

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
)
) NOTICE OF **PRELIMINARY**
) HEARING ON MOTION
) FOR USE OF CASH COLLATERAL
) TO OBTAIN CREDIT
Debtor(s)) (*Check One*)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, _____, filed a Motion For Use of Cash Collateral To Obtain Credit (*check one*). A copy of the motion is attached; and it includes (i) the statement required by [Local Form #541.5](#), and (ii) the following allegations:

a. The immediate and irreparable harm that will come to the estate pending a final hearing is _____.

b. The amount of cash collateral credit (*check one*) necessary to avoid the harm detailed above prior to the final hearing is _____.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: _____.

3. A **PRELIMINARY** HEARING on the motion WILL BE HELD ON _____ AT _____ IN _____.
Testimony will be received if offered and admissible.

4. If you wish to object to the motion, you must do one or both of the following: (1) attend the preliminary hearing; and/or (2) file with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), a written response, which states the facts upon which you will rely and, if the response is filed within three business days before the hearing, notify the judge's chambers by telephone immediately after filing the document, as required by LBR 9004-1(b).

5. On _____ copies of this notice and the motion were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. §705; any creditors' committee chairperson [or, if none serving, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any creditors' committee attorney; the U.S. Trustee; and all affected lien holders whose names and addresses used for service are as follows:

Signature of Moving Party or Attorney

OSB #

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

541.1 (6/1/15)

Keith Y. Boyd, OSB #760701
keith@boydlegal.net
The Law Offices of Keith Y. Boyd
724 S. Central Ave., Suite 106
Medford, OR 97501
Telephone: (541) 973-2422
Facsimile: (541) 973-2426
Of Attorneys for Debtor in Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:

Champion Excavation, Inc.,
Debtor.

Case No. 17-61839-dwh11

MOTION FOR AUTHORITY TO USE
CASH COLLATERAL (Commercial Credit
Group)

**EXPEDITED CONSIDERATION
REQUESTED**

Champion Excavation, Inc., debtor in possession herein (DIP), hereby moves the Court for an order authorizing the use of cash collateral in the sum of \$165,000 and respectfully submits the following:

1. On June 8, 2017, this case was commenced by the filing of a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The DIP, on and since such date has continued in possession of its property and operation of its business at its office located at 7664 Baker Lane, Aumsville, OR 97325, as a debtor in possession. The business of the debtor is commercial excavation work and related services. On the date of filing, the debtor was performing on several excavation contracts pursuant to which it billed and was owed for services rendered, and pursuant to which it will bill for services to be performed.

MOTION FOR AUTHORITY TO USE CASH COLLATERAL - Page 1 of 6

2. On the date of filing, the debtor had \$2500 in deposit accounts. The DIP proposes to use all of said cash. Also on the date of filing, the debtor had current billings/accounts receivable in the approximate sum of \$45,000 and the DIP will bill approximately \$125,000 on Friday, June 15, 2017, all of which will be available for use within the first 4 weeks following filing. The non-current accounts receivable on the day of filing total approximately \$1,238,080.53. The DIP does not know how much of the accounts receivable is collectible. Therefore, the DIP does not seek use of the accounts receivable to fund operations.

3. Prior to the filing of the debtor's petition, CAN Capital Asset Servicing, Inc. (CAN Capital) was granted a security interest by the debtor in virtually all of the assets of the company as security for its loan. CAN Capital filed its UCC Financing Statement on March 2, 2015. The balance of the loan on the day of filing was approximately \$74,557.00.

4. Prior to the filing of the debtor's petition, American Leasing & Financial (American Financial) was granted a security interest by the debtor in a Caterpillar Motor Grader Model 12G, a Caterpillar Water Wagon, and virtually all of the assets of the company as security for its loan. American Financial filed its UCC Financing Statement on November 13, 2015. The balance of the loan on the day of filing was approximately \$91,920.00. The debtor believes the value of the equipment totals \$50,000.

