

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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)	
In re:)	
)	Chapter 11
RICHFIELD EQUITIES, L.L.C.,¹)	Case No. 12-33788
a Michigan limited liability company,)	Honorable Daniel S. Opperman
)	
Debtor.)	
	x	

**FINAL ORDER
AUTHORIZING POSTPETITION FINANCING
AND GRANTING ADEQUATE PROTECTION**

This matter having come before the Court upon the First Day Motion for Entry of Interim and Final Order Authorizing Postpetition Financing and Use of Cash Collateral (“Motion”) and the Stipulation to Entry of Interim Order Authorizing Postpetition Financing and Granting Adequate Protection (“Stipulation”). The Court reviewed the Motion and the Stipulation, and other supporting documentation, and heard the statements of counsel in support of the relief requested and any objections and any evidence offered on September 20, 2012. On September 21, 2012, the Court entered the Interim Order Authorizing Postpetition Financing and Granting Adequate Protection [docket no. 41]. The Court has considered the Affidavit of Bernhard Rumbold in Support of Chapter 11 Petitions and First Day Pleadings and Requests [docket no. 2] as evidence on September 20, 2012, any objections and any evidence offered at the interim hearing on September 20, 2012, and at final hearing on October 9, 2012, and being fully advised in the premises;

¹ The Debtors in this jointly administered bankruptcy proceeding are: Richfield Equities, L.L.C. Case No. 12-33788;



THE COURT FINDS THAT:

A. Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq. (“Code”) on September 18, 2012 (“Petition Date”).

B. (i) Without limitation, debtor Richfield Equities, LLC, as borrower, is indebted to Comerica Bank (“Bank”) as of the Petition Date as follows:

Loans (original note amount and date)	Principal	Interest	Late Fees
Revolving Credit Note (\$9,100,000; 08/16/12)	\$8,903,627.55	\$110,647.38	\$4,515.03
Term Note (\$1,898,330; 07/28/10)	\$1,558,499.00	\$19,005.03	\$239.18
Term Note-D (\$1,505,963.56; 05/25/11)	\$1,505,963.56	\$18,364.39	\$231.12
Huron Hills Note (\$5,337,381; 09/01/02)	\$2,600,000.00	\$29,158.10	\$773.39
Conversion Term Note (\$1,812,666; 07/28/10)	\$998,330.00	\$12,174.08	\$597.60
Capital Requirements Note (\$3,100,000; 05/25/12)	\$2,604,208.02	\$30,847.63	\$1,386.63
Total	\$18,170,628.13	\$220,196.61	\$7,742.95

The notes described above are identified collectively as the “Prepetition Notes.” The amounts referenced above are exclusive of interest accruing after the Petition Date, all letter of credit reimbursement obligations, all obligations of debtor Richfield Equities, LLC as guarantor and costs and expenses (including, but not limited to, counsel fees).

(ii) Debtors Richfield Equities, LLC and Richfield Landfill, Inc. are obligated directly for reimbursement obligations with regard to the following letters of credit:

L/C 655172	Balance \$250,000.00	Applicant Equities
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Richfield Landfill, Inc., Case no. 12-33789; Richfield Management, L.L.C., Inc., Case No. 12-33790, and Waste Away Disposal, L.L.C., Case No. 12-33791.

657998	\$88,000.00	Equities
657999	\$250,000.00	Equities
00001	\$2,161,864.00	Equities
37060	\$66,000.00	Landfill
39240	\$250,000.00	Equities
44442	\$350,000.00	Equities
14025	\$200,000.00	Equities
31543	\$770,000.00	Equities
35485	\$28,750.00	Equities
36074	\$328,113.67	Equities
658894-04	\$725,000.00	Equities
586247	\$2,874,379.00	Landfill

(iii) Debtors are also indebted to Bank for unpaid, fully earned and non-refundable fees which total \$620,000.00.

(iv) Debtor Richfield Equities, LLC also has obligations under a Warrant dated October 18, 2002, as amended, issued to Bank and subsequently assigned by Bank to Comerica Ventures Incorporated.

(v) The liabilities evidenced by the Prepetition Notes, the Letter of Credit reimbursement obligations identified above, all guarantees by Debtors of other entities' obligations, and the other loan and collateral documents, including interest, costs, fees and expenses, are identified as the "Prepetition Indebtedness."

