

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

In re:)	
)	
)	Case No. 12-22602
DICKINSON THEATRES, INC.,)	
a Kansas corporation,)	Chapter 11
)	
Debtor.)	

MOTION OF DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS: (A) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING FROM PEOPLE'S BANK; (B) GRANTING LIENS AND SUPERPRIORITY CLAIMS IN FAVOR OF PEOPLE'S BANK; (C) AUTHORIZING USE OF PEOPLE'S BANK'S CASH COLLATERAL; (D) GRANTING ADEQUATE PROTECTION TO PEOPLE'S BANK; AND (E) SCHEDULING A FINAL HEARING

Dickinson Theatres, Inc., debtor and debtor-in-possession (collectively, the "Debtor"), by and through its undersigned counsel, hereby represents to this Court as follows:

Preliminary Statement

1. By this motion (this "Motion"), the Debtor requests entry of interim and final orders (together, the "DIP Orders") authorizing Debtor to, among other things: (i) obtain post-petition financing pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507 of Title 11 of the United States Code 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") on an interim basis and on a final basis, for the sole purpose of obtaining post-petition financing in the amount of up to \$900,000.00 from People's Bank ("People's") (in its capacity as the Post-petition lender, the "DIP Lender") (the "People's DIP Facility"); (ii) use cash collateral pursuant to Section 363 of the Bankruptcy Code; and (iii) grant adequate protection pursuant to Sections 361, 362, 363, 364, and 507 of the Bankruptcy Code to People's (in its capacity as the Debtor's pre-petition secured lender, the "Pre-petition Lender"). This Motion further seeks authority for the Debtor to grant non-priming liens to secure the People's DIP Facility and to

provide adequate protection to People's. Pending a final hearing on this Motion (the "Final Hearing"), the People's DIP Facility will be issued on an interim basis pursuant to the terms of set forth herein that were negotiated by and between the Debtor and People's as DIP Lender, in (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "People's DIP Credit Agreement").

Jurisdictional Statement

1. The Court has jurisdiction over the Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (D). Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory and rule based predicates for the relief requested herein are Sections 105(a), 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507 of the Bankruptcy Code and Rule 2002, 4001 and 9014 of the Bankruptcy Rules.

Background

3. On September 21, 2012 (the "Petition Date"), the Debtor filed its voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code, commencing the Debtor's Chapter 11 case (the "Chapter 11 Case"). The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

4. With its voluntary petition, the Debtor contemporaneously filed this Motion and an Emergency Motion for Expedited Hearings on Certain Motions and Applications (the "Hearing Motion"), wherein the Debtor requests an expedited hearing on, *inter alia*, this Motion.

5. The Debtor operates 18 movie theatres with 210 screens in seven states (the "Business"). All theatres are operated from leased facilities with the Debtor not operating any theatres from owned locations. The Business employs approximately 36 full-time employees, and approximately 650 part-time employees (collectively, the "Employees"), at the various theatres. All of these Employees are on payroll of, and paid by, the Debtor.

6. Contemporaneously with the filing of its Chapter 11 petition, the Debtor filed a plan of reorganization (the "Plan") and disclosure statement ("Disclosure Statement") and requested the Court to schedule hearings on the adequacy of the Disclosure Statement and confirmation of the Plan. The proposed Plan provides for payment of all allowed claims in full with interest over five years.

7. Upon emergence and consummation of the Plan, Debtor will be significantly stronger and better able to compete and thrive in the highly competitive theatre/entertainment market.

Relief Requested

8. The Debtor requests that the Court authorize it to obtain senior secured, superpriority post-petition financing consisting of the People's DIP Facility from the DIP Lender. The Debtor's obligations under the People's DIP Facility will be secured by junior liens on Debtor's assets encumbered by liens and mortgages of lenders other than People's, senior liens on any assets of the Debtor that are presently unencumbered, and priming liens on all assets of the Debtor that are presently encumbered by the liens and mortgages of People's as the Pre-petition Lender, all without regard to any lease provision requiring a landlord's consent to any such lien.

9. In addition, the People's DIP Facility will be secured by a first lien on certain improved real property owned by the Debtor's subsidiary, Midwest Cinemas, LLC, and

commonly known as 6801 West 107th Street, Overland Park, Kansas (the "Building"). Midwest Cinemas, LLC, will be a co-borrower on the People's DIP Facility.

10. The proposed financing will be provided by People's. The Debtor's obligations thereunder, including obligations to reimburse People's for any draws on the People's DIP Facility, will be senior to all liens and obligations under the People's Pre-petition Credit Agreement (as defined below). As such, the liens created under the People's DIP Credit Agreement are priming liens with respect to liens currently held by People's as Pre-petition Lender. The liens securing the People's DIP Facility will not prime any consensual liens granted by the Debtor in favor of any secured party that held priority over the liens of People's as Pre-petition Lender as of the Petition Date.

