

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In Re:

SNOWTRACKS COMMERCIAL
WINTER MANAGEMENT, LLC

Case No.: _____

Chapter 11

Debtor.

MOTION TO USE CASH COLLATERAL
AND GRANT ADEQUATE PROTECTION

SnowTracks Commercial Winter Management, LLC (“Debtor” or “SnowTracks”), by its counsel Rebecca R. DeMarb and Bartlett Durand of Sweet DeMarb LLC (“SD LLC”), hereby submits this Motion to Use Cash Collateral and Grant Adequate Protection (the “Motion”) in the above-captioned chapter 11 case (the “Chapter 11 Case”). In support of the Motion, the Debtor respectfully states:

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this District and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Sections 361, 362 and 363 of Title 11 of the U.S. Code (the “Bankruptcy Code”), along with Fed. R. Bankr. P. 4001 and 6003, authorize the relief requested in

this Motion. To date, no previous request for the relief sought in this Motion has been requested.

3. On the date of this Motion (the "Petition Date"), the Debtor filed its Petition for protection pursuant to Chapter 11 of the Bankruptcy Code.

4. Debtor is continuing in possession of its property and operating and managing its business pursuant to § 1107 of the Bankruptcy Code. A creditors' committee has not been established and a trustee has not been appointed.

5. On the Petition Date, Debtor filed a Motion for Expedited Hearing and to Limit Notice on First Day Motions (the "Expedited Motion"). The general background information of this case is contained in the Declaration of Michael Bronsteatter in support of the Expedited Motion (the "Declaration") and is incorporated herein.

6. By this Motion, Debtor respectfully seeks an interim order (together with any amended Interim Order, the "Interim Order") as follows:

(a) authorizing, on an interim and permanent basis, the Debtor:

(i) pursuant to sections 361, 363(c)(2) and 363(e) of the Bankruptcy Code, to use Pre-Petition Collateral, including Cash Collateral (each as defined in the Interim Order), and to provide adequate protection to Lincoln Community Bank, (the "Bank"), KLC Financial and a "Mystery Lender" (together, the "Cash Lenders");

(ii) to grant to the Cash Lenders security interests in and liens on the assets of the Debtor defined in this Motion as Collateral, as described below;

- (b) to schedule a hearing on, and at such hearing enter an Order, granting authority to make the adequate protection to various Equipment Lenders, and
- (c) scheduling an objection deadline on the use of cash collateral and grant of adequate protection on to the Cash Lenders within 21 days of the Petition Date and providing that if no objections are timely filed, the Interim Order becomes a Final Order without further notice or hearing.

7. Debtor is indebted to the Cash Lenders claiming a security interest in cash collateral ("Cash Collateral") as follows:

- a. Debtor is indebted to the Bank. The Bank's collateral includes but is not limited to all of the Debtor's equipment, fixtures, inventory, documents, general intangible, accounts, deposit accounts, contract rights, chattel paper, instruments, letters of credit rights and investment property and all proceeds, supporting obligations and products of the foregoing, wherever located. In addition, the Bank has purchase money security interests in specific pieces of equipment. As of the Petition Date, Debtor owed approximately \$365,000 to the Bank, plus reasonable attorney fees and costs as allowed by the loan documents. The exact value of the Collateral is unknown, but the value of the Collateral exceeds the amount owed to the Bank. The Bank perfected its interest in the Collateral through a series of UCC-1 filings with the Wisconsin Department of Financial Institutions, with the first filing having been made on May 5, 2008. In addition to cash collateral, Lincoln Community

Bank has specific security interests in various pieces of equipment. The Bank is Debtor's primary secured creditor.

b. Debtor is indebted to KLC Financial, Inc. ("KLC"), pursuant to an Equipment Financing Agreement related to equipment used by Black Granite Grain Co. LLC. Debtor is a co-debtor on that Equipment Financing Agreement. KLC filed a UCC-1 Financing Statement with the Wisconsin Department of Financial Institutions on May 13, 2015, claiming a security interest in substantially all assets of the Debtor, including cash and other assets that would be considered cash collateral. On the Petition Date, KLC was owed approximately \$8,000.00.

c. A mystery creditor filed a UCC-1 Financing Statement with the Wisconsin Department of Financial Institutions on January 12, 2016 claiming a security interest "in and to all of Merchant's present and future accounts, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment, inventory wherever located, and proceeds now or hereafter owned or acquired by Merchant." As listed with the Department of Financial Institutions, the mystery creditor is only identified as "UCC 110441019" [*sic.*]. Debtor has been attempting to identify the mystery creditor but, as of the Petition Date, Debtor has no information on the identity of this mystery creditor or the purpose of the debt.