C. Without limitation, the Prepetition Indebtedness owed directly by debtor Richfield Equities, LLC is guaranteed by debtor Richfield Landfill, Inc., Richfield Capital (Tsd), L.L.C., debtor Richfield Management, L.L.C., Richfield Disposal of Flint, L.L.C., Active Recycling Of Genesee County, L.L.C., debtor Waste Away Disposal, L.L.C. (collectively, "Corporate Guarantors"), Frederick Hambleton, Bernhard Rumbold and C. Thomas Toppin (collectively with the Corporate Guarantors, "Guarantors") under their respective Guaranties (the

“Guaranties”). Debtor Richfield Equities, L.L.C. also guaranties all obligations of debtor Richfield Landfill, Inc. and debtor Richfield Management, L.L.C.

D. Frederick Hambleton, C. Thomas Toppin And Rumbold & Family, L.L.C., are subordinated participants in the Prepetition Indebtedness (in their capacities as participants, “Participants”).

E. The documents, instruments and agreements executed in connection with the prepetition financing arrangements from Bank to Debtors, Guarantors and Participants are identified collectively as the “Prepetition Loan Documents.” Capitalized terms not defined in this Order shall have the meanings set forth in the Prepetition Loan Documents.

F. The Prepetition Indebtedness is secured by substantially all assets of Debtors and Corporate Guarantors, including without limitation: (i) real property commonly known as 11145 E. Mt. Morris Road, Davison, Michigan; (ii) real property commonly known as 4151 McMillan, Bad Axe, Michigan, (iii) real property commonly known as 4132 Dove Road, Port Huron, Michigan; (iv) existing and future accounts, chattel paper, contract rights, deposit accounts, general intangibles, instruments, documents, software, rights to payment evidenced by chattel paper, documents or instruments, commercial tort claims, letters of credit, letter of credit rights, supporting obligations and rights to payment for money or funds advanced or sold; (v) presently owned and hereafter acquired inventory; (vi) presently owned and hereafter acquired investment property, and stock and membership interests; (vii) presently owned and hereafter acquired property in possession or control of Bank; (viii) presently owned and hereafter acquired machinery, equipment, furniture, fixtures, tools, parts and accessories, and all proceeds and products of and accessions to all of the foregoing (collectively, “Prepetition Collateral”).

G. Bank's security interest in the Prepetition Collateral is valid, perfected, first in priority and unavoidable, the value of the Prepetition Collateral exceeds the amount of the Prepetition Indebtedness under § 506 of the Code, the Prepetition Indebtedness is a valid, binding and unavoidable obligation of Debtors and Guarantors and there are no setoffs, counterclaims or defenses to the Prepetition Indebtedness.

H. In order for Debtors to continue to operate their businesses, and preserve goodwill and going concern value, it is necessary for Debtors to obtain postpetition financing to enable them to pay normal operating expenses (including, without limitation, wages, salaries, insurance premiums, utilities, rent and taxes) and to purchase inventory and supplies.

I. Debtors have not been, and will continue to be unable, in the ordinary course of business or otherwise, to obtain unsecured credit under § 503(b)(1) of the Code and need secured postpetition financing in order to continue operations. Bank is willing to extend secured postpetition credit to Debtors under § 364 of the Code, subject to the terms of this Order.

Upon consideration of the above findings, which are incorporated into this Order, it is ORDERED:

1. Debtors may obtain postpetition financing from Bank on the terms set forth in this Order. The postpetition financing will be governed by the Prepetition Loan Documents (which shall include but shall not be limited to the following documents: the Prepetition Notes, the Guaranties, Subordinated Participation Agreement, as amended, the Forbearance Agreement dated April 18, 2012, as amended, among Debtors, Guarantors, Participants and Bank, and all other Prepetition Loan Documents), including application of all collections of accounts to the Prepetition Indebtedness, subject to the following modifications:

(a) Bank may consider, in its sole discretion, postpetition advances for operating expenses, provided that the principal amount of such requested postpetition advance and all other postpetition advances under a Postpetition Revolving Note by debtor Richfield Equities, L.L.C. to Bank in form and substance satisfactory to Bank (the “Postpetition Revolving Note”) outstanding as of such date, plus the outstanding principal amount of the prepetition Revolving Credit Note shall not exceed the lesser of (A) \$12,600,000 (“Cap”), or (B) the Advance Formula (as defined in the Prepetition Loan Documents), provided that the Temporary Additional Overformula Amount is amended to mean \$9,800,000.