5. Prior to the filing of the debtor's petition, Commercial Credit Group (CCG) was granted a security interest by the debtor in a 2006 Caterpillar D6NXL Dozer with Cab, a Kalyn Lowboy Trailer, and virtually all of the assets of the company as security for its loan. The Note and Security Agreement were signed effective November 20, 2015 and CCG filed its UCC Financing Statement on November 13, 2015. The balance of the loan on the day of filing was approximately \$91,920.00. The debtor believes the value of the equipment totals \$83,000.

MOTION FOR AUTHORITY TO USE CASH COLLATERAL - Page 2 of 6

6. Among the property securing the claim of CAN Capital, American Financial, and CCG (collectively “Secured Lenders”) are accounts, inventory, equipment, chattel paper, general intangibles, and the proceeds and products of such collateral; the proceeds of which constitute “cash collateral” within the meaning of 11 U.S.C. § 363(a).

7. There is one tax lien filed against the debtor. IRS filed its tax lien on February 13, 2017 in the amount of \$4,408.79

8. The DIP has no source of income for operation of the business other than the proceeds from its construction jobs. The DIP requires the use of cash collateral in the operation of the business to pay utilities, pay other expenses of the operation of the business, executory contract of All Star Staffing, and to make any adequate protection payments ordered by the court, all as set forth in the attached Exhibits 1 and 2.

9. If the DIP is not permitted to use cash collateral of the Secured Lenders it will not be able to continue to operate his businesses. Exhibit 1 contains the proposed four week cash collateral budget for operating expenses. Exhibit 2 contains the proposed six month cash collateral budget.

11. The DIP proposes to use cash collateral in which the Secured Lenders may hold a security interest, on the following terms:

a. To use cash from the operation of the business in conformance with the Budgets attached as Exhibits 1 and 2. In any month, the DIP may expend in the aggregate one hundred-ten percent (110%) of the budgeted expenditures for that month. Should the DIP exceed (110%) in any month as previously described, Secured Lenders or any other party may file a motion with the court for an order terminating use of cash collateral or for another remedy.

b. To provide adequate protection to the Secured Lenders during the term of this agreement:

(i) The Secured Lenders each shall be granted liens on and security interests in all post-petition cash, accounts receivable, and inventory as security for any claims they may have arising from the diminution in the value of the interest in prepetition collateral resulting from the use by the DIP thereof from and after the petition date in the same positions their liens attached to the DIP's assets on the date this case was filed.

(ii) Except as otherwise ordered, all funds received shall be deposited in the DIP's bank account or accounts and all expenses of the DIP shall be paid from such accounts. The DIP shall not prepay expenses except in the ordinary course of business.

(iii) The DIP will not use cash collateral during the pendency of this agreement for any purpose which is not authorized by the Bankruptcy Code or by an order of the court.

(iv) The Secured Lenders shall have access to and the right to inspect the DIP's assets and properties during business hours.

(v) The DIP will timely file with the court the monthly financial statements which the DIP is obligated to file under LBR 2015 and shall produce all the supporting documents that the DIP is required to produce to the U.S. Trustee.

(vi) Upon reasonable notice, the DIP will permit the Secured Lenders to inspect, review and copy any financial records of the DIP. These records will be made available at the DIP's place of business.

(vii) If the DIP defaults in any of the conditions of adequate protection, the Secured Lenders may provide the DIP with written notice of such default. Such notice will

also be filed with the Court and United States Trustee. If the default has not been cured within ten (10) days after notice of default is mailed, the DIP's authority to use the cash collateral will terminate without further notice or order of the court.

12. Nothing contained in a cash collateral order shall constitute:

a. An admission by the Secured Lenders that the protection provided to them shall not at some time become inadequate to fully and properly protect its interests and at any time it may apply to the court for additional adequate protection; or

b. An agreement to the treatment of the Secured Lenders under any plan of reorganization.

13. The use of cash collateral will continue until the earlier of a default and failure to cure by the DIP, confirmation of a plan, conversion to a case under Chapter 7, or dismissal.