8. Contemporaneously with this Motion, Debtor filed a separate Motion to Grant Adequate Protection (the "Adequate Protection Motion") to other creditors holding security interests in Debtor's Equipment (the "Equipment Lenders"). By this Motion, Debtor is requesting that the Court schedule a hearing on such Motion to Grant Adequate Protection.

**USE OF CASH COLLATERAL AND ADEQUATE
PROTECTION FOR CASH LENDERS**

9. Pursuant to Section 363(c)(2) of the Bankruptcy Code, a debtor-in-possession may not use cash collateral unless:

(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and a hearing, authorizes such use ... in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). In addition, Section 363(e) of the Bankruptcy Code provides that "on request of an entity that has an interest in property used; or proposed to be used ... by a [debtor in possession], the court, with or without a hearing, shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interests.

11 U.S.C. §363(e)

10. Debtor is authorized to represent that the Bank agrees to the entry of an order approving use of cash collateral and the grant of adequate protection pursuant to the terms of this Motion.

11. All of the Debtor's cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents and all cash proceeds of the prepetition collateral received after the commencement of this case (including cash proceeds from the Debtor's accounts receivable and sale of inventory), is encumbered

by liens granted to the Cash Lenders and constitutes the cash collateral, subject to the order of priority and perfection of the given Cash Lender, of the Cash Lenders as defined in 11 U.S.C. § 363 (the "Cash Collateral").

12. The Debtor requires use of Cash Collateral. Absent such immediate relief, Debtor will not be able to sustain business operations. Payroll is due on March 17, 2017. Vendors and lessors, crucial to the Debtor's business and going concern, will demand payment. Simply stated, without access to Cash Collateral, Debtor's operations would be brought to a grinding halt, resulting in immediate and irreparable harm to the Debtor and its stakeholders, including its ten employees. The ability of the Debtor to finance its operations requires immediate access to the Cash Collateral, the absence of which would immediately and irreparably harm the Debtor, the Estate, and the creditors. The ability to use the Cash Collateral will allow the Debtor to continue the operation of its businesses and administer and preserve the value of the Estate for the benefit of the Estate and creditors. All of the Debtor's cash on hand and cash flow from operations consists of proceeds of the Bank's Cash Collateral, subject to their priority in the same. Without immediate access to cash, as requested, on an interim basis pending entry of a final order, Debtor will be immediately and irreparably harmed. Debtor must have access to the Cash Collateral.

13. Debtor is requesting the entry of the Interim Order with the following provisions regarding the Debtor's use of Cash Collateral:

- a. Debtor is authorized to use Cash Collateral solely to fund the itemized expenditures (subject to permitted variances) contained in the budget attached hereto as Exhibit A (the "Budget"). Regarding permitted variances, for each rolling four week period set forth in the Budget (on a cumulative basis), the Debtor's actual ending cash balance for such period will not be less than 20% of the ending cash balance as set forth in the Budget. Given the nature of Debtor's business, when Debtor's revenue increases, Debtor's expenses increase dramatically. Accordingly, Debtor's "cash in" and "cash out" may vary substantially, but the actual ending cash balance will not be less than 20% of the ending cash balance stated on the Budget, as tested once every four weeks. The Bank and Debtor are authorized, in their sole discretion, to agree to increase cash disbursements and operating expenditures in the Budget, and upon written agreement by the Bank to so modify the Budget, Debtor be authorized to use Cash Collateral in such amount without the need for any further order of the Court.
- b. Every other Wednesday, beginning with the second Wednesday after the Petition Date, Debtor shall provide the Bank with a written accounting for (i) all Cash Collateral in its possession, custody or control, including the sources thereof; (ii) any Cash Collateral

