

**United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division**

**Transmittal Sheet for Opinions**

**Will this opinion be published? Yes**

**Bankruptcy Caption: In re Olde Prairie Block Owner, LLC**

Bankruptcy No. 10 B 22668

**Date of Issuance: March 31, 2011**

**Judge: Jack B. Schmetterer**

**Appearance of Counsel: See Service Certificate**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: ) Chapter 11  
)  
OLDE PRAIRIE BLOCK OWNER, LLC, ) Bankruptcy No. 10 B 22668  
)  
Debtor. )

**AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON DEBTOR'S  
MOTION TO ENTER INTO SENIOR SECURED SUPERPRIORITY DEBTOR-IN-  
POSSESSION CREDIT FACILITY PURSUANT TO 11 U.S.C. § 364(d) [Docket No. 371]**

Debtor in this Chapter 11 bankruptcy case has moved under 11 U.S.C. § 364(d) to borrow up to \$4 million in exchange for a priming lien on its property. CenterPoint Properties Trust (“CenterPoint”), Debtor’s current secured lender, objects. For reasons discussed below, Debtor’s Motion will be granted in part and denied in part. After the original ruling on this issue [Docket No. 744], Debtor moved to alter or amend the ruling [Docket No.760], and the parties have fully briefed and argued that motion. The Amended Findings and related Amended Order resolve the latter Motion and CenterPoint’s Objection thereto.

**BACKGROUND**

Debtor’s bankruptcy case has been found to involve single asset real estate, *see* 11 U.S.C. §§ 101(51B); 362(d)(3), and so it is proceeding on a fast pace toward a confirmation hearing in mid 2011. Debtor must demonstrate actual or imminent refinancing and development funds in order to show a feasible plan for hotel development.

Debtor first filed its pending Motion to enter into credit facility [Docket No. 371] on November 27, 2010. CenterPoint filed an Objection [Docket No. 391], to which Debtor filed a Reply [Docket No. 408]. As discussed below, this Motion is critical to Debtor’s effort to obtain

credit needed for its development.

When Debtor first presented this Motion on December 10, 2010, it argued that an immediate hearing on the Motion was necessary because, among other things, it sought to borrow money to pay real estate taxes that were due the next Monday, December 13, 2010. Because fourteen days had not elapsed since service of the Motion, a final hearing could not be held that day. *See* Fed. R. Bankr. P. 4001(c)(2); Local Bankr. R. 4001-2(B). Instead, a preliminary hearing was held at which Debtor first had to show the usual standards required to obtain senior secured financing—inability to obtain credit otherwise and adequate protection of the existing lender's interest. *See* 11 U.S.C. § 364 and discussion below. Debtor also had to show for emergency relief that the relief it sought was necessary to avoid immediate and irreparable harm to the estate. *See* Fed. R. Bankr. P. 4001(c)(2); Local Bankr. R. 4001-2(B).

At the preliminary hearing, Debtor presented evidence in the form of testimony from three witnesses: Pamela Gleichman, its developer; Marc Nuccitelli, its financial advisor; and Gilbert Li, a representative of the potential lender. CenterPoint elected to reserve its cross-examination of these witnesses until the final hearing on Debtor's Motion. CenterPoint's counsel argued that CenterPoint would be ready and willing to pay Debtor's property taxes if Debtor could not, but they did not call any witness or present any evidence by testimony or documents to back that argument with an actual commitment. Of course, the argument of counsel is not evidence. In fact, CenterPoint did not present any evidence at all at that time.

After Debtor rested at that preliminary hearing, it was opined from the bench that Debtor could not otherwise obtain funds to pay its property taxes and that payment of those taxes was necessary to prevent immediate and irreparable harm to the estate. The matter was set on

December 13, 2010, for entry of the order for emergency relief.<sup>1</sup> On that date, an order [Docket No. 423] was entered authorizing Debtor to obtain post-petition financing secured by a first priority lien on substantially all of Debtor's assets pursuant to 11 U.S.C. § 364(d) only to the extent and in the amount necessary to pay real estate property taxes due that day. CenterPoint has appealed from that order [Docket No. 428].

On January 11, 2011, Debtor was ordered [Docket No. 529] to provide at trial a summary chart detailing its proposed payees, including the amount of each expenses that accrued before or would accrue after the final hearing on its motion commenced on January 12, 2011.

Final hearing on evidence presented in support of Debtor's Motion was held beginning on January 12, 2011. After resting, Debtor and CenterPoint submitted written argument in the form of post-trial proposed findings of fact and conclusions of law.

After the hearing had concluded, Coman & Anderson, P.C., filed an additional objection, arguing that its previously allowed administrative expense claim should be paid along with all other administrative expenses out of the proposed post-petition loan.

Based on evidence presented, the following Findings of Fact and Conclusions of Law are made and will be entered.

#### **FINDINGS OF FACT**

Debtor owns two parcels of choice real estate located adjacent to McCormick Place in the

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<sup>1</sup> Among the vagaries of weather faced by residents of the Midwest is the phenomenon known as "lake-effect snow," which prevented the undersigned from making it to court from the northwest part of Indiana on December 13. Another bankruptcy judge sat in the undersigned's stead to enter an order in accord with the announced ruling. That judge was not familiar with the evidence and made no further findings. CenterPoint immediately appealed the order before the assigned judge arrived the next morning.

