



**SO ORDERED.**

**SIGNED this 27th day of October, 2012.**

*Dale L. Somers*

Dale L. Somers  
United States Bankruptcy Judge

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

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

**FINAL ORDER: (A) AUTHORIZING DEBTOR TO OBTAIN  
POST-PETITION FINANCING FROM PEOPLES BANK; (B) GRANTING  
LIENS AND SUPERPRIORITY CLAIMS IN FAVOR OF PEOPLES BANK;  
(C) GRANTING REPLACEMENT LIENS TO HAWTHORN BANK;  
(D) AUTHORIZING USE OF HAWTHORN BANK'S AND PEOPLES BANK'S CASH  
COLLATERAL; AND (E) GRANTING ADEQUATE PROTECTION TO  
HAWTHORN BANK AND PEOPLES BANK**

Upon consideration of the motion (the "Motion") (Docket No. 12)<sup>1</sup> of Dickinson Theatres, Inc. (the "Debtor"), for entry of an interim order ("Interim Order") and a final order ("Final Order") authorizing the 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,

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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 Peoples Bank ("Peoples") (in its capacity as the post-petition lender, the "DIP Lender") (the Peoples DIP credit documents are referenced herein, collectively, as the "Peoples DIP Facility"); (ii) use cash collateral pursuant to Section 363 of the Bankruptcy Code; (iii) grant adequate protection pursuant to Sections 361, 362, 363, 364, and 507 of the Bankruptcy Code to Peoples (in its capacity as the Debtor's pre-petition secured lender, the "Pre-petition Lender"); and (iv) requesting the Court, at an interim hearing (the "Interim Hearing") on the Motion to set, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), a final hearing date (the "Final Hearing") on the Motion within thirty (30) days after the Petition Date (as defined hereinafter); the Court having reviewed the Motion and the objection thereto filed by Hawthorn Bank (*See* Docket No. 125); having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors and other parties-in-interest and to avoid immediate and irreparable harm to the Debtor, its business, employees, estate, creditors and other parties-in-interest; and having considered the statements of counsel, the agreement between Peoples and the Debtor, and the evidence adduced with respect to the Motion at the Interim Hearing and Final Hearing before the Court; and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, and (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given; and upon the record herein; and after due deliberation thereon; and all objections to the Motion

having been overruled, withdrawn, or otherwise resolved; and good and sufficient cause appearing, the Court hereby finds and concludes on a final basis:

1. 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.

2. On the Petition Date, the Debtor filed the Motion and the Court heard the Motion on an emergency basis at the Interim Hearing. At the Interim Hearing, the Court directed the Debtor to circulate the proposed form of an interim order granting the Motion (the "Interim Order") to all appropriate parties, including, the Office of the United States Trustee (the "U.S. Trustee"), counsel for Peoples, various landlords of the Debtor, and other various creditors who were in attendance at the Interim Hearing.

3. The Debtor provided notice of the Motion and the Interim Hearing by overnight mail to: (i) the U.S. Trustee; (ii) the twenty (20) largest unsecured creditors of the Debtor; (iii) counsel to Peoples as the DIP Lender and Pre-petition Lender; (iv) all known parties with liens of record on assets of the Debtor as of the Petition Date; (v) the landlords for all non-residential real properties occupied by the Debtor as of the Petition Date; (vi) the Internal Revenue Service; and (vii) all other parties requesting notice pursuant to Bankruptcy Rule 2002. The Court concludes that the foregoing notice of the Motion and Interim Hearing was sufficient and adequate under the circumstances and complies with Bankruptcy Rule 4001 in all respects.

4. On October 1, 2012, the Debtor provided notice of a final hearing (the "Final Hearing Notice") on the Motion, scheduled for October 25, 2012, at 1:30 p.m. Central Standard Time, to all parties on the mailing matrix that was filed with the certificate of service to the Final Hearing Notice. (See Docket No. 74.) The Court concludes that the Final Hearing Notice was sufficient and adequate under the circumstances and complies with Bankruptcy Rule 4001 in all respects.

5. On October 3, 2012, the United States Trustee filed its notice of appointment of a creditor's committee (the "Committee"). (See Docket No. 87.)

6. On October 5, 2012, the Court granted the Motion, on an interim basis, and entered the Interim Order. (See Docket No. 100.)