(b) Bank may also consider, in its sole discretion, postpetition advances to fund some or all expenses under a proposed capital expenditure budget (“Cap Ex Budget”) to be filed by Debtors, under a demand Postpetition Cap Ex Note by debtor Richfield Equities, L.L.C. to Bank in form and substance satisfactory to Bank (the “Postpetition Cap Ex Note”). As of the Petition Date, Bank has not agreed to advance funds for capital expenditures, but may consider such requests from Debtors after additional information is obtained on potential sales of assets.

(c) The postpetition credit extended to Debtor by Bank, postpetition interest, attorneys’ fees and other expenses owing by Debtors to Bank is identified as the “Postpetition Indebtedness.” The Postpetition Indebtedness shall be included in the indebtedness guaranteed by Guarantors under their respective prepetition guaranties, and thus shall, without limitation, be an obligation of debtors Richfield Landfill, Inc., Richfield Management, L.L.C. and Waste Away Disposal, L.L.C. The Loan Documents to be executed postpetition shall include ratification and acknowledgment by Guarantors of their respective guarantees of the Postpetition Indebtedness within the terms and limits, if any, of each respective guaranty. The Prepetition Indebtedness and Postpetition Indebtedness are identified collectively as the “Indebtedness.” The Postpetition

Revolving Note and the Postpetition Capex Note shall be identified together as the Postpetition Notes. The Postpetition Notes and all other documents executed in connection with the Postpetition Indebtedness shall be identified, together with the Prepetition Loan Documents, as the “Loan Documents.”

(d) Under no circumstances will there be any further advances under the Prepetition Notes.

(e) Debtors may only use the proceeds of the postpetition advances under the Postpetition Revolving Note to fund payment of expenses as and when budgeted in the updated operating budget approved by Bank and filed with the Court (“Budget”) with a cumulative variance of up to 10% per line item allowed, provided the aggregate amount of expenditures does not exceed the aggregate Budget. Debtors may only use the proceeds of the postpetition advances under the Postpetition Capex Note to fund payment of expenses as and when budgeted, in the Cap Ex Budget, with a cumulative variance of up to 10% per line item allowed, provided the aggregate amount of expenditures does not exceed the aggregate Cap Ex Budget. Debtors shall supply Bank, the U.S. Trustee and any committee appointed in this case with an updated Budget and Cap Ex Budget, and a reconciliation in form acceptable to Bank of postpetition performance to the Budget and the Cap Ex Budget, not less often than once every week. If approved by Bank in writing, Debtors’ updated Budget and Cap Ex Budget shall become the “Budget” and “Cap Ex Budget”, respectively, under this Order.

(f) If any of the amounts actually paid to Debtors’ professionals under the Budget would be required to be disgorged (other than because of denial of approval of such fees or expenses by the Court), then with the agreement of Bank and Participants as evidenced by the entry of this Order, if the proceeds of Collateral are sufficient to pay in full the Indebtedness

(exclusive of amounts owed to Participants under the Loan Documents), including the retention by Bank of cash collateral sufficient to secure fully with a one percent margin (or other security satisfactory to Bank in its sole discretion) Debtors' reimbursement obligations for any outstanding letters of credit, then notwithstanding anything in the Loan Documents or this Order to the contrary, Debtors' professionals shall be deemed to have been paid from the proceeds of Collateral that otherwise would have been distributed to Participants and thus no disgorgement (up to the amount of the Participations) shall be required. Further, the Bank's claim (which includes the Participation Amounts) shall be reduced by that amount.

This provision does not require Bank under any circumstances to pay any Chapter 11 administrative expenses, including to Debtors' professionals (even if disgorgement is required).

