

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

IN RE: )  
 )  
PREMIER PAVING, INC. ) Case No. 12-16445-MER  
EIN: 84-1396608 )  
 )  
Debtor. )

**MOTION TO APPROVE CONTINUED USE OF CASH COLLATERAL  
PURSUANT TO FINAL CASH COLLATERAL AGREEMENT**

The Debtor and Debtor in Possession, Premier Paving, Inc. (“Debtor”), by and through its attorneys, Kutner Miller Brinen, P.C., for its Motion to Approve Continued Use of Cash Collateral Pursuant to Final Cash Collateral Agreement respectfully states as follows:

1. The Debtor filed for relief under Chapter 11 of the Bankruptcy Code on April 2, 2012 (the “Petition Date”). The Debtor remains a Debtor-in-Possession.
2. The Debtor operates a full service highway construction company, which services include: (a) paving, (b) grading and milling, (c) geotextiles, (d) trucking, (e) traffic control, and (f) quality control. The Debtor also owns and operates an asphalt plant.
3. On the Petition Date, the Debtor filed its Motion to Use Collateral, seeking authority to use cash collateral on an interim basis and requesting a final hearing (the “Cash Collateral Motion, Docket No. 14).
4. On April 9, 2012 at 11:00 a.m., the Court conducted a hearing to, among other things, consider interim approval of the Cash Collateral Motion. At the hearing an agreed to Interim Order was presented to the Court (the “Interim Order;” Docket No. 39). The Interim Order, as approved by the Court, among other things: (1) authorized the use of cash collateral in accordance with the budget attached to the Cash Collateral Motion through the date of a final hearing; (2) set May 1, 2102 at 1:30 p.m. as the time and date for the final hearing (the “Final Hearing”); and (3) provided Wells Fargo with the right to conduct an audit of the Debtor, with the first audit to commence on April 18, 2012.
5. The Debtor and Wells Fargo entered into a Second Interim Cash Collateral Agreement, which was approved by the Court on May 29, 2012. The Second Interim Cash Collateral Agreement reset the Final Hearing for July 2, 2012 at 9:30 a.m.
6. The only parties to object to the Cash Collateral Motion were Wells Fargo Bank, NA (“Wells”) and the Official Committee of Unsecured Creditors (the “Committee”).

7. The Debtor and Wells entered into a Stipulation for the Use of Cash Collateral on a final basis through September 30, 2012, which agreement was consented to by the Committee which agreement was approved by the Court.

8. Since September 30, 2012, the Debtor and Wells consented to the continued use of cash collateral on a monthly basis, pursuant to the nearly identical terms and budget of the Stipulation of Use of Cash Collateral with the latest agreement expiring June 1, 2013. The one modification to the agreement, which started with the January, 2013 agreement, is located at paragraph 7(h) which requires the Debtor to provide a written report to Wells Fargo every two weeks detailing the status of the sale. The report will also be sent to the Creditors Committee.

9. The Debtor and Wells have consented to the continued use of cash collateral for an additional month through July 1, 2013 pursuant to the nearly identical terms and budget of the Stipulation of Use of Cash Collateral, a copy of the Stipulation and budget are attached hereto as Exhibit 1.

10. The Debtor asserts notice is not required since the Debtor is merely extending the Final Cash Collateral Order with the consent of Wells.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, a proposed form is filed herewith, approving the Stipulation for Use of Cash Collateral attached hereto and granting such further and additional relief as to the Court may appear proper.

DATED: May 17, 2013

Respectfully submitted,

By: 

Aaron A. Garber (#36099)

**KUTNER MILLER BRINEN, P.C.**

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### CERTIFICATE OF SERVICE

The undersigned certifies that on May 17, 2013, I served by prepaid first class mail a copy of the foregoing **MOTION TO APPROVE CONTINUED USE OF CASH COLLATERAL PURSUANT TO FINAL CASH COLLATERAL AGREEMENT** on all parties against whom relief is sought and those otherwise entitled to service pursuant to the FED. R. BANKR. P. and these L.B.R. at the following addresses:

Suncor Energy (U.S.A.), Inc.  
717 17<sup>th</sup> Street  
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Denver, CO 80202

Power Motive Corporation  
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Denver, CO 80216

Kevin D. McCarthy, Inc.  
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Keenesburg, CO 80643

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Vicky Martina

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO**

In re:	)	
	)	
<b>PREMIER PAVING, INC.</b>	)	<b>Case No. 12-16445 MER</b>
EIN: 84-1396608	)	<b>Chapter 11 Bankruptcy</b>
	)	
Debtor.	)	