City of Chicago as well as a long-term lease of 450 parking spots in the McCormick Place parking garage. Although the properties are mostly vacant and generate very little income, Debtor plans to develop a hotel complex there that will serve the needs of people using and visiting McCormick Place. After an evidentiary hearing earlier in this case on CenterPoint's motion for relief from the automatic stay, it was determined that the value of Debtor's property was \$81,150,000 based on a finding that the highest and best use of the property will be for a fine hotel. *In re Olde Prairie Block Owner, LLC*, No. 10 B 22668, 2010 WL 4512820, at \*4 (Bankr. N.D. Ill. Oct. 29, 2010). CenterPoint has opposed Debtor's attempt to reorganize at many stages of this bitterly contested case.<sup>2</sup>

Karl Norberg is Debtor's Manager. His wife Pamela Gleichman is Debtor's Developer and has signing authority to contract on Debtor's behalf.

CenterPoint is Debtor's only secured lender, having advanced a loan to Debtor in 2008 that was secured by a mortgage on Debtor's property. The loan matured on February 21, 2009, but Debtor defaulted and CenterPoint filed a foreclosure action in state court on February 24, 2009. That proceeding was never resolved because it was interrupted by Debtor's bankruptcy filing on May 18, 2010. In its Proof of Claim filed in the bankruptcy case, CenterPoint asserts a secured claim of about \$48,000,000. Given the property value found, Debtor has been found to have an equity cushion over the CenterPoint debt of more than \$30 million.

JMB Capital Partners LP ("JMB") is Debtor's proposed new lender. Debtor negotiated an

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<sup>2</sup> Among the rulings in earlier contested matters are: Findings of Fact and Conclusions of Law on CenterPoint's Motion to Lift Stay [Docket No. 313]; Opinion on CenterPoint's Motion to Dismiss Counterclaim [Docket 369]; Opinion on CenterPoint's Motion to Amend [Docket No. 417]; Payment of Administrative Expenses [Docket No. 523]; and Memorandum Opinion Dismissing Count II of Counterclaim with Prejudice [Docket No. 660].

arms-length agreement with JMB for a relatively small loan of up to \$4 million. In exchange, Debtor proposes to grant JMB (1) a new senior lien on its property that would prime CenterPoint's lien and (2) a "superpriority" administrative expense.

Coman & Anderson, P.C., is a law firm that represented the receiver that was appointed in the state-court foreclosure proceeding. After the receiver relinquished control of the property to Debtor, Coman & Anderson was allowed \$12,300 in fees and \$224.60 in expenses, all payable as an administrative expense claim at such time as funds are available to pay those and other expenses. *See* on Request of Coman & Anderson, P.C., for Payment of Administrative Expenses [Docket No. 523]. All services for which Coman & Anderson seeks payment out of the proposed JMB loan were rendered prior to January 12, 2011.

## **I. SUMMARY OF DEBTOR'S DEVELOPMENT PLANS AND PROPOSED USE OF FUNDS**

Debtor's goal in obtaining the loan from JMB is to fund steps to make its project more attractive to potential lenders and investors that might advance funds to Debtor at confirmation. This includes taking steps to access benefits from a tax increment financing district encompassing Debtor's property, obtaining various tax credits, generating reports needed to further the development project, and generally managing the property toward hotel development.

### **A. Tax Increment Financing**

Tax increment financing ("TIF") is a government program under Illinois law designed to encourage investment in particular locations. The amount of money available in a TIF district is tied to the taxes generated in that district. When property is located in a TIF district, the owner may apply to the local government for financing out of the TIF district funds for redevelopment

projects. Applicants must typically demonstrate that they have a viable development plan and access to other sources of funding that the TIF financing will complement. Where this source of relatively cheap and safe financing becomes available, potential lenders and investors are more likely to be interested in development projects for affected property.

Here, part of Debtor's property is located within an established TIF district. Debtor contends that it could realize an increased property value of \$55 million from that TIF district, a district in which it is the sole potential beneficiary, if it can get a TIF plan approved. This estimate is based on a calculated present value of expected future tax revenue in that TIF district. While that calculation is somewhat speculative, it seems certain that success of this effort would materially enhance market value of Debtor's property and therefore increase its chances to finance the hotel project. Before Debtor can gain approval of its TIF plan, however, it had and still has much work to do.

First, Debtor had to ensure that its TIF district would remain viable and accessible. That TIF district had apparently expired prior to the final hearing on Debtor's financing motion, so Debtor hired various consultants to lobby the Illinois General Assembly to extend the life of the TIF district so that Debtor could access funds in the future. That effort in the Illinois legislature was successful, and the TIF district now remains potentially accessible to Debtor.

Second, in order to access TIF funds, Debtor will need to complete a long and cumbersome application process. That process involves submitting various plans and reports to the City of Chicago, demonstrating that there is a viable project, and negotiating with the City for approval of an acceptable development plan. This will be both time-consuming and complex, so Debtor will need to hire consultants to shepherd the project through the necessary process.

Debtor hired its consultant, S.B. Friedman & Co., which has already begun such work.

## **B. Tax Credits**

Debtor is also taking steps to obtain and monetize various potential tax credits. Success in these efforts would likely enhance the value of Debtor's property and attract further investors and lenders.

First, there are "historic tax credits," which are federal income tax credits that might provide a 20% credit for certain expenditures for rehabilitation of historic structures. Debtor is eligible for these tax credits because one of the buildings on its property, the American Book Company Building, has been designated on the National Register. Debtor has hired a consultant, Midwest Chicago, LLC, that is available to work with Debtor to ensure that Debtor's development plans maximize the potential value of the tax credit. These credits, if obtained, would likely help attract investors who might benefit thereby.

Second, Debtor is pursuing "new market" federal tax credits, which are designed as an incentive to generate and provide private investment capital (in the form of debt or equity) to businesses that serve low-income communities or target populations. Debtor contends that it is eligible for these credits because the prospective hotel would be located adjacent to a targeted community and would provide jobs for that community. Like the other public funding sources Debtor is pursuing, the process for obtaining the new market tax credits is complex. Debtor has consulted with an attorney who specializes in the area, Alan Kennard of Wildman Harrold, and wishes to retain his services in pursuing these credits.

