

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

In Re:)	Chapter 11
)	
UNITED SITE AND UTILITIES, LLC)	
Debtor.)	Case No. 17-04912-JMC-11

**JOINT MOTION FOR USE OF CASH COLLATERAL
AND PROVIDING ADEQUATE PROTECTION**

Debtor herein, United Site and Utilities, LLC (“the “Debtor”), and secured creditor, Commercial Credit Group Inc. (“CCG”), by and through their respective counsel, for their Joint Motion providing Debtor with interim use of cash collateral and providing CCG with adequate protection, stipulate and represent the following:

- a. On June 29, 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 , Debtor was obligated to CCG on two 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 6-29-17</u>
11-19-15	\$202,025.00	\$112,227.36
3-3-16	\$122,544.00	\$66,714.20

- c. In order to secure 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 Debtor granted to CCG security interests and liens in and upon specific vehicles and 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, which in part, constitute “cash collateral” as defined in 11 U.S.C. 363(a) (the “Cash Collateral”). The obligations on the Notes are cross-collateralized by the Equipment Collateral and Cash Collateral;

d. CCG properly perfected its pre-petition security interests in the Cash Collateral and Equipment Collateral by filing UCC-1 Financing Statements and having its lien noted on the face of certificates of title, as appropriate (the “Financing Statements,” which together with the Notes, Security Agreements, certificates of title, 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, Debtor owed the combined amount of \$178,941.56 on the Notes, plus subsequently accruing interest, and other charges, including legal expenses recoverable under the Loan Documents (collectively, the “Indebtedness”);

f. The Debtor hereby acknowledges: (a) that the Loan Documents and Indebtedness to CCG thereunder constitute legal, valid and binding obligations of Debtor, (b) that Debtor has no claims, set-offs or defenses with respect to the Indebtedness and security interests evidenced by the Loan Documents, (c) that CCG’s pre-petition security interests in the Equipment Collateral and Cash Collateral are valid, properly perfected security interests, and are unavoidable and infeasible in this bankruptcy proceeding or otherwise, and (d) that the Indebtedness is fully secured by the Equipment Collateral and Cash Collateral as of the Petition Date.

g. 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 of its interests therein. Accordingly, Debtor and CCG believe that the terms authorized hereby are fair under the circumstances and that good cause has been shown for the filing of this Joint Motion and should be authorized by this Court.

IT IS THEREFORE, AGREED as follows:

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

2. Post-Petition Considerations. The parties agree as follows, regarding CCG:

2.1. Post-petition Replacement Liens. CCG shall be 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.

2.2 Payments. Commencing October 15, 2017, and then on the 15th day of each month thereafter, Debtor shall remit monthly post-petition interest only payments to CCG for the months of September (in the amount of \$4,000.00), October (in the amount of \$4,500.00), and November (in the amount of \$5,000.00). Commencing December 15, 2017, Debtor shall remit monthly post-petition contract payments in the aggregate amount of \$7,613.00 per month. All payments

accrued but unpaid during the pendency of this Stipulation shall be due ten (10) days after the Court enters its Order approving this Stipulation. Such payments shall continue until the Indebtedness is paid in full, the confirmation of a Chapter 11 plan or other Order of the Court.

2.3 Insurance. 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. Debtor shall provide CCG with written evidence of adequate insurance immediately, and upon request thereafter.

3. Plan Treatment. The unpaid Indebtedness existing at the time of confirmation shall be deemed fully secured and paid at the amount set forth in the Plan until the Indebtedness is paid in full with interest or otherwise ordered by the Court. The other terms of the Loan Documents shall be expressly preserved.

4. Events of Default. Any of the following shall constitute an “Event of Default” hereunder:

4.1 Debtor shall violate or fail to timely satisfy, post-petition, any term or condition of this Joint Motion or the Loan Documents.

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

4.3 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.

4.4 Debtor's Chapter 11 proceeding is converted to a Chapter 7 proceeding or dismissed.

4.5 Debtor's business operations materially change.

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

5. Remedies upon an Event of Default. Upon the occurrence of a post-petition 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 kc@smallbusiness11.com and Debtor shall have five (5) days or, in the event of default caused by inadequate insurance, two (2) business from the date of such notice to fully cure the Event of Default. In the event that Debtor fails to timely cure such Event of Default, the automatic stay provisions of section 362(a) of the Bankruptcy Code, and Debtor's right to use Cash Collateral, shall terminate with respect to CCG, and CCG may submit to the Court, on an *ex parte* basis, an affidavit regarding Debtor's uncured Event of Default and a proposed order prohibiting further use of Cash Collateral, and terminating the automatic stay regarding the Equipment Collateral, and directing Debtor to forthwith assemble the Equipment Collateral on Debtor's business premises for recovery by CCG.

6. Relief from Stay. The automatic stay of Code Section 362(a) is modified as to CCG to the extent necessary to implement the terms of this Order.

7. Incorporation of Notes and Security Agreements. The Notes, Security Agreements and other Loan Documents are hereby incorporated by reference and are hereby ratified, reaffirmed and confirmed by Debtor.

Consented to:

Commercial Credit Group Inc.

United Site and Utilities, LLC

By: /s/ Thomas P. Yoder
Thomas P. Yoder
Barrett McNagny LLP
215 E. Berry Street
Fort Wayne, IN 46802
tpy@barrettllaw.com

By: /s/ KC Cohen
KC Cohen
Attorney at Law
151 N. Delaware Street, Suite 1106
Indianapolis, IN 46204
kc@esoft-lega.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served upon the following by the Court's electronic mailing system this 6th day of October, 2017:

KC Cohen
kc@esoft-egal.com

Office of the U.S. Trustee
ustpregion10.in.ecf@usdoj.gov

Laura DuVall
Laura.Duvall@usdoj.gov

Whitney L. Mosby
wmosby@bgdlegal.com

Harley K. Means
hkm@kgrlaw.com

Thomas C. Scherer
tscherer@bgdlegal.com

/s/ Thomas P. Yoder
Thomas P. Yoder