11. Pending entry of the final order authorizing the People's DIP Credit Agreement (the "Final DIP Order"), the Debtor requests that the Court authorize the Debtor, on an interim basis (the "Interim DIP Order"), to: (a) obtain issuance of the People's DIP Credit Agreement; (b) use cash collateral as provided in the Interim DIP Order; (c) grant to the DIP Lender the liens and superpriority claims described herein; (d) provide adequate protection to People's as the Pre-petition Lender, as described herein and in the Interim DIP Order; (e) approve the proposed notice of the Final Hearing; and (f) schedule the Final Hearing.

Funding of the Debtor's Operations

12. Prior to the commencement of the Chapter 11 Case, People's, as the Debtor's Pre-petition Lender, made certain loans and other financial accommodations (the "People's Pre-petition Loan") to the Debtor pursuant to (i) that certain Loan Agreement dated as of February 19, 2012 (as amended, supplemented or otherwise modified prior to the date hereof, the "People's Pre-petition LOC Loan"), by and between Debtor as the borrower and People's as the Pre-petition Lender. In connection with the People's Pre-petition LOC Loan, Debtor entered into certain collateral and ancillary documentation with People's (such collateral and ancillary documentation, along with the People's Pre-petition Credit Agreement are, collectively, the "People's Pre-petition Credit Documents"). The People's Pre-Petition Credit Documents also include a loan in the original principal amount of \$1,755,630.31 to Chenal Cinemas, LLC, a subsidiary of Debtor, secured by the assets of Debtor and Midwest Cinema Group, Inc. (the "Chenal Loan").

13. As of the Petition Date, the Debtor was indebted under the People's Pre-petition LOC Loan in the approximate principal amount of \$20,000.00 plus interest accrued and accruing, costs, expenses, fees (including attorneys' fees and legal expenses) other charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, hedging and other banking or financial services.

14. The Debtor's obligations under the People's Pre-petition Credit Documents are secured by all of Debtor's inventory, chattel paper, accounts, equipment and general intangibles. All collateral granted or pledged by Debtor to People's, pursuant to the People's Pre-petition Credit Documents, shall collectively be referred to herein as the "People's Pre-petition Collateral."

Proposed People's DIP Facility and Cash Collateral

A. Background

15. After a diligent search, the best terms, with the exception of proposed debtor-in-possession financing from 6801 West 107th, LLC, that Debtor was able to locate for post-petition financing was from People's.¹ Debtor considered various sources of such post-petition credit. In exploring those options, Debtor recognized that the obligations owed to People's as Pre-petition Lender are secured by virtually all of Debtor's personal property. Moreover, Section 365(c)(2) prohibits Debtor from assuming the line of credit loans with People's. Accordingly, Debtor's only realistic alternative was People's. People's, however, was unwilling to issue a new \$400,000.00 source of financing on a pre-petition basis. In considering possible alternative providers for the financing on a post-petition basis, Debtor determined that either: (a) such alternative financing either would need to agree to issue post-petition financing without security, or with security junior in priority to the liens of People's as Pre-petition Lender; or (b) the liens of People's would have to be primed in order to provide such security. Because People's advised Debtor's representatives that it would not consent to be primed by another lender, obtaining a collateralized means of post-petition financing from another post-petition lender who would require liens and claims senior to that of People's likely could only be accomplished through an extended, contested hearing to determine compliance with the requirements of Section 364(d) of the Bankruptcy Code.

16. In view of these circumstances, Debtor concludes that the People's DIP Facility proposal was desirable because, among other things, it permits Debtor to secure the necessary post-petition financing to continue operations, and avoid the loss of significant revenues.

¹ Along with this Motion, the Debtor contemporaneously filed its *Motion for Entry of Interim and Final Orders: (A) Authorizing Debtor to Obtain Post-petition Financing From 6801 West 107th, LLC; and (B) Scheduling a Final Hearing* (the "6801 West 107th DIP Motion").

However, Debtor notes that People's appears to have perfected its security interest with a UCC-1 filing on June 29, 2012, which makes the People's lien on Debtor's assets, to the extent it secures the LOC Loan but not the Chenal Loan, potentially avoidable as a preference under Section 547 of the Bankruptcy Code.

B. Negotiations

17. The Debtor and People's engaged in extensive, arms'-length negotiations with respect to the terms and conditions of the People's DIP Facility and Interim DIP Order. Importantly, the People's DIP Credit Agreement and Interim DIP Order provide that Debtor may immediately obtain issuance of the People's DIP Facility and any interruption of its Business operations pending entry of the Final DIP Order.

18. People's, as the Pre-petition Lender, has consented to the proposed People's DIP Facility, including the granting of priming liens in connection therewith.