Debtor contends that these tax credits would add value of more than \$20 million to its property and hotel project. Once again, that estimate is somewhat speculative, but it must be said

that success in obtaining tax credits would materially enhance the property value.

### **C. Other Expenses**

Debtor also proposes to use some JMB loan proceeds to take other steps that will enhance the value of its property. Among other things, it proposes to: (1) commission a new environmental report to replace its current outdated report, a step that will be required by any prospective lender; (2) retain legal counsel to assist it in its planned development by, for example, helping with TIF and zoning issues or reviewing consultant and vendor contracts; and (3) pay future real estate tax installments as they become due (the next installment of which will be due on April 1, 2011).

## **II. SPECIFIC ENTITIES DEBTOR PROPOSES TO PAY FROM THE JMB LOAN**

Debtor seeks to borrow at least \$3,245,417 from JMB. The following is a list of entities that Debtor proposes to pay out of the JMB loan proceeds, along with a summary of the services provided or to be provided and the amount proposed to be paid:

1. *Cook County*. Debtor proposes to pay the next installments of real estate taxes of approximately \$141,612 due April 1, 2011. In its latest filings, CenterPoint's counsel argued that it is willing to advance and pay those installments (as it argued before the December 13th ruling without actually doing anything to implement that argument), but it has not done so and the due date is tomorrow.
2. *The Continental Companies, LLC ("TCC")*. TCC is a hospitality and casino development and operating company with over forty years of experience. TCC has worked with Debtor as its development partner both before and after Debtor filed for bankruptcy. TCC provides Debtor general development advice as well as TIF advice. Although TCC's

original contracts were signed by Gleichman without any indication that she was acting on behalf of Debtor, Debtor has submitted revised contracts showing that the contracts are between TCC and Debtor. Debtor seeks to pay TCC for services performed from July 1, 2010, after Debtor filed for bankruptcy. During the relevant time period, TCC has assisted and will continue to assist Debtor with, among other things: assisting architects on the design plan; coordinating hotel cost and development projections with the Morgan's Hotel Group; providing necessary information to Debtor's TIF and tax credit consultants; and working with financial institutions to finance the Debtor's development project. Although TCC had agreed to a monthly fee for future work of \$60,000 per month, it agreed to accept \$25,000 per month for work performed between July 1, 2010, and January 1, 2011. Debtor seeks to pay TCC a total of \$555,000, including \$174,000 for services already performed and \$381,000 for future services.

3. *Mid-Chicago, LLC*. Mid-Chicago has an extensive background in real estate development and working with city and state officials, and provides Debtor with TIF and development advice. Debtor entered into an agreement with Mid-Chicago to: assist Debtor in preserving the TIF district and available tax credits; assist the Debtor with its development plans; coordinate engineers, architects, and other professionals working on the project; and provide related services. Mid-Chicago played an important role in the recent passage of TIF legislation earlier referred to. Debtor proposes to pay Mid-Chicago \$30,000, of which \$21,000 is for services already performed and \$9,000 is for future services.
4. *Development Design Group, Inc. ("DDG")*. DDG is a reputable planning, architecture,

and design company with a history of providing expertise in many successful commercial endeavors. DDG will provide Debtor architectural services related to the TIF district and City approval. DDG's services include architectural plans and elevations, design guidelines, site and building selections, character perspective sketches, electronic 3D massing models, photographic images, additional exhibits as reasonably required, and application revisions and meetings that are necessary for further development work. This work is needed for many aspects of the development project, including the TIF and tax credit applications. Debtor proposes to pay DDG \$350,300, including \$10,000 for services already performed and \$340,300 for future services.

5. *Gaia Tech*. Gaia Tech has provided an initial proposal to update their prior environmental studies from 2007. This updated report is needed for the TIF application and other development tasks. Debtor proposes to pay Gaia Tech \$10,000 for future services.
6. *Traffic and Structural Studies*. In order to secure necessary approval from the City of Chicago, obtain TIF approval, and attract prospective lenders, Debtor will need to provide traffic and structural studies. Debtor has not yet identified engineers who will perform the studies, but hopes to do so in the near future. Debtor argued in its post-trial filings that money from the JMB loan should be used to fund these studies, but did not specify amounts needed. In addition, Debtor did not identify in its proposed order that it was seeking funds to pay for either study, let alone specify an amount it sought to borrow for those expenses.
7. *HVS Global*. Debtor plans to employ HVS to perform a study regarding the feasibility of

building a hotel near McCormick Place. This study will be an updated version of a study that HVS previously prepared for the Metropolitan Pier and Exposition Authority, the operator of McCormick Place, and is necessary for Debtor to move forward with the TIF application. Debtor proposes to pay HVS \$17,000 for future services.

8. *Wildman Harrold*. Debtor intends to employ Alan Kennard, a partner at the law firm Wildman Harrold, to assist Debtor in obtaining new market tax credits, which would help Debtor attract investors. Debtor proposes to pay Wildman Harrold \$75,000 for future services. Norberg guaranteed its fees.
9. *Midwest Chicago, LLC*. Midwest will assist Debtor in applying for historic preservation tax credits. Midwest will also work with and advise various persons working on the development project in order to preserve and best leverage the historic preservation tax credits. Debtor proposes to pay Midwest \$165,000, including \$15,000 for services already performed and \$150,000 for future services.
10. *S.B. Friedman & Co. ("Friedman")*. Friedman is a specialized real estate and development advisory firm that works closely with clients to evaluate development potential, project financial feasibility, identify public-private development solutions, and prepare development strategies. Friedman's current contract is with Lakeside Place, LLC, a member of the Debtor, but the company intends to obtain a new contract with Debtor should the JMB loan be approved. The company will prepare Debtor's TIF financing application, for which Debtor proposes to pay Friedman \$200,000, including \$10,000 for services already performed and \$190,000 for future services. Gleichman personally paid

S.B. Friedman a retainer.