(g) Debtors' ability to request advances under this Order and the Postpetition Note shall terminate on the earlier of November 9, 2012] or upon a default by Debtors as described below ("Termination Date"), unless the Termination Date is extended by written stipulation of Bank and Debtors.

(h) Interest on the Prepetition Notes shall continue to accrue at the non-default rate specified in the Prepetition Loan Documents. The non-default rate of interest on the Postpetition Note shall be the Daily Adjusting LIBOR Rate plus the Applicable Margin of 6.0%.

(i) Debtors shall supply to Bank financial information and information relating to the collateral as required by the Prepetition Loan Documents and at the request of Bank, including without limitation by October 12, 2012, an appraisal of Debtors' equipment by an appraiser, and in form and content, acceptable to Bank. Without limitation, Debtors shall deliver to Bank: (i) the information and reports required under the Forbearance Agreement and

other Loan Documents; (ii) as and when filed, all reports and other documents and pleadings filed by Debtors with the Bankruptcy Court or the Office of the U.S. Trustee; (iii) a weekly cash flow statement, comparing actual receipts and disbursements to the projected receipts and disbursements set forth in the Budget; and (iv) concurrently with each advance request, but not less frequently than weekly, a borrowing base report in form satisfactory to Bank reflecting the Advance Formula.

(j) Debtors shall continue to engage Jeffrey Beard of Huron Consulting Group, or another consultant acceptable to Bank and approved by the Court, as their chief restructuring officer, who will be the responsible person for the debtors in possession.

(k) All cash and cash equivalents which are now in or hereafter come into Debtors' possession shall be paid to Bank at the existing cash collateral account at Bank. All payments of accounts for services rendered or to be rendered or for inventory or goods sold or to be sold in the ordinary course of business will be applied to the Prepetition Revolving Note until that Prepetition Revolving Note, exclusive of any portion of which is due Participants, is paid in full, and thereafter to the Postpetition Note. Any other payments may be applied by Bank to any of the Indebtedness as Bank deems appropriate in its sole discretion. Except as modified by this Order, all of the provisions of the Prepetition Loan Documents are ratified and confirmed.

(l) Guarantors ratify and affirm their respective Guaranties of indebtedness of Debtors to Bank, including all Postpetition Indebtedness.

2. Debtors shall timely pay directly to Bank the monthly interest payments due on the Prepetition Notes. Interest on the Postpetition Indebtedness shall be payable monthly on the first day of each month.

3. On or before November 9, 2012, Debtors shall close on the sale of substantially all assets of Debtors, or the business of Debtors, for a sale price and other terms acceptable to Bank.

4. The Postpetition Indebtedness shall be secured by a first and paramount security interest and lien in all of the property of Debtors (collectively, the "Postpetition Collateral" and identified together with the Prepetition Collateral as the "Collateral"), including without limitation: (a) all of the following, whether now owned or existing or hereafter created or acquired, wherever located, together with all additions and accessions and all proceeds and products thereof: all accounts, accounts receivable, instruments, documents, drafts, notes, acceptances, chattel paper, general intangibles (including, without limitation, all goodwill, copyrights, patents, trademarks, trade names and franchises), software, contract rights, rights to payment evidenced by chattel paper, documents or instruments, deposit accounts, rights to payment for money or funds advanced or sold, causes of action, choses in action, commercial tort claims, letters of credit, letter of credit rights, supporting obligations, investment property or other property in possession or control of Bank, all personal property received as returns and repossessions, all other forms of receivables, tax refunds of any form, all inventory, including all goods held for sale and documents evidencing inventory, all equipment (together with spare and repair parts, special tools and equipment and replacements), the proceeds of credit and other forms of insurance coverage of any of the foregoing and all books and records pertaining to all of the foregoing; and (b) all interests in real property and fixtures; provided, however, that if Debtors' interest in any of the foregoing property as of the Petition Date was encumbered by a valid, binding and unavoidable prepetition lien, the lien on that property granted to Bank under this Order shall be junior to such existing senior lien only.