14. Notwithstanding any of the provisions hereof, nothing contained in the cash collateral order shall constitute a determination as to the amount, validity, or priority of any prepetition obligation, lien, or security interest of any creditor; and all rights of the DIP and other parties in interest to argue that any prepetition lien or security interest in any property of the DIP is unperfected, unenforceable, or voidable, are preserved.

15. This motion does not contain any of the generally disapproved provisions set forth in LBF 541.5, a copy of which is attached hereto as Exhibit 3.

16. The DIP requests that the Court consider this motion on an expedited basis so that they may continue operations.

WHEREFORE, the DIP requests that this Court hold a preliminary hearing pursuant to 11 U.S.C. §363(c)(3) and FRBP 4001(b) to consider authorizing the DIP, pending a final

MOTION FOR AUTHORITY TO USE CASH COLLATERAL - Page 5 of 6

hearing, to use cash collateral as described herein, and setting a final hearing to approve the DIP's motion for authority to use cash collateral as outlined herein.

DATED this 12th day of June, 2017.

THE LAW OFFICES OF KEITH Y. BOYD

By: /s/ Keith Y. Boyd
Keith Y. Boyd, OSB #760701
Of Attorneys for Debtor in Possession

Champion Excavation
4 Week Cash Requirement
6/9/2017

Cash Balance \$2,000.00

Revenue

Dollar store Aumsville	\$50,000.00
Dollar store Mill City	\$55,000.00
Misl starts	\$3,000.00
Dayton	\$35,000.00
Creekside	\$45,000.00

Retainage	\$15,000.00
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Total Revenue \$203,000.00

Expenses

Dollar store Aumsville

Job Materials	(\$38,550.00)
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Dollar store Mill City

Job Materials	(\$49,113.00)
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Dayton

Job Materials	(\$5,000.00)
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Creekside

Job Materials	(\$8,000.00)
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Labor Cost	(\$39,963.00)
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Fuel	(\$12,000.00)
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Sanitation	(\$750.00)
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Telephone	(\$475.00)
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Utilities	(\$640.00)
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Total expenses	(\$154,491.00)
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Net CashBalance \$50,509.00

Cash Collateral = total expenses plus contingency (\$165,000.00)

Champion Esxcavation
Six Month Cash Collateral Plan

	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	17-Dec	
Revenue							
Dollar Store Aumsville	\$4,333						
Retainage	\$9,784						
Dollar Store Mill City -Change Order	\$70,170						
Retainage	\$11,254						
Projected Revenue-Not yet Contracted							
Dollar General Dayton	\$45,995	\$91,990	\$45,995				
Retainage	(\$2,300)	(\$4,599)	(\$2,300)	\$9,199			
Lone Oak		\$271,417	\$271,417	\$271,417	\$271,417		
Retainage		(\$13,571)	(\$13,571)	(\$13,571)	(\$13,571)	\$54,283.36	
Total Revenue	\$139,236	\$345,236	\$301,541	\$267,045	\$257,846	\$54,283	
Job Expenses							
Dollar General Dayton							
Material	\$28,471	\$37,962	\$28,471				
Subcontractors		\$2,400					
Lone Oak							
Material		\$97,126	\$97,126	\$97,126	\$97,126		
Subcontractors		\$52,154	\$52,154	\$52,154	\$52,154		
Labor	\$56,091	\$61,131	\$61,131	\$61,131	\$61,131	\$61,131	
Total Job Expenses	\$84,562	\$250,773	\$238,882	\$210,411	\$210,411	\$61,131	\$1,056,170
Overhead Expenses							

Rent	\$2,100	\$2,100	\$2,100	\$2,100	\$2,100	\$2,100
Insurance	\$8,400	\$8,400	\$8,400	\$8,400	\$8,400	\$8,400
Fuel	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
Repairs	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Telephone	\$500	\$500	\$500	\$500	\$500	\$500
Utilities	\$700	\$700	\$700	\$700	\$700	\$700
Payroll & Books	\$400	\$400	\$400	\$400	\$400	\$400
Misc	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
Total Overhead	\$30,100	\$30,100	\$30,100	\$30,100	\$30,100	\$30,100
Owner draw	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Trustee Fees	\$4,725			\$4,725		
Cash	\$36,255	\$51,104	\$110,467	\$138,026	\$154,835	\$167,170
						\$125,222