11. *Cullen & Associates ("Cullen")*. Cullen specializes in performing legislative and executive branch representation and consulting services. Thomas Cullen, the owner of Cullen, has worked with state legislators since 1987 in various capacities. Cullen has provided and will offer Debtor services consisting of Illinois legislative analysis and assistance. Cullen registered as a lobbyist for the Debtor and has assisted and will continue to assist in the passage of TIF legislation. Debtor proposes to pay Cullen \$21,505, including \$13,505 for services already performed and \$8,000 for future services.
12. *Res Publica*. Debtor has engaged Res Publica to assist in governmental relations and related matters publicizing the many public benefits (including jobs and tax revenue) of the development project. This work helps Debtor's efforts to secure and maximize TIF benefits. Debtor proposes to pay Res Publica \$50,000, half for services already performed and half for future services. Gleichman personally paid Res Publica a retainer.
13. *Daley George*. Debtor has retained the Daley George law firm to assist Debtor with zoning, TIF, and other typical development work. This work is necessary to secure the TIF funding and to keep Debtor's development project on track. Debtor proposes to pay Daley George \$94,000, including \$44,000 for services performed and \$50,000 for future services.
14. *Marcus, Clegg & Mistretta ("MCM")*. Debtor wants MCM to assist with general legal work, including the review of consultant and vendor contracts. MCM's contract is with Norberg, personally, as Manager of Debtor. Debtor proposes to pay MCM \$55,000,

- including \$20,000 for services already performed and \$30,000 for future services.
15. *Walker Wilcox*. Walker Wilcox has performed a number of different tasks relating to the foreclosure case and has provided background information relating to the claim objection involving CenterPoint. Debtor proposes to pay Walker Wilcox \$21,000, all for services already performed.
  16. *Ungaretti & Harris, LLP*. Ungaretti is Debtor's general bankruptcy counsel. As a result of the firm's legal work in this case, Debtor has been able to continue its efforts to develop its real estate assets and reorganize its business. Debtor proposes to pay Ungaretti a total of \$800,000, including \$424,273 for services already performed and the remaining amount for future services. Gleichman and Norberg have guaranteed Ungaretti's fees.
  17. *Righeimer, Martin & Cinquino ("RMC")*. Leo Cinquino, a partner at RMC, was approved as an additional bankruptcy counsel. Cinquino has assisted Debtor in several aspects of its case, including an earlier condemnation proceeding relating to part of Debtor's property, as well as through business advice to Debtor. Debtor seeks his continued help to develop its real estate assets and reorganize its business in this bankruptcy case. Debtor proposes to pay RMC \$200,000, including \$120,000 for services already performed and \$80,000 for future services.
  18. *CRT Capital Group LLC*. CRT is Debtor's financial advisor and investment banker. CRT has canvassed the market and communicated with numerous investors who invest in projects and developments of this type and size, including debt (to finance both emergence from bankruptcy and the development project going forward) and equity

sources. Through these efforts, CRT identified JMB as a post-petition lender and as a possible source of exit financing and equity for the project. Debtor seeks to pay CRT \$235,000, including \$110,000 for services already performed and \$125,000 for future services. Norberg has guaranteed CRT's fees.

19. *Ostrow Reisen Berk & Abrams*. Ostrow Reisen is an accounting firm. The parties did not discuss the firm at all in their post-trial filings, other than to dispute whether it should be employed as a professional by the estate before the JMB loan is approved. It is not clear what services the firm will provide to Debtor or how the services it will provide will advance Debtor's ability to reorganize. Indeed, at trial it appeared that Ostrow Reisen would be preparing tax returns for two of the Debtor LLC's members, but not for Debtor itself. Moreover, Ostrow Reisen is the only creditor other than CenterPoint to file a Proof of Claim in this bankruptcy case, asserting a \$45,000 unsecured prebankruptcy claim against Debtor that has not been waived thus far. Debtor seeks to pay Ostrow Reisen \$25,000 out of the JMB loan for future services, subject to the firm's retention by Debtor as a professional.
20. *General and Administrative Expenses*. Debtor also seeks to use funds from the proposed JMB loan to fund its operations. Specifically, Debtor seeks to pay up to \$200,000 for office rent at an unspecified location, salary for an office assistant, office supplies and expenses, insurance, computer and telephone services, and utilities. Debtor does not explain where and how it obtained these services and facilities in the past, and it may be that Debtor has thus far been operated out of Gleichman's home.

Further factual matters described in the Conclusions of Law will stand as additional Findings of Fact.

## CONCLUSIONS OF LAW

### I. LEGAL STANDARDS

A debtor-in-possession may obtain credit or incur debt only as provided in § 364 of the Bankruptcy Code, Title 11 U.S.C. The standards that a debtor must meet under § 364 depend on the type of credit it seeks to obtain. A debtor may obtain unsecured credit in the ordinary course of business allowable as an administrative expense without a hearing or court approval, unless the court orders otherwise. 11 U.S.C. § 364(a). A debtor may obtain unsecured credit outside the ordinary course of business only with court approval after notice and a hearing. *Id.* § 364(b). If a debtor is unable to obtain unsecured credit, a court may authorize the debtor, after notice and a hearing, to obtain credit: (1) with priority over other administrative expenses (sometimes referred to as “superpriority” administrative expenses); (2) secured by a lien on unencumbered estate property; or (3) secured by a junior lien on encumbered estate property. *Id.* § 364(c). Finally, a debtor can obtain credit secured by a senior or equal lien on encumbered estate property (sometimes referred to as a “priming lien”) with court approval and after notice and a hearing only if: (1) the debtor is unable to obtain credit otherwise and (2) the interest of the creditor to be primed is adequately protected. *Id.* § 364(d).