expended and the purposes for which it was expended pursuant to this Order through Friday of the prior week; and (iii) actual revenue for the prior two week period. Debtor shall track and identify the proceeds of any Cash Collateral that are created after the Petition Date that is derived from proceeds of Cash Collateral and, therefore, subject to the Replacement Lien set forth in more detail below. Debtor shall not (i) compromise, adjust or modify the amount of any of Debtor's accounts receivable (by way of discount, offset or otherwise) other than in the ordinary course of business or (ii) sell, transfer or convey any item of Cash Collateral outside the ordinary course of business according to ordinary business terms without either the Bank's written permission or Court approval issued after notice to the Bank and an opportunity for a hearing.

- c. Debtor shall: (a) not conclude any transactions outside the ordinary course of business without Court approval; (b) maintain insurance of the type and nature required under the Loan Documents; (c) pay all post-petition withholding, sales, fuel and other tax obligations as they come due; (d) maintain its property in the same working condition as it was on the Petition Date; and (e) provide Cash Lenders with inspection and appraisal rights on the Collateral at all reasonable times.

d. Debtor proposes that the following be events of default in the Interim Order:

- a. Failure of the Debtor to make any payment under the Interim Order to the Bank or any taxing authority within three (3) Business Days after such payment is due;
- b. Failure of the Debtor to comply with any material provision of the Interim Order and such failure to comply continuing unremedied for three (3) Business Days following notice by Lenders of such failure; or
- c. The conversion or dismissal of this Case.

14. As adequate protection for any diminution in the Cash Lender's Collateral through the Debtor's use, possession or the operation of the automatic stay, Debtor proposes to grant to Cash Lenders, pursuant to Sections 361(1) and 363(e) of the Bankruptcy Code, additional and replacement security interests and liens (the "Replacement Lien") in the same order of the Cash Lenders' priority of perfection in the same. The Replacement Lien would secure an amount of the Cash Lenders' Prepetition Indebtedness equal to the aggregate diminution in the value of Collateral resulting from the Debtor's use or possession of the Cash Collateral and Collateral (whether as a result of physical deterioration, loss, consumption, use, shrinkage, decline in market value or otherwise). The Replacement Lien shall attach to all proceeds, rents or profits of the Cash Collateral that were either subject to the

prepetition liens or acquired as a result of the Debtor's use and/or expenditure of Cash Collateral. For the avoidance of doubt the Replacement Lien shall not attach to causes of action arising under Chapter 5 of the Bankruptcy Code or the proceeds thereof.

15. Debtor requests that the Replacement Lien granted to the Cash Lenders be perfected by operation of law upon execution and entry of the Interim Order by the Court. As further adequate protection, the Debtor requests authorization to make payments (the "Adequate Protection Payments") to the Bank as stated in the Budget.

16. Debtor's obligations to the Bank will continue to accrue at the contract rate during the term of the Case.

17. Notwithstanding, the Cash Lenders will retain their liens and interests in their Collateral, including Cash Collateral, as they existed on the Petition Date.

**REQUEST TO GRANT ADEQUATE PROTECTION TO EQUIPMENT
LENDERS AND TO SCHEDULE A HEARING ON SAME**

18. Debtor is requesting that the Court schedule a hearing on the Adequate Protection Motion filed contemporaneously with this Motion. The Adequate Protection Motion does not require emergency relief.

NOTICE AND PROCEDURAL PROVISIONS

19. Pursuant to Bankruptcy Rule 4001(b), Debtor requests that the Court conduct an interim hearing on the use of cash collateral and adequate protection to

the Cash Lenders to avoid immediate and irreparable harm and prejudice to the Debtor's estate and all parties in interest.

20. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to Section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. For all of the reasons stated in this Motion, Debtor requests an expedited hearing on this Motion.

