

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**IN RE:**

**AP&E PROPERTIES, LLC.**

**CASE NO. 16-50282  
CHAPTER 11**

**Debtor-in-possession.**

**DEBTOR'S MOTION TO USE CASH COLLATERAL**

The Debtor, AP&E Properties, LLC., by Counsel George L. Lemon, moves the Court pursuant to 11 U.S.C. §§ 363 and 364 for authority to use cash collateral free of any post-petition security interests.

**JURISDICTION**

1. On November 15, 2016, Debtor filed a voluntary bankruptcy petition pursuant to 11 U.S.C. § 301,1101, et seq.
2. AP&E Properties, LLC., is a Debtor-in-Possession with all the powers of a trustee pursuant to 11 U.S.C. §§ 363(c)(2), 363(c)(1), 364(c)(2) and 364 (c)(3) and Bankruptcy Rules 4001 and 9014.
3. This matter arises under Title 11 of the United States Code and constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2)(M). The Court has original jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a).

**STATEMENT OF FACT**

4. AP&E Properties, LLC. is located at 194 Central Ave., Beckley, WV 25801, and is owned solely by James P. Wills.
5. Debtor entered into loan agreements with Branch Banking and Trust Company ("BB&T") on November 20, 2008. Under information and belief, Debtor owes the following current balances under each note to BB&T:

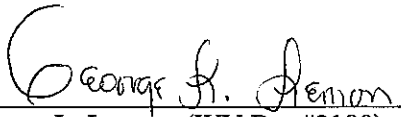
- a. Note 1- Current balance of \$54,047.63 bearing an interest rate of 6.99%.
- b. Note 2- Current balance of \$62,305.02 bearing an interest rate of 6.99%.
- c. Note 3- Current balance of \$96,882.34 bearing an interest rate of 6.99%.
- d. Note 6- Current balance of \$30,505.04 bearing an interest rate of 6.25%.
- e. Note 8- Current balance of \$29,802.73 bearing an interest rate of 5.00%.
- f. Note 9- Current balance of \$137,137.08 bearing an interest rate of 5.64%.

**CASH COLLATERAL**

- 6. As of the petition date, the Debtor has rents receivable of approximately \$6,800 a month. As previously mentioned BB&T holds a secured claims against the Debtor in the amount of \$410,679.84 secured by the debtor's real property and the assignment of rents receivable.
- 7. The debtor's real property in Beckley, West Virginia has a value of approximately \$610,000. Given the value of the debtor's real property, BB&T's claim against the debtor is fully secured.
- 8. Debtor has no other source of credit on an immediate basis, and the debtor requires the use of its rents for the payment of taxes and insurance on the properties, and other necessary operating expenses. The Debtor asserts that failure to allow it to use cash for the purposes stated will precipitate a crisis in the ongoing operation of the Debtor's business and will cause irreparable harm.
- 9. This Court should recognize that the security interest of BB&T in the Debtor's receivables is adequately protected by its other collateral. Therefore, BB&T should receive no additional protection by way of a post-petition security interest in the Debtor's cash

collateral, and should certainly not be entitled to have incoming cash diverted from the Debtor to pay its claim.

WHEREFORE, the Debtor prays that the Court authorize the Debtor's use of cash collateral to pay its taxes and insurance on the properties, and other necessary operating expenses.



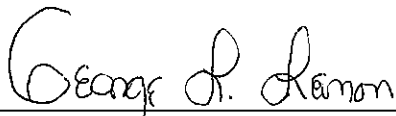
George L. Lemon, (WV Bar #2180)  
Virginia A. Lemon (WV Bar #12260)  
Lemon Law Office  
122 ½ N. Court  
Lewisburg, WV 24901  
[304/645-3773/georgelemon@frontier.com](mailto:304/645-3773/georgelemon@frontier.com)

AP&E Properties, LLC.  
By Counsel

#### CERTIFICATE OF SERVICE

I, George L. Lemon, certify that on the 6<sup>th</sup> day of January, 2017, a true and exact copy of the foregoing **DEBTOR'S MOTION TO USE CASH COLLATERAL** was served upon, all parties requesting electronic service via CM/ECF and by United States Mail postage prepaid, upon the following:

James W. Lane, Jr., Esq.  
Bradford P. Bury, Esq.  
Flaherty Sensabaugh Bonasso PLLC  
P.O. Box 3843  
Charleston, WV 25338  
Counsel for BB&T



George L. Lemon (WV Bar # 2180)