By their terms, these statutory standards do not require inquiry into a debtor’s proposed use of the funds. However, should authority to borrow be granted, the funds would be property of the estate and subject to usage limitations set out in 11 U.S.C. § 363. Under that provision, a

debtor may use or sell estate property outside the ordinary course of business only after notice and a hearing. *Id.* § 363(b)(1). In determining whether to approve such a use or sale, various standards have been used, “including a business judgment test, a good faith test determining whether the [use or] sale is fair and equitable, and a test to assess whether the transaction is in the best interest of the estate.” *In re Zeigler*, 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005) (internal citations omitted). “The Seventh Circuit Court of Appeals has stated that there must be an ‘articulated business justification’ for the [use or] sale.” *Id.* (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)).

Here, Debtor seeks to obtain credit from JMB in exchange for a priming lien on property encumbered by CenterPoint’s lien, a lien on any of Debtor’s property that is not already encumbered, and a superpriority administrative expense claim. Debtor has shown that it cannot obtain this credit under less onerous terms than those offered by JMB and, as discussed below, that CenterPoint’s interest in Debtor’s property is adequately protected. *See* 11 U.S.C. § 364(d). CenterPoint opposes this relief, arguing that its interest is not adequately protected, that the various proposed expenditures will not advance Debtor’s reorganization, and that specific expenses objected to should not be approved.

It is not enough for Debtor to rely on a large equity cushion resting on expert opinions as to value of its property even when, as in this case, the property is close to Lake Michigan at one of Chicago’s most vibrant locations next to McCormick Place. A large equity cushion is not a debtor’s piggy bank, and the uses contemplated for the new loan must have serious likelihood of benefitting the property and advancing the purposes of reorganization. A priming lien without

such a showing would impose an unwarranted burden on the secured creditor if reorganization fails.

## II. CENTERPOINT'S INTEREST IS ADEQUATELY PROTECTED

A debtor will sometimes provide adequate protection of an interest in estate property by: (1) making cash payments to the affected entity to the extent its interest decreases in value; (2) providing to the entity an additional or replacement lien to the extent its interest decreases in value; or (3) granting some other relief that will allow the entity to realize the “indubitable equivalent” of its interest. 11 U.S.C. § 361. The purpose of adequate protection “is to insure that the creditor receives the value for which he bargained prebankruptcy.” *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987).

However, a large equity cushion in the form of property value has also been found to provide adequate protection in some circumstances. *See In re Aaura, Inc.*, No. 06 B 01853, 2006 WL 2568048, at \*2 (Bankr. N.D. Ill. Sept. 1, 2006) (citing *In re James Wilson Assoc.*, 965 F.2d 160, 171 (7th Cir. 1992); *In re Markos Gurnee P'ship*, 252 B.R. 712, 716–17 (Bankr. N.D. Ill. 1997)). When a debtor seeks to prime an existing creditor, it must also show that the creditor's interest is not being jeopardized, considering “all of the relevant facts, with a particular focus upon the value of the collateral, the likelihood that it will depreciate or appreciate over time, the prospects for successful reorganization of the Debtor's affairs by means of the Plan, and the Debtor's performance in accordance with the Plan.” *In re Strug-Division LLC*, 380 B.R. 505, 513–14 (Bankr. N.D. Ill. 2008) (quoting *In re Aqua Assoc.*, 123 B.R. 192, 196–97 (Bankr. E.D. Pa. 1991)). A debtor's use of credit obtained through a priming lien must be likely to benefit the

estate and improve the debtor's ability to reorganize. *See id.*; *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *In re Mosello*, 195 B.R. 277 (Bankr. S.D.N.Y. 1996) (finding potential increase in value from Chapter 11 debtor's property development plans too speculative to adequately protect mortgagee's undersecured interest in debtor's property).

In this case, it was earlier found from expert testimony that Debtor's property has a value of \$81,150,000. Since Debtor's debt amounted to approximately \$48.7 million as of July 7, 2010, when CenterPoint filed its Proof of Claim, the property value found represents a large equity cushion. While accepted methods were used with expert opinion to value the property, those sources are only a substitute for testing the market to obtain actual sales or funding. Nonetheless, it is clear here that CenterPoint's security interest in Debtor's property and cash would be adequately protected, even when primed by the proposed lien. There is sufficient equity in Debtor's properties (about 38% of value) to protect CenterPoint against the diminution in value of its interest that will result from the relatively small JMB priming lien, and the activities to be funded are likely to enhance property value, thus offering further possible protection.

CenterPoint argues that Debtor admitted at one point that its property was worth only \$30 million. The basis for this argument is an inference CenterPoint derives from some unclear statements in a presentation that Debtor had prepared and that was admitted into evidence as Debtor's Exhibit 65. However, that document was an old presentation that did not contain the most current information. In addition, the presentation contained an explicit statement that Debtor valued its property at \$93 million, not \$30 million as CenterPoint argues. Finally, the value found here after a full evidentiary hearing at which experts for both sides testified was

\$81,150,000, *In re Olde Prairie Block Owner, LLC*, No. 10 B 22668, 2010 WL 4512820, at \*4 (Bankr. N.D. Ill. Oct. 29, 2010), and that value must be accepted until new evidence shows the contrary.