5. The Postpetition Indebtedness shall have priority under § 364(c)(1) of the Code and § 507(b) of the Code over all administrative expenses incurred in this Chapter 11 proceeding of the kind specified in § 503(b) or § 507(b) of the Code, except for fees charged by the court and for fees to which the U.S. Trustee is entitled under 28 U.S.C. 1930. In addition, the Prepetition Indebtedness shall have priority under § 507(b) of the Code over all administrative expenses incurred in this Chapter 11 proceeding of the kind specified in § 503(b) of the Code. No costs or expenses of administration which have been or may be incurred in these proceedings (including any conversion of these proceedings under § 1112 of the Code, or any other related proceedings), and no priority claims are, or will be, prior to or on a parity with the claim of Bank against Debtors arising out of the Indebtedness, or with the security interest of Bank in the Prepetition and Postpetition Collateral except as provided herein, and no such cost or expenses of administration shall be imposed against Bank, its claims or its Collateral under § 506(c) or § 552 of the Code or otherwise. The foregoing provision shall not restrict Debtor's payment of administrative expenses, including professional fees as provided below, provided, that Debtor is not then, and will not as a result of such payment be, in default of its obligations under this Order or the Prepetition Loan Documents, provided, however, that the Bank shall fund advances under the Postpetition Note, notwithstanding any default hereunder, for costs and expenses not previously funded but incurred in accordance with the Budget and this Order through the date of any default, notwithstanding that such proceeds are to be distributed after a default. Debtor may make payments for professionals retained by Debtor or any committee in accordance with the Budget in advance on a weekly basis and consistent with the Budget. Payments will be made to each professional's client trust account as invoices are submitted in accordance with the Budget and may be paid to such professionals pursuant to any orders of the Court establishing procedures for interim compensation and reimbursement for professionals. The waivers of the

surcharge provisions of § 506(c) of the Code are only applicable to a chapter 7 trustee in this case as follows: except in an emergency situation (“Emergency”) as provided below, a chapter 7 trustee, shall not be allowed and may not request any surcharge whatsoever against the Prepetition Collateral or the Postpetition Collateral unless, prior to incurring such costs or expenses the chapter 7 trustee proposing to incur such cost or expense shall obtain (i) the specific written consent of Bank allowing such charge to be imposed against the Prepetition Collateral or the Postpetition Collateral under § 506(c) of the Code or (ii) upon motion to the court with reasonable notice to Bank, an order of the Court providing for such a surcharge. In an Emergency, the chapter 7 trustee may incur costs or expenses prior to obtaining the written consent of Bank or a court order under the previous sentence but may only request a surcharge for such expenses if within a reasonable period of time, but not more than 5 business days after incurring such cost or expense, the chapter 7 trustee files and serves upon Bank a motion for approval of such Emergency cost or expense as a surcharge. An Emergency cost or expense shall mean an expense necessary to prevent immediate and irreparable harm to the Prepetition Collateral or the Postpetition Collateral. Nothing in this Stipulation and Order or any budget shall constitute consent by Bank to the imposition of any costs or expenses of administration or other charge, lien assessment or claim against Bank, its claims or the Prepetition Collateral or Postpetition Collateral under § 506(c) of the Code or otherwise.

6. The security interests and liens granted to Bank under this Order shall be evidenced by the entry of this Order, and except as otherwise provided herein, shall be deemed to be first, valid and perfected as against all third parties upon entry of this Order, without regard to applicable federal, state or local filing and recording statutes, as of the Petition Date, provided, however, that Bank may take such steps as it deems appropriate to comply with such recording statutes and Debtors shall execute and deliver such additional documents and shall take any and

all additional action to comply with such recording statutes as Bank may request. At Bank's discretion, it may attach this Order to financing statements bearing Debtors' names as the debtor and file them with any state or local office to further evidence the liens granted hereby without the signature of Debtors.

7. As adequate protection under §§ 361 and 363 of the Code with respect to the Prepetition Indebtedness and for any diminution in the Prepetition Collateral (whether cash collateral or non-cash collateral), Bank is granted a continuing and replacement security interest and lien in all of the Postpetition Collateral. The replacement lien on Postpetition Collateral granted to Bank shall be junior only to (i) the lien securing the Postpetition Indebtedness, and (ii) if Debtors' interest in any of the Postpetition Collateral as of the Petition Date was encumbered by a valid, binding and unavoidable lien senior to the prepetition lien held by Bank, then to such existing senior lien.