7. On October 12, 2012, Hawthorn Bank ("Hawthorn") filed a limited objection to the Motion. (See Docket No. 125). In its objection, Hawthorn noted that it has a prior perfected pre-petition security interest in the Debtor's assets which is superior to that of Peoples. Hawthorn Bank further requested that this Court only enter an order approving the Motion provided that the order expressly mandates that the Debtor make monthly adequate protection payments to Hawthorn in an amount equal to the normal monthly loan payments that would be due under the applicable loan documents if the bankruptcy had not been filed and that the Court grant adequate protection in the form of the granting of additional and replacement security interests in and replacement liens upon the Debtor's post-petition assets and the proceeds thereof to the same extent as Hawthorn's pre-petition security interest.

8. Without prejudice to the rights of any other party, but subject to the limitations thereon set forth in paragraph "U" below, the Debtor admits, stipulates and agrees that:<sup>2</sup>

I. Prior to the commencement of the Chapter 11 Case, Peoples, as the Debtor's Pre-petition Lender, made certain loans and other financial accommodations (the "Peoples 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 "Peoples Pre-petition LOC Loan"), by and between the Debtor as the borrower and Peoples as the Pre-petition Lender. In connection with the Peoples Pre-petition LOC Loan, the Debtor entered into certain collateral and ancillary documentation with Peoples (such collateral and ancillary documentation, along with the Peoples Pre-petition Credit Agreement are, collectively, the "Peoples Pre-petition Credit Documents"). The Peoples Pre-Petition Credit Documents also include a loan in the renewed principal amount, as of May 2012, of \$1,755,630.31 to Chenal Cinemas, LLC, a subsidiary of the Debtor, secured by the assets of the Debtor and Midwest Cinema Group, Inc. and guaranteed by the Debtor (the "Chenal Loan").

II. As of the Petition Date, the Debtor was indebted under the Peoples Pre-petition LOC Loan in the approximate principal amount of \$44,935.00 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.

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<sup>2</sup> To the extent that Hawthorn and Peoples have liens in the same pre-petition collateral, nothing in this Order shall be deemed a determination as to the respective priority of those parties' security interests in that collateral. Rather, both parties shall be deemed to reserve their rights regarding their respective priority interests in such collateral.

III. The Debtor's obligations under the Peoples Pre-petition Credit Documents are secured by all of the Debtor's inventory, chattel paper, accounts, equipment and general intangibles. All collateral granted or pledged by the Debtor to Peoples, pursuant to the Peoples Pre-petition Credit Documents, shall collectively be referred to herein as the "Peoples Pre-petition Collateral;" provided, however, that such Peoples Pre-petition Collateral shall not include: (i) any actions for preferences, fraudulent conveyances and other avoidance power claims and any recoveries or proceeds thereof under Chapter 5 of the Bankruptcy Code; and (ii) all claims, causes of action and rights of recovery belonging to the Debtor, including without limitation, commercial contract and tort claims and insurance claims under applicable insurance policies (but only to the extent that such claims, causes of action and rights of recovery belonging to the Debtor arose Post-Petition).

IV. All of the Debtor's cash, including, without limitation, all cash and other amounts on deposit or maintained in any deposit account by Debtor and any amounts generated by collection of Debtor's accounts receivable, sale of Debtor's inventory, or any other disposition of the Peoples Pre-petition Collateral constitute proceeds of the Peoples Pre-petition Collateral and therefore constitute cash collateral of the Pre-petition Lender within the meaning of Section 363(a) of the Bankruptcy Code (the "Cash Collateral").

V. All of Peoples Pre-petition Credit Documents executed and delivered by the Debtor to Peoples as the Pre-petition Lender are valid and enforceable by Peoples as the Pre-petition Lender against the Debtor. The liens and security interests of Peoples as Pre-petition Secured Lender in the Pre-petition Collateral, as security for the Peoples Pre-petition Loan, constitute valid, binding, enforceable and perfected liens and security

interests and are not subject to avoidance, disallowance, subordination or recharacterization pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

VI. On June 6, 2012, the Debtor executed a Promissory Note payable to Hawthorn for a principal amount of \$750,000.00.

VII. That same day (June 6, 2012), the Debtor also executed a Commercial Security Agreement which secured its debt obligations to Hawthorn.

VIII. Pursuant to the terms of the Commercial Security Agreement, Hawthorn took a security interest in the Debtor's following collateral: accounts and other rights to payment, inventory, equipment, instruments and chattel paper, general intangibles, documents, government payments and programs, investment property, deposit accounts and all equipment then owned or thereafter acquired located at 1935 S. Signal Butte, Mesa, Arizona 85209.

IX. Two days later on June 8, 2012, Hawthorn filed a UCC-1 financing statement with the Kansas Secretary of State (Filing No. 99272171) thereby perfecting its security interest in the Debtor's assets.