PROCEDURES RE: MOTIONS FOR
USE OF CASH COLLATERAL OR TO OBTAIN CREDIT

1. Motion - Each motion for court approval to use cash collateral (Bankruptcy Code §363(c)(2)) or to obtain credit (Bankruptcy Code §364(c)) must clearly either:
 - a. state that it does not contain any of the provisions set forth in paragraph 5 below; or
 - b. identify which of the provisions in paragraph 5 are contained in the motion, and the justification for the provision(s).

2. Notice of Hearing on Motion - The moving party is required to use the appropriate local form Notice of Hearing (i.e., COMPLETELY fill out [Local Form #541.1](#) for a preliminary hearing and [Local Form #541](#) for a final hearing). The moving party must obtain the hearing date, time and location from the court before service.

Note: A preliminary hearing is required only when use of cash collateral or credit is sought within the time frame set forth in Fed. R. Bankr. Proc. 4001(b)(2) or (c)(2), and only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

3. Service of Motion and Notice - The moving party must serve the motion and notice on all parties listed in pt. 5 of the notice.

Note: Service for a preliminary hearing must be made within a reasonable time prior to the hearing by giving telephonic or other actual notice of the hearing date, time and location to all parties requiring notice (including the U.S. Trustee). Service for a final hearing must be made within 2 business days after receiving the hearing date. A moving party who cannot serve the motion and notice within these time frames must notify the court and obtain a new date. Sanctions may be imposed for failure to comply.

4. Filing of Motion and Notice with Clerk's Office - The motion and notice must be filed with, or mailed to, the Clerk on the date of service.

5. Discouraged Provisions.

- a. The court will not normally approve the following types of provisions in motions either to use cash collateral or to obtain credit.
 1. Cross-collateralizing prepetition debt with postpetition assets.
 2. Findings of fact on matters extraneous to the approval process. (For example, in connection with an application to borrow on a secured basis, a finding that the debtor cannot obtain unsecured credit would be acceptable, whereas a finding that the lender acted in good faith in declaring the prepetition loan in default would not be acceptable.)
 3. Provisions or findings of fact that bind the debtor, the estate and/or all parties in interest with respect to the validity, perfection, relative priority or amount of the secured party's lien or debt. This would include, for example, an order approving a provision that the secured party's lien is a "first priority" lien on the collateral.
 4. Any language that characterizes any postpetition payments as payments of interest, fees or costs on a prepetition loan.

5. Waiver of Bankruptcy Code §506(c) right to seek to charge collateral of secured party for the trustee's expenses in preserving or disposing of assets for the benefit of the secured party.
 6. Granting a security interest in bankruptcy avoiding power causes of action or avoiding power recoveries.
 7. Waiver or release by debtor or the estate of any or all claims the debtor/estate may have against the lender/secured party, including waiver of avoiding power causes of action against the lender/secured party or against insiders of the lender/secured party.
 8. Waiver by debtor or the estate of the right to seek to prime the secured position of the lender/secured party under Bankruptcy Code §364(d).
 9. Priming any other party's lien, without that party's consent or without providing adequate protection.
 10. Automatic relief from the stay of Bankruptcy Code §362(a) upon the occurrence of a default, upon conversion to Chapter 7 or upon appointment of a trustee, without further application to and order of the court.
 11. Waiver, effective on default, or expiration of a prior court order, of the debtor's right to move for a court order pursuant to Bankruptcy Code §363(c)(2)(B), authorizing the use of cash collateral in the absence of the secured party's consent.
- b. Each motion must state that it does not contain any of these provisions, or identify which of these provisions are contained in the motion, and the justification for the provision(s).