21. The Debtor respectfully requests that this Court set an objection deadline of twenty one days from the Petition Date and, if no objections to the Debtor's use of cash collateral are filed and served by such objection deadline, then the Interim Order would become final without further notice or hearing.

22. Notice of this objection deadline will be provided via electronic mail or facsimile to the parties or their counsel identified on the affidavit of mailing filed with the Court on the Petition Date, or by ECF service if applicable. Given the nature of the relief requested herein, Debtor submits that no other notice is necessary and asks the Court, pursuant to Fed. R. Bankr. P. 9007, to approve the same.

WHEREFORE, the Debtor respectfully requests that the Court (a) enter the Interim Order, granting Debtor the right to use cash collateral and grant the Cash Lenders adequate protection; (b) schedule a hearing on and at the hearing grant the Equipment Lenders adequate protection; (c) schedule a final objection deadline on the use of cash collateral of twenty one days from the Petition Date; and (d) grant such other and further relief to the Debtor as the Court may deem proper.

Dated this 10th day of March, 2017.

SWEET DeMARB LLC
Attorneys for Debtor

By: 

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EXHIBIT A

BUDGET

	Week 1 3/13/2017	Week 2 3/20/2017	Week 3 3/27/2017	Week 4 4/3/2017
Week Beginning				
Beginning Cash Balance	\$ 120,000.00	\$ 124,775.00	\$ 166,792.00	\$ 144,084.60
Cash In				
Contract Revenue	\$ -	\$ 27,460.00	\$ 8,430.00	\$ -
T&M Revenue	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00	\$ 28,025.00
Landscaping Income	\$ -	\$ -	\$ -	\$ -
Total Cash In	\$ 37,500.00	\$ 64,960.00	\$ 45,930.00	\$ 28,025.00
Cash Out				
Gross Payroll, Taxes (incl. Mike)	\$ 10,000.00	\$ -	\$ 28,000.00	\$ -
Draw to Mike for the IRS (past and current)	\$ 5,500.00	\$ -	\$ -	\$ -
Fuel Exp (Machines)	\$ 1,250.00	\$ 1,250.00	\$ 1,250.00	\$ 500.00
Fuel Exp (Trucks)	\$ 1,375.00	\$ 1,375.00	\$ 1,375.00	\$ 7,500.00
Salt	\$ 8,500.00	\$ 8,500.00	\$ 8,500.00	\$ 3,500.00
Sand	\$ -	\$ -	\$ 300.00	\$ -
Sidewalk Salt	\$ -	\$ -	\$ -	\$ -
Mulch & Fertilizer				
Repairs	\$ 1,250.00	\$ 1,250.00	\$ 1,250.00	\$ 1,250.00
Rent- Stewart Avenue (Additional Shop- 3rd Party Owner)	\$ -	\$ 1,300.00	\$ -	\$ -
Rent - Weston (Additional Shop - 3rd Party Owner)	\$ -	\$ 1,518.00	\$ -	\$ -
Insurance (Equipment & Vehicles)	\$ -	\$ 3,750.00	\$ -	\$ -
Utilities (for all 3 shops & cell phones)	\$ 1,850.00	\$ -	\$ 1,850.00	\$ -
Registrations	\$ -	\$ -	\$ -	\$ -
UST Fees	\$ -	\$ -	\$ -	\$ -
Real Estate Lease Payment (to Mike re: LCB - W4008 County Rd G)	\$ -	\$ 1,000.00	\$ -	\$ -
Equipment Lease Payment (to Mike re: JD Credit, Peoples Collateral)	\$ -	\$ -	\$ 6,894.46	\$ -
Equipment Lease Payment (to Black Granite re: CNH)	\$ -	\$ -	\$ 4,600.00	\$ -
Wells Fargo Vendor (was GE Cap) AP Payment	\$ -	\$ -	\$ 2,745.96	\$ -
Lincoln Community Bank AP Payment	\$ -	\$ -	\$ 5,880.00	\$ -
Marlin Leasing Payment	\$ -	\$ -	\$ 132.00	\$ -
Merchant's Capital AP Payment	\$ -	\$ -	\$ 1,600.00	\$ -
CNH Cap Monthly Payment	\$ -	\$ -	\$ 800.00	\$ -
Wells Fargo Bank NA AP Payment	\$ -	\$ -	\$ 459.98	\$ -