X. Thereafter, on June 29, 2012, Peoples filed its UCC-1 financing statement with the Kansas Secretary of State (Filing No. 99305972) as part of its perfection of its security interest in the Debtor's assets.

XI. Pursuant to K.S.A. § 84-9-322 Hawthorn asserts it has a perfected security interest in its collateral.

XII. The Debtor owed Hawthorn approximately \$713,611.78 as of the Petition Date.

XIII. All of Hawthorn's loan related documents executed and delivered by the Debtor to Hawthorn as the June 2012 loan are valid and enforceable by Hawthorn against the Debtor. The liens and security interests of Hawthorn in the pre-petition collateral, as security for the Hawthorn pre-petition loan, constitute valid, binding, enforceable and perfected priority liens and security interests and are not subject to avoidance, disallowance, subordination or recharacterization pursuant to the Bankruptcy Code or applicable non-bankruptcy law

XIV. All of the Debtor's cash, including, without limitation, all cash and other amounts on deposit or maintained in any deposit account by the Debtor and any amounts generated by collection of the Debtor's accounts receivable, sale of the Debtor's inventory, or any other disposition of the pre-petition collateral of Hawthorn constitute proceeds of the Hawthorn pre-petition collateral and therefore constitute Cash Collateral of Hawthorn as a pre-petition lender within the meaning of Section 363(a) of the Bankruptcy Code. All collateral granted or pledged by the Debtor to Hawthorn, pursuant to the Hawthorn Pre-petition Credit Documents, shall collectively be referred to herein as the "Hawthorn Pre-petition Collateral;" provided, however, that such Hawthorn Pre-petition Collaterals shall not include: (i) any actions for preferences, fraudulent conveyances and other avoidance power claims and any recoveries or proceeds thereof under Chapter 5 of the Bankruptcy Code; and (ii) all claims, causes of action and rights of recovery belonging to the Debtor, including without limitation, commercial contract and tort claims and insurance claims under applicable insurance policies (but only to the extent that such claims, causes of action and rights of recovery belonging to the Debtor arose Post-Petition).



9. The Debtor has an immediate and critical need to use Cash Collateral pursuant to the terms of this Final Order to, among other things, finance the ordinary costs of its operations, maintain business relationships with vendors, suppliers and customers, make payroll, and satisfy other working capital and operational needs. The Debtor's access to sufficient working capital and liquidity through the use of Cash Collateral pursuant to this Final Order is vital to the preservation and maintenance of the going concern value of the Debtor's estate. Consequently, without the continued use of Cash Collateral by the Debtor, to the extent authorized pursuant to this Final Order, the Debtor and its estate would suffer immediate and irreparable harm.

10. Peoples, as DIP Lender, has indicated a willingness to provide the Debtor with a certain financing commitment on the terms and conditions set forth in this Final Order and in the Peoples DIP Facility. After considering all of their alternatives, the Debtor has concluded, in an exercise of its sound business judgment, that the financing to be provided by Peoples pursuant to the terms of this Final Order and the Peoples DIP Facility represents the best post-petition financing presently available to the Debtor.

11. The security interests and liens granted pursuant to this Final Order to Peoples are appropriate under Section 364(d) of the Bankruptcy Code because, among other things: (i) such security interests and liens do not impair the interests of any holder of a valid, perfected, and non-avoidable pre-petition security interest in or lien upon the property of the Debtor's estate, or (ii) the holders of such valid, perfected, pre-petition security interests and liens have consented to the security interests and priming liens granted pursuant to this Final Order to Peoples (the "Non-Primed Liens").

12. Furthermore, the adequate protection for Hawthorn allowed by this Final Order and the replacement liens granted to Hawthorn pursuant to this Final Order is appropriate under the Bankruptcy Code.

13. Good cause has been shown for immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). In particular, the authorization granted herein for the Debtor to continue using Cash Collateral and for the Debtor to execute the Peoples DIP Facility and obtain final financing in the form of the Peoples DIP Facility, is necessary to avoid immediate and irreparable harm to the Debtor and its estate. Entry of this Final Order is in the best interests of the Debtor, its estate and creditors. The terms of the Peoples DIP Facility and the terms of Debtor's continued use of Cash Collateral pursuant to this Final Order and the granting of adequate protection to and replacement liens for Hawthorn are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

14. The Debtor and Peoples have negotiated the terms and conditions of the Peoples DIP Facility and this Order (including the Debtor's use of Cash Collateral pursuant hereto) in good faith and at arm's-length, and any credit extended and loans made to the Debtor pursuant to this Order and the Peoples DIP Facility shall be, and hereby are, deemed to have been extended, issued or made, as the case may be, in "good faith" within the meaning of Section 364(e) of the Bankruptcy Code. Similarly, the negotiations of the terms and conditions of this Order between Hawthorn and other parties (including the Debtor) have also been in "good faith."

