

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO

In Re:	)	Chapter 11
	)	
COLORADO PROPERTY REPAIR, LLC	)	Case No. 17-18004-KHT
Debtor.	)	

**STIPULATED MOTION CONCERNING USE OF CASH COLLATERAL  
AND ADEQUATE PROTECTION**

Debtor and Debtor-In-Possession, Colorado Property Repair, LLC (“the Debtor”), and secured creditor Commercial Credit Group Inc. (“CCG”), by and through their undersigned counsel, hereby respectfully submit their Stipulated Motion Concerning Use of Cash Collateral and Adequate Protection and state as follows:

1. On August 28, 2017 (the “Petition Date”), the Debtor filed its voluntary petition under Chapter 11 of the U.S. Bankruptcy Code (the “Code”) in the United States Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”), Case No. 17-18004-KHT.

2. As of the Petition Date, the Debtor was obligated to CCG on three separate commercial purchase-money loans that are evidenced by the following Negotiable Promissory Notes payable to CCG (collectively, the “Notes”):

<u>Note Date</u>	<u>Face Amt. of Note</u>	<u>Balance as of 8-28-17</u>
4-22-15	\$85,440.00	\$47,547.01
6-3-15	\$74,712.00	\$40,653.98
9-3-15	\$45,990.00	\$27,695.46

3. In order to secure the Debtor’s obligations to CCG, the Debtor executed and delivered to CCG security agreements of even date with each of the Notes (the

“Security Agreements”) pursuant to which the Debtor granted to CCG security interests and liens in and upon specific equipment more particularly described on the Schedule A attached to each of the respective Security Agreements (collectively, the “Equipment Collateral”) as well as all of the Debtor’s respective accounts, accounts receivable, equipment, contract rights, goods, inventory and other items of personal property more particularly described therein (collectively, the “Personal Property Collateral”), which in part, constitute “cash collateral” as defined in Section 363(a) of the Code (the “Cash Collateral”). The obligations on the Notes are cross-collateralized by the Equipment Collateral and Cash Collateral.

4. CCG asserts that it properly perfected its pre-petition security interests in the Cash Collateral and Equipment Collateral by filing UCC-1 Financing Statements, as appropriate (collectively, the “Financing Statements” which together with the Notes, Security Agreements, and all documents executed by the Debtor and delivered to CCG, are referred to herein collectively as the “Loan Documents”).

5. As of the Petition Date, the Debtor owed the combined amount of \$115,896.44 on the Notes plus subsequently accruing interest and other charges including legal expenses recoverable under the Loan Documents (collectively, the “Indebtedness”);

6. The Debtor asserts that it requires continued post-petition use of the Cash Collateral to operate its business, and that CCG is entitled to adequate protection for the Debtor’s use of the Cash Collateral.

7. In addition, the Debtor asserts that it will need to continue to use the Equipment Collateral and the Personal Property during the course of the bankruptcy and

CCG is entitled to adequate protection for the use and diminution in value the Equipment Collateral and the Personal Property Collateral.

8. The Parties agreement is set forth in the Cash Collateral and Adequate Protection Agreement (the "Agreement") attached hereto as Exhibit A.

9. The material terms and conditions of the Agreement are as follows:

(a) Subject to the terms and conditions of the Agreement, the Debtor is authorized to use the Cash Collateral to pay post-petition expenses in the ordinary course of the Debtor's business or by Court order on notice to creditors.

(b) CCG is hereby granted post-petition liens against the same types of property of the Debtor (excluding causes of action arising under the Bankruptcy Code), to the same validity, extent and priority, as existed as of the Petition Date, wherever located, effective *nunc pro tunc* as of the Petition Date. Said liens shall be deemed for all purposes to have been properly perfected, without filing, as of the Petition Date.

(c) Commencing November 15, 2017 and continuing each month thereafter, until further order of the Court, the Debtor shall remit monthly post-petition payments to CCG (in the aggregate amount of \$4,880.00 per month), which payments shall be due on the 15<sup>th</sup> day of each month.

(d) The Debtor shall at all times maintain such insurance on the Equipment Collateral as is required under the Security Agreements with one or more insurance companies, and shall name CCG as sole loss payee on such insurance policies. The Debtor shall provide CCG with written evidence of adequate insurance immediately, and upon request thereafter.

(e) The following constitute an “Event of Default” under the Agreement:

(i) Debtor shall violate or fail to timely satisfy, post-petition, any term or condition of this Consent Order or the Loan Documents.

(ii) A trustee or examiner is appointed under Chapter 11 of the Code without the consent of CCG.

(iii) Debtor sells or encumbers any item of property subject to CCG’s liens (including, without limitation, the Cash Collateral), without the prior written consent of CCG.

(iv) Debtor’s Chapter 11 proceeding is converted to a Chapter 7 proceeding or dismissed.

(v) Insurance required under the Security Agreements is deemed inadequate, allowed to lapse by the Debtor, or is otherwise terminated.