C. Material Terms of the DIP Credit Agreement and the Interim DIP Order²

Borrower:	Dickinson Theatres, Inc.
Co-Borrowers:	Midwest Cinema Group, Inc.; Pallazo 16 Theatres, LLC; Arizona Cinemas, LLC; Chenal Cinemas, LLC; Mesa Cinemas, LLC
Lender:	People's Bank
Commitment:	\$900,000.00 – consisting of the \$500,000.00 pre-petition facility and the \$400,000.00 post-petition facility
Restrictions on Use of Credit Facility:	General business operations
Maturity Date:	December 9, 2012
Priority and Liens:	See paragraph 8 of this Motion

² In case of any discrepancy between the terms of this summary of the People's DIP Facility and the terms of the Interim DIP Order, the Interim DIP Order shall control.

Fees: A \$4,000.00 fee will be charged for the new line of credit. The Debtor will be responsible for all closing costs including the appraisal, mortgage filing fees, environmental and any other third party costs required by People's for closing.

Interest Rate: Wall Street Journal Prime Rate plus 2.5% floating daily with a floor of 7.5%. Interest due monthly with principal & accrued interest due at maturity.

Events of Default: Standard Terms

Remedies Upon Default: Standard Terms

Other Items: Nothing unique to this case

D. The Use of Cash Collateral and Adequate Protection

19. In order to address its capital needs and fund its restructuring efforts, Debtor also requires the use of cash collateral of People's as Pre-petition Lender (the "Cash Collateral"). The use of Cash Collateral will provide the Debtor with the necessary capital with which to operate its Business, pay its employees, maximize value and pursue a reorganization under Chapter 11.

20. People's, as Pre-petition Lender, has consented to Debtor's use of Cash Collateral in the ordinary course of business, subject to the adequate protection liens and payments discussed below, and the other terms and conditions set forth in the Interim DIP Order.

21. People's, as the Pre-petition Lender has requested and is entitled to, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, adequate protection of its interests in collateral under the People's Pre-petition Credit Agreement to the extent that there is a diminution in the value of its interests in such collateral from and after the Petition Date. As adequate protection for any such diminution in value, the Debtor proposes that People's as the Pre-petition Lender shall be granted, pursuant to Sections 361, 363(e), and 364(c) of the Bankruptcy Code, additional and replacement security interests and liens (the "Replacement Liens") in and upon all existing and after acquired real and personal, tangible and intangible, assets of the Debtor (the "Collateral").

22. The Replacement Liens shall have the same relative priority as the liens securing their respective pre-petition claims, and be junior only to the liens granted to People's as the DIP Lender, and Non-Primed Liens (as defined in the Interim DIP Order). The Replacement Liens are and shall be valid, perfected, enforceable and effective as of the date of the entry of the Interim DIP Order, without any further action by the parties and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or other agreements.

The Proposed DIP Facility Should Be Authorized

23. Approval of the People's DIP Facility will provide Debtor with additional operating cash such that it will be able to avoid: (a) irreparable harm to the Debtor's Business; (b) depletion of going concern value; and (c) jeopardizing Debtor's ability to reorganize and maximize value. Accordingly, the timely approval of the relief requested herein on an interim basis is imperative.

24. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt: (a) with priority over any and all administrative expenses, as specified in Section 503(b) or 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364. The Debtor proposes to obtain the People's DIP Facility by providing, *inter alia*, superpriority claims, security interests and liens pursuant to Section 364(c)(1), (2), (3) and Section 364(d) of the Bankruptcy Code.

25. With the exception of the pending 6801 West 107th DIP Motion, the Debtor has further been unable to procure acceptable post-petition financing other than the People's DIP Facility, let alone on more favorable terms and conditions than those for which approval is sought herein.

26. Bankruptcy courts grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under Section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"); *see also In re Funding Sys. Asset Mgmt. Corp.*, 72 B.R. 87 (Bankr. W.D. Pa. 1987); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444,449 (D. Colo. 1985).

27. Furthermore, Section 364(d) does not require that a debtor seek alternative financing from every possible lender; rather, the debtor simply must demonstrate sufficient efforts to obtain financing without the need to grant a senior lien. *Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (debtor testified to numerous failed attempts to procure financing from various sources, explaining that "most lend money only in return for a senior secured position"); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa.

1991) (debtor adequately established that some degree of priming of loan was necessary if debtor were to obtain funding).

28. Substantially all of Debtor's assets are encumbered by People's' pre-petition liens, and Debtor has been unable to procure post-petition DIP financing absent granting the proposed superpriority claims and liens. Debtor submits that the circumstances of this case require Debtor to obtain the required People's DIP Facility pursuant to Section 364(c) and Section 364(d) of the Bankruptcy Code and, accordingly, the People's DIP Facility reflects the exercise of its sound business judgment.