Relying on *In re Swedeland Development Group*, 16 F.3d 552 (3d Cir. 1994), CenterPoint also argues that its interest cannot be adequately protected because there is no tangible evidence that the financing will actually increase value of Debtor's property. In *Swedeland*, the debtor property developer sought post-petition financing in the form of a priming lien to obtain working capital to fund ongoing construction. 16 F.3d at 556–57. The debtor argued that its secured creditor was adequately protected because the completed development “would generate a positive cash flow, the residential units could be completed and sold, and the completion of the project by the end of the century would result in [the secured creditor] being paid in full.” *Id.* at 557. On appeal, a panel of the Third Circuit found that this was not adequate protection because the future profitability of the enterprise was entirely speculative in that case. *Id.* at 563–67.

CenterPoint's reliance on *Swedeland* is not appropriate. It is found and held here that CenterPoint's interest is sufficiently protected by the substantial equity cushion demonstrated by the value found in Debtor's properties. While the proposed expenditures are likely to increase property value that would provide additional protection, the amount of such possible increase in value is speculative and dependant on market factors, and is not relied on here to determine adequate protection of CenterPoint's interest. It can, however, be said that to the extent the security is likely to be benefitted, the burden on CenterPoint of a priming lien is likely to be

mitigated.

Allowing a priming lien should be considered with caution to avoid transferring the entrepreneurial risk of failure by Debtor's investors and principals onto the secured creditor CenterPoint. Given the inherent uncertainty of determining valuation through methods commonly used by experts in appraising real estate, some restraint in allowing priming liens to fund particular expenses is warranted.

Debtor has shown that most of the expenses it seeks to fund with proceeds of its proposed borrowing will likely advance the value of the estate property and make it easier for Debtor to reorganize. First, Debtor has been taking steps towards acquiring funds from the TIF district, as well as various tax credits for which it is eligible. These government funding sources may be monetized and, if so, that would likely attract potential investors and lenders who would help fund Debtor's hotel development project. In addition, it is clear from evidence presented that these funding sources will be available to any future owner of Debtor's property, including CenterPoint should it acquire that property through foreclosure. Second, Debtor continues to push forward with its hotel development plans by seeking lenders and investors, generating various required reports, and generally operating as a property developer. By doing so, Debtor enhances the value of its property, and therefore, its bankruptcy estate. This has been a hotly contested bankruptcy case, and Debtor in this single asset bankruptcy is moving on a fast time line towards possible plan confirmation, as it must.

Debtor has also shown under § 363(b) and (c) that it has a serious articulated business justification for most of the proposed uses of the requested loan, regardless of whether they are

inside or outside the ordinary course of business, and that those uses are in the best interest of the estate. Moreover, tax credits and government assistance that Debtor seeks are tied to the proposed development and use of the property, not to other possible interests of Debtor, and will likely benefit whoever owns Debtor's properties in the future. Considering all relevant factors, it is concluded that CenterPoint's collateral would not be jeopardized by allowing a priming lien.

### **III. DEBTOR'S PROPOSED USE OF FUNDS**

For most of Debtor's proposed expenses, Debtor has shown that it is unable to obtain unsecured credit allowable under § 503(b)(1) as an administrative expense or allowable only under §§ 363(c)(2), (c)(3), or (d) on more favorable terms and conditions than those provided by JMB. For those expenses, Debtor is unable to obtain credit without granting JMB the terms it demands. However, Debtor has obtained unsecured credit for some of the proposed expenses. Indeed, some vendors have already provided services on retainers paid by Gleichman or some other person, on an unsecured basis or otherwise. Although the vendors for those expenses may have performed valuable services to Debtor's estate, permitting Debtor to borrow from JMB in exchange for a priming lien in order to pay past due expenses would be contrary to the plain language of the requirements under § 364(d).

In its Motion to Amend the original Order, Debtor seeks further authority to pay JMB's costs and expenses relating to the proposed loan. Debtor did not present evidence on this subject at trial, but now seeks blanket permission to pay those costs and expenses, "including, but not limited to, accrued attorneys' fees of \$548,912.48, for, among other things costs and expenses relating to reviewing and responding to oral and written discovery requested by CenterPoint."

Such expenses are commonly required by lenders, but here Debtor and JMB cannot yet obtain approval of them for two reasons. First, no evidence was offered as to the reasonableness and necessity of the expenses sought to be approved. Second, attorneys for both JMB and Debtor contended expressly at the final oral argument on Debtor's Motion to Amend that no evidence need be offered and that CenterPoint has no right to review evidence as to the requested expenses and that it should be given no opportunity to question them.

While Debtor and JMB offered to submit JMB's attorneys' fees and expenses to Court review and approval without evidence, they have thus far stood firm on their position that CenterPoint should not be allowed to challenge those expenses before loans to pay them would prime its lien. Their stated reason for this position was a fear that CenterPoint would challenge the expenses. However, fear of litigation is no excuse for the extraordinary claim of right to deprive CenterPoint of its Fifth Amendment Due Process right to notice and a hearing before its lien is primed by this part of the loan. To receive approval of the additional half million dollar loan that is sought, JMB and Debtor will be required to yield their procedural objection to a hearing to obtain approval of what they seek in this regard.

For these reasons, Debtor will be permitted to borrow from JMB only those amounts necessary to fund approved future services—that is, services rendered after on January 1, 2011—provided under contracts with the Debtor. Jurisdiction will be reserved to consider additional expenses on notice of motion and hearing with evidence is presented as to the necessity, reasonableness, and usefulness thereof.

#### IV. PAYEES WHO MAY BE PROFESSIONALS

CenterPoint argues that several of the payees that are attorneys or accountants cannot be paid from the requested JMB loan proceeds. However, that argument lacks merit.

First, CenterPoint argues that several payees that are law firms or accountants must be employed under 11 U.S.C. § 327 and must file fee applications before the JMB loan can be approved. Section 327 does not necessarily apply to all accountants and lawyers. *See In re Renaissance Residential of Countryside, LLC*, 423 B.R. 848, 856–58 (Bankr. N.D. Ill. 2010). However, even assuming that § 327 will apply to professionals who are sought to be employed, Debtor can still be authorized to borrow funds from JMB without authority to pay those funds out to the professionals until they have been employed and have submitted proper fee applications. In other words, failure as of yet to be employed under § 327 or to submit a fee application is not a bar to Debtor borrowing money to pay properly employed professionals and other attorney and accountant payees in the future.