15. Based on the foregoing, and upon the record made before this Court at the Interim Hearing and Final Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED ON A FINAL BASIS THAT:**

A. The Motion is approved on a final basis and on the terms and conditions set forth in this Final Order. Any objections to the Motion that have not previously been withdrawn or resolved are hereby overruled on the merits. This Final Order shall become effective and binding upon all parties-in-interest immediately upon its entry.

B. The Debtor is authorized to enter into the Peoples DIP Facility on the terms outlined in this Final Order and as more particularly set forth in the Peoples DIP Facility. To the extent any provisions in this Final Order conflict with any provisions of the Motion, the Peoples Pre-petition Credit Documents, or the Peoples DIP Facility, the provisions of this Final Order shall control.

C. The salient terms of the Peoples DIP Facility are generally described as follows:

Borrower: Dickinson Theatres, Inc.

Co-Borrowers: Midwest Cinema Group, Inc.; Palazzo 16 Theatres, LLC; Arizona Cinemas, LLC; Chenal Cinemas, LLC; Mesa Cinemas, LLC.

Lender: Peoples 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 and the expenses of the Debtor's Chapter 11 Case.

Maturity Date: December 31, 2012.

Priority and Liens: Junior liens on Debtor's assets encumbered by liens and mortgages of lenders other than Peoples, 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 Peoples as the Pre-petition Lender, all without regard to any lease provision requiring a landlord's consent to any such lien.

A first mortgage in the amount of \$550,000.00, 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").

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 Peoples 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 and accrued interest due at maturity.

Events of Default: See Other Items below.

Remedies Upon Default: See Other Items below.

Other Items: All liens and right to repayment under the Peoples DIP Facility shall be senior to the rights and remedies of any other post-petition lender, including 6801 West 107th LLC as an additional post-petition lender of the Debtor.

Peoples, under the Peoples DIP Facility and the Peoples DIP Loan Agreement shall be paid in full prior to the Debtor making any payments to any other post-petition lender, including 6801 West 107th LLC in its capacity as a post-petition lender of the Debtor.

Subject to paragraph "U" herein, the Peoples Pre-petition LOC Loan and the Chenal Loan will be cross-collateralized with a first position mortgage upon the Building. The mortgage shall become automatically enforceable and perfected upon the entry of this Order.

The liens securing the Peoples DIP Facility, in addition to the Replacement Liens (as defined hereinafter), shall also secure Peoples up to an additional \$350,000.00 of Automatic Clearing House exposure, above and beyond the \$900,000.00 Peoples DIP Facility.

The liens securing the Peoples DIP Facility shall only attach to the sale, disposition, or other liquidation, of any lease of non-residential real property the Debtor is currently a party to, of which the Debtor has filed a Motion to Reject Lease or Executory Contract ("Rejected Leasehold Interests"). The Peoples DIP Facility shall not be secured by any leasehold interest of Rejected Leasehold Interests of the Debtor in non-residential real property to which Peoples is not a party.

Upon the Debtor's default under the Peoples DIP Facility, Peoples' rights to enforce the Peoples DIP Facility, with respect to use or occupancy of any Rejected Leasehold Interests to which the Debtor is a party, is expressly limited to: (i) all rights and remedies granted to Peoples under applicable non-bankruptcy law; (ii) all rights and remedies expressly consented to, in writing, from any landlord or lessor of the Debtor of such non-residential real property; and (iii) all other rights and remedies further ordered by this Bankruptcy Court, after appropriate notice and motion as required by the Bankruptcy Code and Bankruptcy Rules.

As to any lease(s) of non-residential real property, which the Debtor is currently a party to, and such lease(s) the Debtor is proposing to be retained/accepted, Peoples retains its rights, remedies and claims (if any) that existed prior to the Petition Date.

Peoples agrees to negotiate in good faith, as that term is defined in the Uniform Commercial Code as amended from time to time.

D. The DIP Lender hereby waives any pre-existing Events of Default (as defined under the Peoples DIP Facility) as of the date of this Final Order.