29. The terms and conditions of the People's DIP Facility are fair and reasonable and were negotiated extensively by well-represented, independent parties in good faith and at arms'-length. Accordingly, People's as the DIP Lender, and all obligations incurred under the People's DIP Credit Agreement, should be accorded the benefits of Section 364(e) of the Bankruptcy Code.

The Use of Cash Collateral Should Be Approved

30. Under 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). Debtor requires the use of Cash Collateral to fund its day-to-day operations. The use of Cash Collateral will enable Debtor to continue to satisfy its vendors, service its customers, pay its employees and operate its Business in the ordinary course and in an orderly and reasonable manner to preserve and enhance the value of its estate for the benefit of all stakeholders. Indeed, absent such relief, Debtor's Business will be brought to an immediate halt, with damaging consequences for Debtor and its estate and creditors.

Additionally, the movie theatres will cease to operate and will go dark, to the material detriment of the properties' value. The interests of People's as the Pre-petition Lender in the Cash Collateral will be protected by the adequate protection set forth above. People's as the Pre-petition Lender has consented to the use of the Cash Collateral on the terms set forth herein and in the Interim DIP Order. Accordingly, Debtor's request to use Cash Collateral in the operation of its Business and administration of this Chapter 11 Case should be approved.

The Proposed Adequate Protection Should Be Authorized

31. 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 interest." 11 U.S.C. § 363(e). Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. 11 U.S.C. § 361. What constitutes adequate protection must be decided on a case-by-case basis. *See In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal citation omitted).

32. People's as the Pre-petition Lender has agreed to Debtor's use of Cash Collateral and the Debtor's entry into the People's DIP Facility in consideration for the adequate protection provided under the Interim DIP Order. Accordingly, the adequate protection proposed herein to

protect People's' interests in the Pre-petition Collateral is fair and reasonable and sufficient to satisfy the requirements of Sections 363(c)(2) and (e) of the Bankruptcy Code.

The Automatic Stay Should Be Modified On A Limited Basis

33. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtor to: (i) grant the security interests, liens and superpriority claims described above with respect to People's as the DIP Lender and as the Pre-petition Lender, as the case may be, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) permit People's as DIP Lender and as Pre-petition Lender to exercise, upon the occurrence of and during the continuance of an event of default (upon five (5) days' notice of such occurrence and subject to the jurisdiction of this Court), all rights and remedies under the People's DIP Facility, the People's Pre-petition Credit Agreement and the DIP Orders; and (iii) implement the terms of the proposed DIP Orders.

34. Stay modifications of this kind are ordinary and standard features of post-petition debtor financing facilities and, in the Debtor's business judgment, are reasonable and fair under the present circumstances.

Interim Approval Should Be Granted

35. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (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 use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a Debtor's estate pending a final hearing.

36. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtor requests that the Court conduct an expedited preliminary hearing on this Motion and: (a) authorize the Debtor to use the Cash Collateral and borrow under the People's DIP Facility on an interim basis, pending entry of a final order, in order to (i) obtain the People's DIP Facility, (ii) maintain and finance the ongoing operations of Debtor pending entry of the Final DIP Order, and (iii) avoid immediate and irreparable harm and prejudice to the Debtor's estate and all parties-in-interest; and (b) schedule a hearing to consider entry of a final order.

37. Debtor has an urgent and immediate need for cash to continue to operate. Currently, Debtor does not have sufficient unencumbered funds with which to operate its Business on an ongoing basis. Absent authorization from the Court to obtain secured credit, as requested, on an interim basis pending a final hearing on the Motion, the Debtor will be immediately and irreparably harmed. The availability of use of post-petition secured credit will provide necessary assurance to the Debtor's vendors, employees and customers of its ability to meet its near-term obligations. Failure to meet these obligations and to provide these assurances likely would have a long-term negative impact on the value of Debtor's Business, to the detriment of all parties-in-interest. Accordingly, the interim relief requested is critical to preserving and maintaining the going concern value of the Debtor.

38. To successfully implement the foregoing, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay under Bankruptcy Rule 6004(h).

Notice

39. The Debtor has provided notice of this Motion to: (a) the Office of the United States Trustee (the "U.S. Trustee"); (b) the creditors on each of the Debtor's lists of twenty (20)

largest unsecured creditors; (c) counsel to People's; (d) all known parties with liens of record on assets of the Debtor as of the Petition Date; (e) the Internal Revenue Service; (f) the Kansas Department of Revenue; and (g) all other parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

WHEREFORE, the Debtor respectfully requests the court enter an Interim DIP Order substantially in the form of the terms outlined in this Motion; and grant Debtor such other and further relief as the court may deem equitable and proper.

Dated: September 21, 2012.

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