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**STIPULATION FOR USE OF CASH COLLATERAL**

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COMES NOW the Creditor, **WELLS FARGO BANK, NATIONAL ASSOCIATION** ("Wells Fargo"), by and through its undersigned attorneys, Brown, Berardini & Dunning, P.C., and the Debtor and Debtor-in-Possession, **PREMIER PAVING, INC.** ("Debtor"), by and through its attorneys, Kutner Miller Brinen, P.C., and for their Stipulation for Use of Cash Collateral, state as follows:

1. The Debtor filed for relief under Chapter 11 of the Bankruptcy Code on April 2, 2012 (the "Petition Date"). The Debtor remains a Debtor-in-Possession.
2. The Debtor operates a full service highway construction company, which services include: (a) paving, (b) grading and milling, (c) geotextiles, (d) trucking, (e) traffic control, and (f) quality control. The Debtor also owns and operates an asphalt plant.
3. Wells Fargo is a secured creditor of the Debtor with a first lien interest on certain assets of the Debtor, including cash collateral, accounts receivable, equipment and inventory.
4. The Debtor and Wells Fargo have entered into previous Cash Collateral Agreements that have been approved by the Court, the last which expires on June 1, 2013.
5. The Debtor and Wells Fargo have reached a further agreement for the Debtor to continue to use cash collateral to meet its operational needs and generate new revenues through July 1, 2013.
6. Debtor agrees to limit its net cash flow variance on its Budget attached hereto as Exhibit "A" during this interim period to no more than 15%.
7. To the extent that Wells Fargo or any other party possesses a properly perfected security interest in the Debtor's cash collateral, as adequate protection for the Debtor's use of cash collateral:
  - a. The Debtor shall continue to provide such party with a replacement lien on all inventory, equipment, accounts and general intangibles generated by the

Debtor post-petition to the extent that the use of cash collateral results in a decrease in the value of the secured party's interest in such property pursuant to 11 U.S.C. § 361(2);

- b. The Debtor shall continue to maintain adequate insurance coverage on all personal property assets and adequately insure against any potential loss;
- c. The Debtor shall continue to provide to Wells Fargo, in addition to all periodic reports and information filed with the Bankruptcy Court, including debtor-in-possession reports, the following weekly reports or as otherwise stated:
  - (i) all payment and check receipts made payable to Debtor, including joint checks payable to Debtor and any material supplier and/or subcontractor; and
  - (ii) Monthly reports on financial statements, including, Income Statements, Balance Sheet, and WIP; Weekly reports on Cash Flows, Inventory Valuation, A/R aging (including a break out of retention, and bonded A/R), A/P aging, and a WIP report that manually brings the monthly WIP report forward each week;
- d. The Debtor shall only expend cash collateral pursuant to the Budget subject to reasonable fluctuation that results in a change of no more than 15% in net cash flow per month;
- e. The Debtor shall pay all post-petition taxes;
- f. The Debtor shall retain in good repair all collateral in which such party has an interest;
- g. The Debtor shall pay Wells Fargo the sum of \$25,000 per month during the term of this Order with the first payment having been due on June 30, 2012; and
- h. The Debtor shall provide to Wells Fargo every two weeks a written report detailing the status of the sale of the asphalt plant.

8. To the extent that the Debtor receives a joint check for materials and/or services supplied in the ordinary course of business, payable to the Debtor and any material supplier or subcontractor for any given project solely for the purpose of providing for payment of that material supplier or subcontractor with respect to that specific project, such payments may continue to be made free and clear of the lien of Wells Fargo.

9. The Debtor agrees that Wells Fargo, or any of its representatives, shall be permitted, on reasonable advance notice, to inspect, examine and copy any books and records and operations and collateral related to Debtor's ongoing business. The Debtor agrees that Wells Fargo shall be entitled to physical inspection, on no more than two (2) days advanced notice to Debtor, of the collateral, specifically including but not limited to the inventory and equipment.

10. A proposed order is filed herewith granting the relief requested herein. The proposed Order is substantially the same as the previous Orders approving the use of cash collateral entered in this case.

11. By entering into this Stipulation, Wells Fargo does not waive any of its rights to pursue any of its other remedies, including a Motion for Relief from Stay and/or a Motion to Dismiss.

DATED this 17<sup>th</sup> day of May, 2013.

Respectfully submitted,

**KUTNER MILLER BRINEN, P.C.**

/s/ Aaron A. Garber

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