8. Debtors shall pay all reasonable fees and out-of-pocket disbursements incurred by Bank, in any way arising from or in connection with this Order, the Loan Documents or the Indebtedness, including, without limitation, the reasonable fees of counsel for Bank for the preparation, examination and approval of this Order, for the payment of all fees and out-of-pocket disbursements incurred by Bank, including reasonable attorney fees incurred by Bank, in any way arising from or in connection with any action taken by Bank to monitor, advise, enforce or collect the Indebtedness, or enforce any obligations of Debtors under this Order, the Loan Documents or any other document or agreement arising from or relating to the business relationship between Bank and Debtors, including any actions to lift the automatic stay or otherwise in any way participate in this bankruptcy proceeding. Debtors shall also be responsible for such fees and disbursements of Bank for any defense of any litigation instituted

by Debtors, Guarantors, Participants or any third party against Bank arising from or relating to the Indebtedness, this Order, the Loan Documents or the business relationship among Debtors, Guarantors, Participants, or any of them, and Bank. All of these fees and expenses shall be part of the Postpetition Indebtedness. Payment of such fees and expenses shall be made monthly on account as provided in the Budget, with quarterly summary statements of account being provided contemporaneously to the Debtors, the U.S. Trustee and the unsecured creditors' committee, if one is formed. Notwithstanding paragraph 1.(e) above, the amount paid to Bank under this paragraph is not limited by the amount set forth in the Budget.

9. The terms of this Order constitute a "finding of fact" as to the "adequate protection necessary" for Debtors' use of both cash and non-cash Prepetition Collateral of Bank under § 363 of the Code and for Debtors' incurring the Postpetition Indebtedness. This Order is in lieu of all further hearings on the issue of adequate protection with respect to Bank. The Court also finds that Bank has extended credit, and will be extending credit, under this Order in good faith.

10. In consideration for the agreement of Bank to entry of this Order, Debtors, Guarantors and Participants (each, a "Releasing Party") fully and forever remise, release and discharge Bank, and each and all of its parent, subsidiary and affiliated corporations, companies and divisions, together with its or their predecessors, successors and assigns, and each and all of its or their directors, officers, employees, attorneys, accountants, consultants and other agents (collectively, "Releasees"), of and from any and all claims, demands, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, costs, expenses, accounts, damages, judgments, losses, liabilities and defenses, of whatsoever kind or nature, in law, equity or otherwise, whether known or unknown, whether concealed or hidden, which any Releasing

Party has had, may have had or now has, or which any of its predecessors, successors or assigns hereafter can, shall or may have, for or by reason of any matter, cause or thing whatsoever, whenever arising, to and including the date this Order is entered, including without limitation, (a) claims arising from or in any way related to this Order, the Indebtedness, the Loan Documents or the business relationship among Debtors, Guarantors, Participants and Bank, and (b) claims under the avoidance provisions of §§ 544, 547, 548, 549 and 550 of the Code.

11. Debtors, Guarantors and Participants admit that they have no defenses, offsets or counterclaims with respect to the payment of any sum owing to Bank, with respect to the validity or enforceability of the Loan Documents, or with respect to the Indebtedness. In addition, Debtors, Guarantors and Participants irrevocably waive any right, without the prior written consent of Bank, (a) to grant or impose, under § 364 of the Code or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to Bank's liens and security interests; (b) to use, or seek to use, cash collateral; or (c) to modify or affect any of the rights of Bank under this Order or the Loan Documents by any plan of reorganization confirmed in these cases or subsequent Order entered in these cases.

12. Defaults have occurred under the Prepetition Loan Documents. Debtors, Guarantors and Participants, to the fullest extent allowed under applicable law, waive all notices that Bank might be required to give but for this waiver, including any notices otherwise required under Section 6 of Article 9 of the Uniform Commercial Code as enacted in the State of Michigan or other relevant state (the "UCC") concerning the Collateral. Furthermore, Debtors, Guarantors and Participants waive (a) the right to notification of disposition of the Collateral under § 9-611 of the UCC, (b) the right to require disposition of the Collateral under § 9-620(e) of the UCC and (c) all rights to redeem any of the Collateral under § 9-623 of the UCC.