E. The Debtor is hereby authorized to enter into the Peoples DIP Facility and execute the documents under the Peoples DIP Facility and such additional documents, instruments, and agreements as may be reasonably required by Peoples to implement the terms or effectuate the purposes of this Final Order.

F. The Debtor is hereby authorized on a final basis and directed to pay on demand all fees, expenses and other amounts payable under the terms of the Peoples DIP Facility in accordance with the terms of the Peoples DIP Facility.

G. Upon execution and delivery of the Peoples DIP Facility, the Peoples DIP Facility shall constitute valid and binding obligations of the Debtor and shall be enforceable against the Debtor in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the Peoples DIP Facility or this Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. Similarly, no obligation, payment, transfer or grant of security to Hawthorn pursuant to this Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law, or subject to any defense, reduction, setoff, recoupment or

counterclaim. The Debtor agrees to timely execute any documents necessary to effectuate the terms of this Final Order.

H. Peoples, as the Pre-petition Lender is entitled to, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, adequate protection of its interests in collateral under the Peoples 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. Similarly, Hawthorn, as a pre-petition lender with a security interest is also entitled to, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, adequate protection of its interests in collateral under its pre-petition loan 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 Peoples as the Pre-petition Lender and Hawthorn as a pre-petition lender shall each 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 the same relative priority as the liens securing their respective pre-petition claims, in and upon all existing and after-acquired real and personal, tangible and intangible, assets of the Debtor (the "Collateral"), subject only to (i) the liens granted to Peoples as the DIP Lender, (ii) the Carve Out, (iii) the Non-Primed Liens, and (iv) the Challenge Rights set forth in paragraph "U" hereof; provided, further, that such Collateral shall not include: (i) any actions for preferences, fraudulent conveyances and other avoidance power claims and any recoveries or proceeds thereof under Chapter 5 of the Bankruptcy Code; and (ii) all claims, causes of action and rights of recovery belonging to the Debtor, including without limitation, commercial contract and tort claims and insurance claims under applicable insurance policies (but only to the extent that such claims, causes of action and rights of recovery belonging to the Debtor arose Post-Petition).

I. Except to the extent otherwise expressly set forth in this Final 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. However, the Debtor agrees to timely execute any documents necessary to effectuate the terms of this Final Order.

J. As further adequate protection for Hawthorn, the Debtor is authorized to make monthly adequate protection payments to Hawthorn in an amount equal to the normal monthly loan payments that would be due under the applicable loan documents if the bankruptcy had not been filed.

K. Except to the extent otherwise expressly set forth in this Final Order, as further adequate protection for Peoples, the Debtor is authorized to make monthly adequate protection payments to Peoples in an amount equal to the normal monthly loan payments that would be due under the Chenal Loan if the bankruptcy had not been filed.

L. Except to the extent otherwise expressly set forth in this Final Order, the Replacement Liens and all adequate protection shall not be subject to challenge and shall attach and become valid, perfected, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtor, or Peoples, and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages, fixture filings, filings with the U.S. Patent and Trademark Office, or other documents. The Debtor agrees to timely execute any documents necessary to effectuate the terms of this Final Order.

M. Subject to the terms and conditions set forth in this Final Order, the Debtor may use the Cash Collateral to fund its general corporate and working capital requirements (including, without limitation, certain administrative expenses in this Chapter 11 Case, in accordance the Budget (defined herein) and the terms of this Final Order).

N. Attached hereto as Exhibit A, and incorporated herein, is a budget (the "Budget")<sup>3</sup> for the period commencing on the week-ending September 28, 2012, and concluding on the week-ending November 30, 2012 (the "Budget Period"). The Budget reflects on a line-item basis the Debtor's anticipated cumulative cash receipts and expenditures on a weekly basis and all necessary and required cumulative expenses which the Debtor expects to incur during each week of the Budget Period. On a monthly basis for the period from the Petition Date through the last day of each month of the Budget Period, (a) the aggregate actual disbursements by the Debtor measured on a rolling six-week basis shall be no greater than 15% of the aggregate amount of projected disbursements for such six-week period as set forth in the Budget; and (b) the aggregate actual cash receipts collected by the Debtor measured on a rolling six-week basis shall be no less than 15% of the aggregate amount of projected cash receipts for such six-week period as set forth in the Budget (the "Report"). The Debtor shall provide the Report to Hawthorn, Peoples and the Committee's professionals, so as to be actually received by 5:00 p.m. Central Standard Time on the 15<sup>th</sup> day of each month, commencing November 15, 2012, on a weekly line-by-line variance (in the form and scope reasonably acceptable to Peoples, in consultation with the Committee's professionals) on a cumulative basis from the Petition Date to the Report date, comparing actual cash receipts and actual cash disbursements to cash receipts and cash disbursements forecasted in the Budget for such period and showing on a line-by-line