(f) Upon the occurrence of an Event of Default (other than the absence of insurance), CCG shall notify the Debtor’s counsel of such Event of Default via e-mail at [lmk@kutnerlaw.com](mailto:lmk@kutnerlaw.com) and the Debtor shall have five (5) days (two (2) business days in the case of inadequate insurance) from the date of such notice to fully cure the Event of Default. In the event that the Debtor fails to timely cure such Event of Default, the automatic stay provisions of Section 362(a) of the Code, and Debtor’s right to use Cash Collateral, shall terminate with respect to CCG, and CCG may submit to the Court a notice regarding the Debtor’s uncured Event of Default and a proposed order prohibiting further use of Cash Collateral, and CCG may file a motion to terminate the automatic stay regarding the Equipment Collateral subject to the Debtor’s right to defend.

10. The Agreement does not contain any of the provisions of the type indicated in the appendix at L.B.R. 4001-3(a) APP.

WHEREFORE, the Debtor and CCG hereby respectfully request that the Court enter an order approving the Agreement *nunc pro tunc* to the Petition Date and for such other relief as is just and appropriate under the circumstances.

Dated this 12th day of September, 2017.

Respectfully submitted,

**KUTNER BRINEN, P.C.**

By: /s/ Lee M. Kutner

Lee M. Kutner, #10966  
1660 Lincolns Street, Suite 1850  
Denver, Colorado 80264  
Telephone: (303) 832-2400  
Facsimile: (303) 832-1510  
Email: lmk@kutnerlaw.com  
*Attorneys for Debtor*

**SNELL & WILMER L.L.P.**

By: /s/ Brian P. Gaffney

Brian P. Gaffney, #39119  
1200 Seventeenth Street, Suite 1900  
Denver, Colorado 80202  
Telephone: (303) 634-2000  
Facsimile: (303) 634-2020  
Email: bgaffney@swlaw.com  
*Attorneys for CCG*

## CASH COLLATERAL AND ADEQUATE PROTECTION AGREEMENT

This Cash Collateral and Adequate Protection Agreement (this "Agreement") is entered into this 8th day of September 2017, by and between Colorado Property Repair, LLC (the "Debtor"), Debtor and Debtor-In-Possession in Case No. 17-18004-KHT currently pending in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court"), and Commercial Credit Group Inc. ("CCG").

### Recitals

A. On August 28, 2017 (the "Petition Date"), the Debtor filed its voluntary petition under Chapter 11 of the U.S. Bankruptcy Code (the "Code").

B. As of the Petition Date, the Debtor was obligated to CCG on three separate commercial purchase-money loans that are evidenced by the following Negotiable Promissory Notes payable to CCG (collectively, the "Notes");

<u>Note Date</u>	<u>Face Amt. of Note</u>	<u>Balance as of 8-28-17</u>
4-22-15	\$85,440.00	\$47,547.01
6-3-15	\$74,712.00	\$40,653.98
9-3-15	\$45,990.00	\$27,695.46

C. In order to secure the Debtor's obligations to CCG, the Debtor executed and delivered to CCG security agreements of even date with each of the Notes (the "Security Agreements") pursuant to which the Debtor granted to CCG security interests and liens in and upon specific equipment more particularly described on the Schedule A attached to each of the respective Security Agreements (collectively, the "Equipment Collateral") as well as all of the Debtor's respective accounts, accounts receivable, equipment, contract rights, goods, inventory and other items of personal property more particularly described therein ("Personal Property Collateral"), which in part, constitute "cash collateral" as defined in Section 363(a) of the Code (the "Cash Collateral"). The obligations on the Notes are cross-collateralized by the Equipment Collateral, the Personal Property Collateral, and the Cash Collateral.

D. CCG asserts that it properly perfected its pre-petition security interests in the Cash Collateral and Equipment Collateral by filing UCC-1 Financing Statements, as appropriate (collectively, the "Financing Statements" which together with the Notes, Security Agreements, and all documents executed by the Debtor and delivered to CCG, are referred to herein collectively as the "Loan Documents").

E. As of the Petition Date, CCG asserts that the Debtor owed the combined amount of \$115,896.44 on the Notes plus subsequently accruing interest and other charges including legal expenses recoverable under the Loan Documents (collectively, the "Indebtedness");

F. The Debtor asserts that it requires continued post-petition use of the Cash Collateral to operate its business, and that CCG is entitled to adequate protection for the Debtor's use of the Cash Collateral.

G. In addition, the Debtor asserts that it will need to continue to use the Equipment Collateral and Personal Property Collateral during the course of bankruptcy and CCG is entitled to adequate protection for the use and diminution in value the Equipment Collateral and Personal Property Collateral.

H. CCG is willing to consent to the Debtor's use of the Cash Collateral, the Equipment Collateral, and the Personal Property Collateral based on the terms and conditions of this Agreement.

### Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficient of which are hereby confirmed, the parties agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein and made a part of this Agreement.

