debtor has demonstrated that it is an exercise of its sound business judgment to sell the Properties to Buyer and to leaseback the Properties from Buyer pursuant to the terms substantially contained in the Lease, and that said sale and lease are in the best interests of the Debtor, its estate, and its creditors.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Motion is granted and the Debtor is authorized to take any and all action to consummate the sale of the Properties and to enter a lease for the leaseback of the Properties pursuant to the terms of the Purchase Contract and Lease, respectively.

2. Pursuant to 11 U.S.C. § 363(b) and (f), upon consummation of the closing of the Purchase Contract, the Properties shall be transferred to Buyer free and clear of all Interests of any kind or nature whatsoever; provided, however, that real estate taxes and the Interests of CoBank, ACB, will attach to the net proceeds of the sale in the order of their priority, with the same validity, force and effect which they now have as against the Properties; and, further provided, that the net proceeds after payment of real estate taxes shall be paid to CoBank, ACB for application to the prepetition secured debt of PCC to CoBank.

3. Except as otherwise specifically provided this Order, all persons and entities, including, but not limited to, all debt security holders, members, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding claims or interests of any kind or nature whatsoever against or in the Debtor or the Properties (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or

subordinated), arising under or out of, in connection with, or in any way relating to, the Properties prior to the Closing, hereby are forever barred and estopped from asserting against Buyer, its successors or assigns, its property, or the Properties, such persons' or entities' claims or interests.

4. The consideration provided by Buyer for the Properties shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

5. This Order (a) shall be effective as a determination that, as of the Closing, all Interests of any kind or nature whatsoever existing as to the Debtor or the Properties prior to the Closing shall be extinguished or attach to the net proceeds of the Purchase Contract as provided in paragraph 2 above, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deed, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Properties.

6. If any person or entity that has filed financing statements, mortgages, mechanic's liens, assignment of rents, affidavit of foreign judgment, judgment lien, *lis pendens*, or other documents or agreements evidencing liens, claims or other interests in the Debtor or the Properties shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction,

releases of liens, claims or other interest which the person or entity has with respect to the Debtor or the Properties or otherwise, then Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Properties of any kind or nature whatsoever.

7. All persons holding claims or interests against or in the Debtor or the Properties of any kind or nature whatsoever shall be, and hereby are, forever barred and estopped from asserting, prosecuting, or otherwise pursuing such claims against or interests of any kind or nature whatsoever against the Properties with respect to any claims or interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtor, its estate, officers, directors, shareholders or the Properties.

8. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Contract and/or Lease and any amendments thereto, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) resolve any disputes arising under or related to the Purchase Contract and (b) interpret, implement, and enforce the provisions of this Order.

9. The transactions contemplated by the Purchase Contract and Lease are undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Purchase Contract and Lease shall not affect the validity of the sale to Buyer unless such authorization is duly stayed pending such appeal. In the absence of a stay pending appeal, if Buyer elects to close under the Purchase Contract at any time after entry of this Order, then, with respect to the sale of the Properties, Buyer is a purchaser in good faith and is entitled

to all of the protections afforded by section 363(m) of the Bankruptcy Code if this Order or any authorization contained herein is reversed or modified on appeal.

10. The terms and provisions of the Purchase Contract, Lease and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, and its creditors, Buyer, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting claims against or interests in the Properties to be sold to Buyer pursuant to the Purchase Contract, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

11. The Purchase Contract, the Lease and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

12. The transfer of the Properties pursuant to the Purchase Contract sale is a transfer pursuant to section 1146(c) of the Bankruptcy Code, and accordingly shall not be taxed under any law imposing a stamp tax on a sale, transfer, or any other similar tax.

13. Debtor is authorized to pay from the proceeds of the sale, the brokers commission due to Hamilton Commerce Realtors/Ben Dougan and Independence Real Estate Services/John D. Ross in the amount of \$15,300.00 each.

14. This Order shall be effective and enforceable immediately upon entry. The stay otherwise imposed by Fed. R. Bankr. P. 6004(g) and 6006(d) is waived. Time is of the essence in closing the transaction and the Debtor and Buyer intend to close the sale as soon as possible.