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<sup>3</sup> Excluding the line items for the 12/28/2012 entries for: "Catch-Up Rent;" "Convenience under \$2000" and "Convenience \$2000-2500."



basis any variance to the corresponding line-item of the Budget together with an explanation for such variance. The Debtor shall provide Hawthorn, Peoples, and the Committee's professionals, upon a reasonable request, with additional financial reports from time to time. If necessary, the Debtor may file in lieu of a further hearing, a supplemental stipulation and order (the "Supplemental Stipulation and Order"), agreed to by the Debtor, Peoples, Hawthorn and the Committee, that includes a budget from December 1, 2012 through and including December 31, 2012. If necessary, a hearing on continuance of this order, or entry of a new order regarding use of cash collateral and DIP financing, after November 30, 2012, shall be held on November 28, 2012 at 9:30 a.m. or as soon thereafter as counsel may be heard.

O. If, for whatever reason, the People DIP Facility and/or the Debtor's authority to use Cash Collateral terminates (the date of such termination, the "Termination Date"), to the extent unencumbered assets are not available at such time to pay administrative expenses in full, the Replacement Liens and any additional security to Hawthorn and Peoples, excluding the Mortgage on the Building (granted pursuant to this Final Order) shall be subject to: (i) the payment of any accrued, approved and unpaid fees payable pursuant to 28 U.S.C. § 1930 (including, without limitation, fees under 28 U.S.C. § 1930(a)(6)), (ii) the fees due to the Clerk of the Court, (iii) the fees and expenses Cash Collateral of any Chapter 7 trustee appointed in this case, if any, up to \$7,500.00; and (iv) (a) the accrued, approved and unpaid fees and expenses incurred by the professionals retained by the Debtor or the Committee by an order of the Court entered pursuant to Sections 327 or 1103(b) of the Bankruptcy Code, and the expenses of individual members of any Committee, for the period prior to the occurrence of the Termination Date, provided they are within the amounts on a cumulative basis for any period covered by the Budget and are subsequently allowed by the Bankruptcy Court under Sections 330 and 331 of

the Bankruptcy Code, and (b) any fees and expenses incurred, after the Termination Date, by professionals retained by the Debtor, the Committee, and any trustee, examiner, or other representative appointed in the Chapter 11 Case, all in an aggregate amount not to exceed \$75,000.00 (the items collectively in clauses (i) through (iv) above, collectively, the "Carve Out"); provided, further, that for the avoidance of any doubt and notwithstanding anything to the contrary in this Final Order, any accrued, approved and unpaid fees and expenses incurred by the Debtor's and the Committee's professionals under Sections 330 and 331 of the Bankruptcy Code shall be administrative expenses of the Debtor's estate under Sections 503(b)(2) and entitled to priority under Section 507(a)(2) of the Bankruptcy Code.

P. Upon the occurrence of the Termination Date, no portion of the Hawthorn Pre-petition collateral or post-petition replacement liens or the Peoples Pre-petition Collateral, the Cash Collateral or other unencumbered funds and no disbursements set forth in the Budget, shall be used for the payment of professional fees, disbursements, costs, or expenses incurred in connection with asserting any claims or causes of action against Hawthorn or Peoples or any of their affiliates, agents, attorneys, financial advisors, officers, managers, directors, or employees, including without limitation, any action challenging or raising any defenses to the indebtedness due under the Hawthorn loan agreement or the Peoples Pre-petition LOC Loan, the Peoples Pre-Petition Collateral, or the validity or enforceability of any of the Peoples Pre-petition Credit Documents.

Q. The Debtor shall deposit funds in accordance with the Budget into a segregated bank account at Peoples (the "Segregated Bank Account") for the purpose of paying sales and use taxes deemed to be collected by the Debtor on behalf of state and local taxing authorities from and after the Petition Date (collectively, the "Trust Fund Taxes"). The Debtor shall use the

funds on deposit in the Segregated Bank Account solely for the purpose of remitting Trust Fund Taxes to the applicable taxing authorities.