2. Effective Date. This Agreement will be effective *nunc pro tunc* to the Petition Date upon entry of an order from the Bankruptcy Court approving this Agreement.

3. Authority to Use the Cash Collateral. Subject to the terms and conditions hereinafter set forth, the Debtor is hereby authorized to use the Cash Collateral in order to pay post-petition expenses incurred in the ordinary course of its business activities.

4. Limitations of Use of Cash Collateral.

(a) The Debtor shall not transfer Cash Collateral to, nor expend Cash Collateral for the benefit of any other entity owned by or affiliated with the Debtor.

(b) The Debtor shall not use any portion or proceeds of the Cash Collateral to fund acquisitions, capital expenditures, capital leases, or other transactions not in the ordinary course of the Debtor's business unless approved by the Court on notice to creditors.

5. Grant of Post-Petition Liens; Adequate Protection Payments.

(a) Post-Petition Liens. Notwithstanding anything in Section 552 of the Code to the contrary, CCG is hereby granted post-petition liens pursuant to Section 361(2) of the Code on any and all assets created or acquired by the Debtor on or after the Petition Date of the same type as the assets on which CCG held a lien or security interest on the Petition Date to the same validity, extent, and priority as existed as of the Petition Date, wherever located, effective *nunc pro tunc* as of the Petition Date. Said liens shall be deemed for all purposes to have been properly perfected, without filing, as of the Petition Date. Said liens shall not encumber avoidance actions held by the Debtor or the estate.

(b) Section 551 Issues. The Replacement Liens granted by this Agreement shall not be subject to any lien or security interest which is avoided and preserved for the benefit of the Debtor's estate under Section 551 of the Bankruptcy Code.

(c) CCG's Prior Liens. CCG shall retain all liens that existed prior to the Petition Date with the same priority and to the full extent that they existed prior to the Petition Date.

(d) Adequate Protection Payments. Commencing November 15, 2017 and continuing each month thereafter on the 15th day of each month, until further order of the Court, the Debtor shall remit monthly post-petition payments on the Notes to CCG in the aggregate amount of \$4,880.00 per month.

6. Insurance. The Debtor shall at all times maintain such insurance on the Equipment Collateral and Personal Property Collateral as is required under the Security Agreements with one or more insurance companies, and shall name CCG as sole loss payee on such insurance policies. The Debtor shall provide CCG with written evidence of adequate insurance immediately and upon request thereafter.

7. Plan Treatment. The unpaid indebtedness existing at the time of confirmation shall be deemed fully secured and paid at the same monthly amount as stated in section 5(d) above until the indebtedness is paid in full with interest. In the event the Debtor files such a plan, CCG shall affirmatively cast its vote in favor thereof.

8. Events of Default. Any of the following shall constitute an "Event of Default" hereunder:

(a) Debtor shall violate or fail to timely satisfy, post-petition, any term or condition of this Agreement or the Loan Documents;

(b) A trustee or examiner is appointed under Chapter 11 of the Code without the consent of CCG;

(c) The Debtor sells or encumbers any item of property subject to CCG's liens (including, without limitation, the Cash Collateral) without the prior written consent of CCG;

(d) The Debtor's Chapter 11 proceeding is converted to a Chapter 7 proceeding or dismissed; or

(e) Insurance required under the Security Agreements is deemed inadequate, allowed to lapse by the Debtor, or is otherwise terminated.

9. Remedies upon an Event of Default. Upon the occurrence of an Event of Default (other than the absence of insurance), CCG shall notify the Debtor's counsel of such Event of Default via e-mail at [lmk@kutnerlaw.com](mailto:lmk@kutnerlaw.com) and the Debtor shall have five (5) days (two (2) business days in the case of inadequate insurance) from the date of such notice to fully cure the Event of Default. In the event that the Debtor fails to timely cure such Event of Default, the Debtor's right to use Cash Collateral shall immediately terminate and CCG may submit to the Court a notice regarding the termination of the Debtor's ability to use Cash Collateral.

10. Incorporation of Loan Documents. The Loan Documents are hereby incorporated in to this Agreement by reference.



11. Entire Agreement. This Agreement constitutes the entire agreement between the parties. No other promises, representations, or other inducements have been made to the parties in exchange for this Agreement.


12. Modification. No provision of this Agreement may be waived or modified in any respect whatsoever except by written agreement signed by the parties to this Agreement.

13. Counterparts. This Agreement may be executed by facsimile, e-mail, or other means of electronic signature and may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

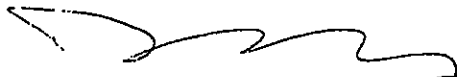
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IN WITNESS WHEREOF, the parties have entered into this Cash Collateral and Adequate Protection Agreement as of the day first set forth above.

**COLORADO PROPERTY REPAIR, LLC**

By:   
Its: MANAGING MEMBER  
Title: \_\_\_\_\_

**COMMERCIAL CREDIT GROUP INC.**

By:   
Its: Senior Vice President  
Title: \_\_\_\_\_