Second, CenterPoint argues that proceeds of the JMB loan will result from a disposition of its collateral, and therefore those proceeds would be its cash collateral which Debtor cannot use without its consent or court order. However, as discussed above, CenterPoint's interest in Debtor's property is adequately protected by the large equity cushion. This cushion exists regardless of whether it is in the form of cash or unencumbered real property, and it provides adequate protection for use of loan proceeds even when viewed as cash collateral.

Third, CenterPoint argues that payment to attorneys and accountants would be an impermissible charge against its collateral to pay general estate administrative expenses. Under

11 U.S.C. § 506(c), a debtor-in-possession “may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to such property.” However, Debtor is not seeking to charge CenterPoint’s secured claim under § 506(c) for preservation expenses. Instead, Debtor seeks to borrow additional funds from the unencumbered equity in its property in order to further its reorganization efforts. A secured creditor “has no right to fence off the entire collateral in which it has an interest so that no other creditor can get at it. Its only entitlement is to the adequate protection of its interest.” *In re James Wilson Assocs.*, 965 F.2d 160, 171 (7th Cir. 1992) (debtor may use oversecured mortgagee’s cash collateral to pay attorney fees). Therefore, CenterPoint’s argument is without merit.

#### **V. THE PROPOSED JMB LOAN WAS NEGOTIATED AND IS BEING PROVIDED IN GOOD FAITH**

The Bankruptcy Code offers some protections to lenders who advance post-bankruptcy credit to debtors. Specifically,

[t]he reversal or modification on appeal of an authorization under [§ 364] to obtain credit or incur debt, or of a grant under [§ 364] of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to any entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

Debtor and JMB negotiated the proposed loan in good faith and at arm’s length. The terms and conditions of the proposed loan are the best available under the circumstances, reflect

Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration. The proceeds of the proposed JMB loan will be extended in good faith and for valid business purposes and uses, so JMB is entitled to the full protection and benefits of § 364(e).

### CONCLUSION

By separate order, Debtor will be authorized to obtain credit in return for a priming lien on Debtor's property that is encumbered by CenterPoint's lien, liens on Debtor's unencumbered property, and a superpriority administrative expense claim, but only to the extent Debtor has not already obtained credit and to the extent the payee's services will provide a benefit to the estate. Specifically, Debtor will be authorized to borrow from JMB on terms requested only enough to net a total of \$2,007,639, which may be used to pay only the following providers up to the following amounts for purposes described hereinabove:

1. Cook County, \$141,612 to pay the next installments of real estate taxes due April 1, 2011.
2. The Continental Companies, LLC, \$381,000.
3. Mid-Chicago, LLC, \$9,000.
4. Development Design Group, Inc., \$340,300.
5. Gaia Tech, \$10,000.
6. HVS Global, \$17,000.
7. Wildman Harrold, \$75,000.
8. Midwest Chicago, LLC, \$150,000.

9. S.B. Friedman & Co., \$190,000, provided that no payment may be made to it except under contract with Debtor approved by the Court on subsequent motion. Debtor has demonstrated that S.B. Friedman's services would benefit the estate and would not jeopardize CenterPoint's collateral. However, the evidence shows S.B. Friedman has a contract to provide services to some party other than Debtor. Therefore, Debtor may not use JMB funds to pay S.B. Friedman unless Debtor executes a contract with it.
10. Cullen & Associates, \$8,000.
11. Res Publica, \$25,000.
12. Daley George, \$50,000.
13. Marcus, Clegg & Mistretta, \$30,000, provided that no payment may be made to it except under contract with Debtor approved by the Court on subsequent motion. Debtor has demonstrated that Marcus, Clegg & Mistretta's services would benefit the estate and would not jeopardize CenterPoint's collateral. However, the evidence shows the law firm has a contract to provide services to some party other than Debtor. Therefore, Debtor may not use JMB funds to pay the law firm unless Debtor executes a contract with it.
14. Ungaretti & Harris, LLP, \$375,727.
15. Righeimer, Martin & Cinquino, \$80,000.
16. CRT Capital Group LLC, \$125,000.

Debtor will not be authorized to borrow from JMB funds that would be used:

1. To pay for traffic or structural studies. Debtor has shown that those studies would benefit the estate and would not jeopardize CenterPoint's collateral. However, Debtor has not yet presented evidence as to the cost of those services.
2. To pay Walker Wilcox. Debtor seeks to pay Walker Wilcox for services previously performed, not for future services. Because the firm has provided services on an unsecured credit basis to Debtor, Debtor cannot now meet the standards for using funds out of the proposed JMB loan to pay the firm's fees.
3. To pay Ostrow Reisen Berk & Abrams. Debtor did not satisfactorily show how this accounting firm's proposed services will benefit its estate. In fact, it appears that the services presently proposed would directly benefit individual members of the Debtor LLC rather than the bankruptcy Debtor or estate.
4. To pay "general or administrative" expenses. Debtor did not present evidence at trial regarding need for an office, an office assistant, or the like. It cannot be determined on this record what benefit this would have for the estate, whether these expenses are necessary, whether the costs are reasonable, or whether these expenses would unfairly jeopardize CenterPoint's collateral.
5. To repay Gleichman or any other entity or individual the amounts of any payments or retainers they advanced to any of the above payees. Entrepreneurs who advance expenses may take personal risks in their pursuit of possible profit, and those unsecured voluntary advances cannot qualify under standards required under § 364(d) for a priming lien.