EX. A

Mystery Creditor that Filed the UCC-1 on 1/12	\$	-	\$	-	\$	-	\$	-
Professional Fees -- Attorneys	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00
TOTAL CASH OUT	\$	32,725.00	\$	22,943.00	\$	68,637.40	\$	15,750.00
ENDING CASH BALANCE	\$	124,775.00	\$	166,792.00	\$	144,084.60	\$	156,359.60

Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13
4/10/2017	4/17/2017	4/24/2017	5/1/2017	5/8/2017	5/15/2017	5/22/2017	5/29/2017	6/5/2017
\$ 156,359.60	\$ 149,134.60	\$ 184,801.60	\$ 175,044.20	\$ 174,499.20	\$ 155,399.20	\$ 155,731.20	\$ 118,168.80	\$ 119,068.80
\$ -	\$ 27,460.00	\$ 8,430.00	\$ 8,430.00	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 28,025.00	\$ 28,025.00	\$ 28,025.00	\$ 12,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00
\$ 28,025.00	\$ 55,485.00	\$ 48,955.00	\$ 32,930.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00
\$ 14,000.00	\$ -	\$ 21,500.00	\$ -	\$ 21,500.00	\$ -	\$ 21,500.00	\$ -	\$ 21,500.00
\$ 5,500.00	\$ -	\$ -	\$ -	\$ 5,500.00	\$ -	\$ -	\$ -	\$ 5,500.00
\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
\$ 7,500.00	\$ 7,500.00	\$ 7,500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
\$ 3,500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
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\$ -	\$ -	\$ -	\$ 24,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 1,250.00	\$ 1,250.00	\$ 1,250.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00
\$ -	\$ 1,300.00	\$ -	\$ -	\$ -	\$ 1,300.00	\$ -	\$ -	\$ -
\$ -	\$ 1,518.00	\$ -	\$ -	\$ -	\$ 1,518.00	\$ -	\$ -	\$ -
\$ -	\$ 3,750.00	\$ -	\$ -	\$ -	\$ 3,750.00	\$ -	\$ -	\$ -
\$ -	\$ -	\$ 1,850.00	\$ -	\$ -	\$ -	\$ 850.00	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ 4,875.00	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ 1,000.00	\$ -	\$ -	\$ -	\$ 1,000.00	\$ -	\$ -	\$ -
\$ -	\$ -	\$ 6,894.46	\$ -	\$ -	\$ -	\$ 6,894.46	\$ -	\$ -
\$ -	\$ -	\$ 4,600.00	\$ -	\$ -	\$ -	\$ 4,600.00	\$ -	\$ -
\$ -	\$ -	\$ 2,745.96	\$ -	\$ -	\$ -	\$ 2,745.96	\$ -	\$ -
\$ -	\$ -	\$ 5,880.00	\$ -	\$ -	\$ -	\$ 5,880.00	\$ -	\$ -
\$ -	\$ -	\$ 132.00	\$ -	\$ -	\$ -	\$ 132.00	\$ -	\$ -
\$ -	\$ -	\$ 1,600.00	\$ -	\$ -	\$ -	\$ 1,600.00	\$ -	\$ -
\$ -	\$ -	\$ 800.00	\$ -	\$ -	\$ -	\$ 800.00	\$ -	\$ -
\$ -	\$ -	\$ 459.98	\$ -	\$ -	\$ -	\$ 459.98	\$ -	\$ -

\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00
\$	35,250.00	\$	19,818.00	\$	58,712.40	\$	33,475.00	\$	31,600.00	\$	12,168.00	\$	50,062.40	\$	11,600.00	\$	3,000.00	\$	11,600.00	\$	31,600.00
\$	149,134.60	\$	184,801.60	\$	175,044.20	\$	174,499.20	\$	155,399.20	\$	155,731.20	\$	118,168.80	\$	119,068.80	\$	119,068.80	\$	99,968.80	\$	99,968.80