In re Champion Excavation, Inc.
U.S. Bankruptcy Court Case No. 17-61839-dwh11

SERVICE LIST FOR NOTICE OF PRELIMINARY HEARING ON
MOTION FOR USE OF CASH COLLATERAL

via Manual Service (first class mail and as described below):

Champion Excavation, Inc. (via email)
POB 1400
Aumsville, OR 97325

Commercial Credit Group (via fax)
Amanda Cullison
2135 City Gate Ln # 440
Naperville, IL 60563-3062

Largest Unsecured Creditors:

A+ Flagging, Inc. (via email)
John Cramer
PO Box 123
Aumsville, OR 97325-0123

Corix Water Products (via fax)
Vicki Taylor
11020 W Plank Ct # 100
Wauwatosa, WI 53226-3279

Allwest Underground (via fax)
Cora
799 Valentine Ave SE
Pacific, WA 98047-2124

HB Jaeger (via fax)
Jeff Stewart
2840 Black Lake Blvd SW # B
Tumwater, WA 98512-5107

Bank of the West (via email)
James Roach
PO Box 7167
Pasadena, CA 91109-7167

High Country Fusion Company (via fax)
Beth Coonts
PO Box 509
Fairfield, ID 83327-0509

Cal Portland (via email)
Kim Hetzel
PO Box 3601
Seattle, WA 98124-3601

Key Bank (via fax)
Sandra/Tracy/Farrin
4910 Tiedeman Rd
Brooklyn, OH 44144-2338

Capital Rental (via fax)
Mark
5345 Commercial St SE
Salem, OR 97306-1015

Knapp, Michael E. (via email)
2355 State St
Salem, OR 97301-4541

Chavarria Construction (via email)
Colleen Chavarria
2200 Silver Falls Dr NE
Silverton, OR 97381-9458

Les Schwab (via email)
Jeremy
2275 S Santiam Hwy
Lebanon, OR 97355-3047

Columbia West (via fax)
Jeff Maruca
11917 NE 95th St
Vancouver, WA 98682-2438

Marc Nelson Oil Products (via fax)
Annie Koenig
PO Box 7135
Salem, OR 97303-0024

SERVICE LIST FOR NOTICE OF PRELIMINARY HEARING ON MOTION FOR USE OF
CASH COLLATERAL - **Page 1 of 2**

PetroCard Metrofueling Inc. (via fax)
John Canini
PO Box 34243
Seattle, WA 98124-1243

Commercial Credit Group
Cogency Global, Inc., Registered Agent
325 13th St NE #404
Salem, OR 97301

Raccoon Rock Products, Inc. (via email)
Brian Phillips
306 Shaff Rd
Stayton, OR 97383-1028

Can Capital Asset Servicing (via email)
2015 Vaugh Rd NW #500
Kennesaw GA 30144

Roger Langeliers Construction Co. (via fax)
Rick
7145 NW Progress Ct
Hillsboro, OR 97124-8568

Can Capital Asset Servicing
Parris Sanz, President
414 W 14th St #302
New York NY 10014

Sunbelt Rentals (via email)
Credit Manager
PO Box 409211
Atlanta, GA 30384-9211

Can Capital Asset Servicing
CT Corporation System, Registered Agent
388 State St #420
Salem OR 97301

Waste Management (via fax)
Credit Manager
Tualatin Valley Waste Recovery
PO Box 541065
Los Angeles, CA 90054-1065

IRS
PO Box 7346
Philadelphia, PA 19101-7346

Secured Lenders:

The Attorney General of the United States
Department of Justice
10th & Constitution NW
Washington DC 20530

American Leasing and Financial (via fax)
Thomas Davis, Authorized Representative
11501 SW Pacific Hwy #200
Portland OR 97223

U.S. Attorney for the District of Oregon
1000 SW 3rd Ave #600
Portland OR 97204

Commercial Credit Group (via fax)
Amanda Cullison
2135 City Gate #440
Naperville IL 60563

via Electronic Service:

KEITH Y BOYD ecf@boydlegal.net, arnold@boydlegal.net
US Trustee, Eugene USTPRegion18.EG.ECF@usdoj.gov