R. The provisions of this Final Order shall be binding upon and inure to the benefit of Peoples, Hawthorn, the Debtor, and their respective successors and assigns (including, without limitation, any trustee or other fiduciary hereafter appointed for or on behalf of the Debtor's estate or property). The provisions of this Final Order and any actions taken pursuant thereto (a) shall survive the entry of any order: (i) confirming any plan of reorganization in this Chapter 11 Case; (ii) converting this Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; or (iii) dismissing the Chapter 11 Case; and (b) shall continue in full force and effect notwithstanding the entry of any such order, and the claims, liens, and security interests granted pursuant to this Final Order shall maintain their priority as provided by this Final Order until all obligations owing under the Peoples DIP Facility and owed to Hawthorn are paid in full and discharged in accordance with the terms of this Final Order.

S. If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, the vacatur or stay shall not affect: (a) the validity of any Replacement Liens of Hawthorn or Peoples incurred prior to the actual receipt by Hawthorn or Peoples of written notice of the effective date of such reversal, modification, vacatur or stay; or (b) the validity or enforceability of any claim, lien, security interest or priority authorized or created hereby with respect to the obligations owing under the Peoples DIP Facility or with respect to obligations owing to Hawthorn. Notwithstanding any such reversal, modification, vacatur or stay, any use of Cash Collateral prior to the actual receipt by Hawthorn or Peoples of written notice of the effective date of such reversal, modification, vacatur or stay, shall be governed in all respects by the provisions of this Final Order.

T. In consideration for the replacement liens and adequate protection provided to Hawthorn by this Order as detailed above, neither the Debtor nor any other party-in-interest in this Chapter 11 Case, including, without limitation, the Committee or any Chapter 7 or Chapter 11 trustee, shall assert or become entitled to assert any claim against any vendor that actually delivers or provides post-petition goods or services to the Debtor in the ordinary course of the Debtor's business operations to recover post-petition payments by the Debtor on account of such goods or services under Section 549 of the Bankruptcy Code or on the basis that such payments came from funds that constitute Cash Collateral of any secured creditor of the Debtor, unless: (a) such payments were not made in the ordinary course of the Debtor's business; or (b) such payments are made following such vendor's actual receipt of written notice of the termination of the Debtor's authority to use Cash Collateral.

U. Challenge Rights. The Debtor's stipulations herein (the "Debtor's Stipulations") shall be binding upon the Debtor in all circumstances. The Debtor's Stipulations and all findings, orders, rights and protections herein shall be binding upon other parties-in-interest, including the Committee, unless (I) the Committee or any other party-in-interest other than the Debtor obtains the authority to commence and commences, or if this case is converted to a case under Chapter 7 ("Successor Case") prior to the expiration of the Challenge Period (as defined below), the Chapter 7 trustee in such Successor Case commences, on or before December 31, 2012 (such time period shall be referred to as the "Challenge Period," and the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the "Challenge Period Termination Date"), (a) a contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, or findings included in the Debtor's Stipulations, or (b) a contested

matter or adversary proceeding against the DIP Lender in connection with or related to the Peoples Pre-petition Loan, or the actions or inactions of any or all of the DIP Lender arising out of or related to the Peoples Pre-petition Loan, or otherwise, including without limitation, (i) any claim against the DIP Lender in the nature of a "lender liability" cause of action, setoff, counterclaim or defense to the Peoples Pre-petition Loan, and (ii) claims (x) for marshaling and any other equitable claim for reallocation of any collateral, (y) for disgorgement of any adequate protection payments or otherwise made after December 1, 2012 resulting from the avoidance of any underlying obligations (but solely to the extent a budget agreed to by the Debtor, Peoples, Hawthorn and the Committee is not filed with the Court by November 30, 2012 under the Supplemental Stipulation and Order), and (z) under Sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code, or by way of suit against the DIP Lender (the objections, challenges, actions and claims referenced in clauses (a) and (b), collectively, the "Claims and Defenses"), and (II) this Court rules in favor of the plaintiff in any such timely and properly commenced contested matter or adversary proceeding; provided, that as to the Debtor, for itself and not its estate, all such Claims and Defenses are irrevocably waived and relinquished as of the Petition Date. Until the Challenge Period Termination Date, any party-in-interest, including the Committee, may assert any Claims and Defenses.<sup>4</sup> The Challenge Period may be extended without further Court order upon Peoples' and Hawthorn's written consent, as applicable.

V. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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<sup>4</sup> Subject to the limitations set forth in this paragraph the Committee is hereby granted standing, without further order of the Bankruptcy Court, to file and prosecute any Claims and Defenses on behalf of the Debtor's estate.