Therefore, any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay or risk their appeal being foreclosed as moot.

15. The provisions of this Order are nonseverable and mutually dependent.

Reginald W. Jackson  
Vorys, Sater, Seymour and Pease  
P.O. Box 1008  
Columbus, Ohio 43215

Randall D. LaTour  
Vorys, Sater, Seymour and Pease  
P.O. Box 1008  
Columbus, Ohio 43215

Joseph Werstak, CFO  
United Producers, Inc.  
5909 Cleveland Avenue  
Columbus, Ohio 43229

GE Cattle  
c/o David A. Domina  
2424 South 144th St.  
Omaha, NE 68144

Currey of Nebraska, LLC  
c/o David A. Domina  
2424 South 144th St.  
Omaha, NE 68144

Producers Livestock Corp.  
c/o James F. Cann  
2424 South 144th St.  
Omaha, NE 68144

Harry Hayes  
c/o James F. Cann  
2424 South 144th St.  
Omaha, NE 68144

Everett & Deborah Rogers  
c/o Richard D. Rhyne - Lathrop  
2345 Grand Blvd., Ste 2800  
KansasCity, MO 64108

Scholfield Veterinary Supply  
PO Box 8232  
DesMoines, IA 50301

Dell Commercial Credit  
DEPT 50-0059090269  
PO Box 9020  
DesMoines, IA 50368-9020

United States Postal  
USPS-Hasler  
Box 0527  
CarolStream, IL 60132-0527

Owen Electric Cooperative Inc  
PO Box 308  
510 South Main St.  
Florence, KY 41022-0308

Hoffman Htg. & Air  
1791 E Johnson Lane  
Vincennes, IN 47591

Lancaster Utilities Collection  
104 E. Main Street  
P O Box 1099  
Lancaster, OH 43130-0819

Officemax Credit Plan  
Dept 58-3400616958  
PO Box 9020  
DesMoines, IA 50368-9020

Stockton Animal Clinic  
MFA Cattlemen Auction Co  
14975 S Hwy 39  
Stockton, MO 65785

Ed Sanders  
4820 Mason Rd.  
Fort Loramie, OH 45845

Rumbold Valley Farms Inc  
Feed Division  
411 N Chestnut St  
Kewanee, IL 61443

Aquila  
PO Box 219703  
KansasCity, MO 64121-9703

MFA Oil Company  
1515 E First St  
Maryville, MO 64468-3101

Geiler's Sunoco  
101 West 1st Street  
Kinmundy, IL 62854

Moore Wallace  
PO Box 905046  
Charlotte, NC 28290-5046

American Electric Power  
PO Box 24418  
Canton, OH 44701-4418

Daniel A. DeMarco  
Hahn Loeser & Parks LLP  
3300 BP Tower  
200 Public Square  
Cleveland, OH 44114

CoBank ACB  
5500 South Quebec Street  
GreenwoodVillage, CO 80111

James Markus  
Block Markus Williams LLC  
1700 Lincoln Street, Ste 4000  
Denver, CO 80203

United States Trustee  
170 North High, Suite 200  
Columbus, OH 43215

Office of the U.S. Attorney-Columbus  
303 Marconi Blvd., Suite 200  
Columbus, OH 43215

Jeannette Eisan Hinshaw  
Bose McKinney & Evans LLP  
135 N. Pennsylvania St. Ste 2700  
Indianapolis, IN 46204  
Fax: (317) 684-5173

Joseph Robbins  
Robbins Appraisal Inc  
5200 Schott Rd.  
Mayville, MI 48744

BASCOM  
Mutual Telephone Co.  
PO Box 316  
Bascom, OH 44809-0316

Verizon Wireless  
PO Box 790406  
SaintLouis, MO 63179-0406

OfficeMax Contract Inc.  
PO Box 360755  
Pittsburgh, PA 15250-6755

James R. Morris  
Special Asst. Atty. General  
Missouri Dept of Revenue  
301 High St., Rm 670  
Jefferson City, MO 65105

Kyle R. Grubbs, Esq.  
Frost Brown Todd LLC  
2200 PNC Center  
201 East Fifth Street  
Cincinnati, OH 45202

###