13. Debtors shall keep the Collateral maintained by sufficient insurance coverage acceptable to Bank, with Bank named as the mortgagee, loss payee and/or additional insured on all such policies.

14. Debtors agrees that it shall not seek any extension of the exclusivity periods set forth in §§ 1121(b) and 1121(c) of the Code without the express written consent of Bank, which consent Bank may withhold in its sole discretion. Debtors agree that the intent of the foregoing sentence is to prohibit any extensions of the exclusivity periods unless Bank, in its sole discretion, consents in writing to any such extensions. Debtors and all parties receiving notice of this Order shall have no claim, cause of action or defense on account of Bank's exercise of the foregoing rights.

15. Debtors shall provide Bank, its attorneys, accountants, employees and agents with access to Debtors' books and records for the purpose of audit, examination and inspection thereof, and observation of Debtors' operations, and shall provide all reasonable information and documents requested by Bank or its designated agents. Bank, its attorneys, accountants, employees and agents shall have the right to enter Debtors' business premises during reasonable business hours for the purpose of examining and appraising Bank's Collateral. Debtors shall pay the cost of any audit requested or performed by Bank. Notwithstanding paragraph 1.(e) above, the amount paid to Bank under this paragraph is not limited by the amount set forth in the Budget.

16. The covenants and other terms of this Order are for the sole benefit of Bank; Bank, in its sole discretion, may in writing waive any covenant or term.

17. Upon entry of this Order, Debtors are authorized and directed to: (a) execute and deliver the Postpetition Note and such other agreements, information, statements and documents as Bank may reasonably request; and (b) take such actions as may be necessary or appropriate in order to effectuate the agreements set forth in this Order.

18. In the event that Debtors default in performance of any of their respective obligations under this Order or under the Loan Documents (excluding existing defaults under the Prepetition Loan Documents of which the Bank has been notified in writing), or upon the entry of an order dismissing this case, appointing a trustee in this case, converting this case to a case under Chapter 7 of the Code, or transferring the venue of this case to another district, Debtors' right to request advances from Bank under this Order and the Loan Documents shall terminate, Debtors shall each segregate and account for all cash collateral then in their possession or control, and Bank shall have the right to apply for relief from the stay under § 362 of the Code. Any such application by Bank may be scheduled for an expedited hearing on two business days' notice without objection by any of the parties who stipulated to entry of this Order (or as soon thereafter as practicable, depending on the Court's schedule and availability).

19. The provisions of this Order, which shall be immediately effective upon entry, and any actions taken under this Order, shall survive entry of, and shall govern with respect to, any conflict with any order which may be entered subsequently, and the terms and provisions of this Order, as well as the liens and security interests under the Prepetition Loan Documents, this Order, and all rights of Bank and obligations of Debtors created or arising under this Order, shall continue in these proceedings or any superseding proceedings under the Code, and such liens and security interests shall maintain their priority as provided by this Order until satisfied and discharged. If any or all of the provisions of this Order are hereafter modified, vacated or stayed

by subsequent order of this or any other court, such stay, modification or vacation shall not affect: (a) the validity of any debt to Bank incurred under this Order and which is incurred prior to the effective date of such stay, modification or vacation; (b) the validity and enforceability of any lien or priority authorized hereby with respect to any such debt to Bank; or (c) the conduct of Bank with respect to the rights granted to Bank in this Order prior to the effective date of such stay, modification or vacation, and notwithstanding such stay, modification or vacation, all amounts owed to Bank by Debtors under this Order prior to the effective date of such modification, stay or vacation, shall be governed in all respects by the original provisions of this Order and Bank shall be entitled to all the rights, privileges and benefits, including the security interests and priorities granted herein, with respect to all such advances and the course of conduct established in connection therewith.

20. All objections to the Stipulation and the Motion and the Interim Order Authorizing Postpetition Financing and Granting Adequate Protection are addressed under this Order, and to the extent not addressed are expressly overruled. This Order is a final order, except that an unsecured creditors' committee may file objections by the earlier of (a) 14 days after it is served with this Order, or (b) November 13, 2012.

Signed on October 11, 2012

/s/ Daniel S. Opperman
Daniel S. Opperman
United States Bankruptcy Judge