**Order prepared by:**

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ATTORNEY AT LAW

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**Approved:**

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*Proposed Counsel for Unsecured Creditors  
Committee*

United States Bankruptcy Court  
District of Kansas

In re:  
Dickinson Theatres, Inc.  
Debtor

Case No. 12-22602-DLS  
Chapter 11

**CERTIFICATE OF NOTICE**

District/off: 1083-2

User: knicole  
Form ID: pdf020

Page 1 of 2  
Total Noticed: 1

Date Rcvd: Oct 29, 2012

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Oct 31, 2012.

db +Dickinson Theatres, Inc., 6801 W 107th Street, Overland Park, KS 66212-1825

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.  
NONE. TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE. TOTAL: 0

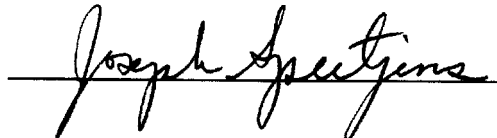
Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Oct 31, 2012

Signature:



The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on October 29, 2012 at the address(es) listed below:

- Benjamin Blaustein on behalf of Creditor Committee Unsecured Creditors Committee  
bblaustein@kelleydrye.com
- Brian M Holland on behalf of Creditor Little Rock Development Company, LLC  
bholland@lathropgage.com, stimper@lathropgage.com;mdscott@lathropgage.com
- Brian T. Fenimore on behalf of Creditor John W. Hartley, Jr. bfenimore@lathropgage.com,  
stimper@lathropgage.com;mdscott@lathropgage.com
- Bruce E. Strauss on behalf of Creditor First Community Bank bruce@merrickbakerstrauss.com,  
bestrauss@mbslaw.psemail.com
- Cynthia F Grimes on behalf of Creditor Committee Unsecured Creditors Committee  
grimreb@gmail.com, cafrogley@aol.com
- Douglas Bacon on behalf of Creditor Spirit Master Funding LLC douglas.bacon@lw.com
- Eric R Wilson on behalf of Creditor Committee Unsecured Creditors Committee  
ewilson@kelleydrye.com
- Jennifer D Raviele on behalf of Creditor Committee Unsecured Creditors Committee  
jrvaviele@kelleydrye.com
- Joseph A DiPietro on behalf of U.S. Trustee U.S. Trustee joseph.a.dipietro@usdoj.gov
- Lisa R. Wetzler on behalf of Creditor Board of County Commissioners of Johnson County Kansas  
Lisa.Wetzler@jocogov.org
- Michael D. Fielding on behalf of Creditor Hawthorn Bank michael.fielding@huschblackwell.com,  
karen.shackelford@huschblackwell.com;Tricie.Loudon@huschblackwell.com;susan.williams@huschblackwe  
ll.com
- Paul M. Hoffmann on behalf of Debtor Dickinson Theatres, Inc. phoffmann@stinson.com
- Robert D. Maher on behalf of Creditor Hartley's Executive Cleaners, Inc.  
rmaher@mcdowellrice.com, jcummings@mcdowellrice.com
- Ronald M Tucker on behalf of Creditor Simon Property Group, Inc. rtucker@simon.com,  
cmartin@simon.com;psummers@simon.com;Bankruptcy@simon.com
- Scott B Haines on behalf of Creditor Arrowhead Mall 2005, LLC sbhaines@martinpringle-kc.com
- Scott M. Brinkman on behalf of Creditor Spirit Master Funding LLC sbrinkman@bscr-law.com
- Sharon L. Stolte on behalf of Debtor Dickinson Theatres, Inc. sstolte@stinson.com
- Susan L Lissant on behalf of Creditor Missouri Department of Revenue ks@dor.mo.gov
- Susan P DeCoursey on behalf of Creditor Marks Nelson Vohland Campbell Radetic, LLC  
sdecoursey@cmplaw.net, gpappas@cmplaw.net;jdavis@cmplaw.net
- Thomas M. Mullinix on behalf of Creditor Jack Waters TMM@evans-mullinix.com,  
jeff@evans-mullinix.com;denise@evans-mullinix.com
- Timothy M Swanson on behalf of Debtor Dickinson Theatres, Inc. tswanson@stinson.com
- U.S. Trustee ustpregion20.wi.ecf@usdoj.gov
- W. Rick Griffin on behalf of Creditor NR 14 LLC wrgriffin@martinpringle.com,  
mmcortez@martinpringle.com;angoupil@martinpringle.com
- Wesley F. Smith on behalf of Creditor Peoples Bank wsmith@stevensbrand.com,  
jackerman@stevensbrand.com;sdatumtate@stevensbrand.com;mcarroll@stevensbrand.com

TOTAL: 24