6. To pay Coman & Anderson, P.C. The Objection of Coman & Anderson, P.C., will be overruled. Its allowed administrative expense claim is for work in 2010 on behalf of a replaced state-court receiver. As discussed above, Debtor may not borrow from JMB to pay for prior expenses.
7. To borrow an additional priming loan of over \$500,000 to pay JMB its fees and expenses related to this loan, an amount that was not established by evidence during the hearing and that Debtor and JMB have stubbornly refused thus far to present for review by the Court in a hearing participated in by CenterPoint. However, recognizing the necessity of resolution of this additional loan request, jurisdiction will be reserved to reopen the evidence upon notice and motion to take evidence on this matter subject to CenterPoint objection and court review.

One final comment to explain the Amended Order being entered. Debtor and JMB ask that terms of a forty-six page financing agreement be fully incorporated by reference. It contains the usual series of protections that hog tie Debtor and forestall any other claims or rights by third parties or Debtor. Similar contracts between debtors and lenders of new loans are usually approved as negotiated so long as they do not impair third party rights. However, the JMB loan is not a new first mortgage, but is rather a priming lien. Only certain terms therein are incorporated in the Amended Order allowing a limited priming loan. Some other proposed provisions are not.

JMB is receiving a priming lien on prime Chicago lakefront property worth a great deal more than its present loan, as well as a superpriority administrative expense claim. It has absolute discretion whether or not to loan or to pay any of the approved expenses. Other provisions that

overly burden CenterPoint and give total control of the bankruptcy case to JMB are not approved.

An Amended Order in accord with the forgoing will separately be entered.

ENTER:

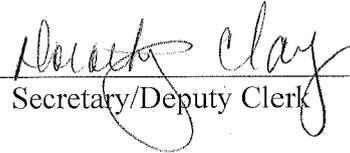
Jack B. Schmetterer  
United States Bankruptcy Judge

Dated this 9<sup>th</sup> day of March, 2011.

Case No. 10 B 22668  
In re: Olde Prairie Block Owner, LLC  
Updated: March 7, 2011

**CERTIFICATE OF SERVICE**

I, Dorothy Clay, certify that on March 31, 2011, I caused to be served copies of the foregoing AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following by electronic service through the Court's CM/ECF system or regular U.S. mail.

  
Secretary/Deputy Clerk

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE: ) Chapter 11  
)  
OLDE PRAIRIE BLOCK OWNER, LLC, ) Bankruptcy No. 10 B 22668  
)  
Debtor. )

**AMENDED ORDER GRANTING IN PART DEBTOR'S MOTION TO ENTER INTO  
SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT  
FACILITY PURSUANT TO 11 U.S.C. § 364 [Docket No. 371]**

For reasons stated in the Amended Findings of Fact and Conclusions of Law of this date, IT IS HEREBY ORDERED AND ADJUDGED as follows pursuant to 11 U.S.C. § 364:

1. Debtor is authorized to obtain credit from JMB Capital Partners LP ("JMB") in return for (1) a priming lien on Debtor's property that is presently encumbered by the lien of CenterPoint Properties Trust ("CenterPoint"), (2) liens on Debtor's unencumbered property, if any, and (3) a superpriority administrative expense claim, but only to the extent allowed herein. Specifically, Debtor is authorized to borrow from JMB only enough to net a total of \$2,007,639, which may be used to pay only the following providers up to the following amounts for services provided after January 1, 2011, and only on terms approved herein:
  - a. Cook County for the next installment of real estate taxes due April 1, 2011, \$141,612.
  - b. The Continental Companies, LLC, \$381,000.
  - c. Mid-Chicago, LLC, \$9,000.
  - d. Development Design Group, Inc., \$340,300.
  - e. Gaia Tech, \$10,000.

- f. HVS Global, \$17,000.
  - g. Wildman Harrold, \$75,000.
  - h. Midwest Chicago, LLC, \$150,000.
  - i. S.B. Friedman & Co., \$190,000, provided that no payment may be made to it except under contract with Debtor approved by the Court on subsequent motion.
  - j. Cullen & Associates, \$8,000.
  - k. Res Publica, \$25,000.
  - l. Daley George, \$50,000.
  - m. Marcus, Clegg & Mistretta, \$30,000, provided that no payment may be made to it except under contract with Debtor approved by the Court on subsequent motion.
  - n. Ungaretti & Harris, LLP, \$375,727.
  - o. Righeimer, Martin & Cinquino, \$80,000.
  - p. CRT Capital Group LLC, \$125,000.
2. Debtor is not presently authorized to borrow from JMB funds that would be used:
- a. To pay for traffic or structural studies.
  - b. To pay Walker Wilcox.
  - c. To pay Ostrow Reisen Berk & Abrams.
  - d. To pay “general or administrative” expenses as defined in Debtor’s Motion.
  - e. To repay Gleichman or any other entity or individual the amounts of any retainers they advanced to any of the above payees.
  - f. To pay JMB financing expenses, since Debtor and JMB have thus far declined to request approval thereof for lending with a priming lien and showing with evidence

the necessity and reasonableness thereof through a hearing that allows CenterPoint to object thereto.

3. The Objection of Coman & Anderson, P.C., is overruled.
4. Debtor must deposit all proceeds from advances made by JMB pursuant to this Order in a separate account held directly by Debtor and may not distribute or pay funds therefrom to any entity not explicitly named in Paragraph 1 above.
5. On or before the fifteenth day of each month, beginning April 15, 2011, Debtor shall file a report listing:
  - a. The date and amount of each and every advance of funds from JMB pursuant to this Amended Order; and
  - b. The amount of each payment actually made from funds borrowed pursuant to this Amended Order. Copies of all related invoices paid shall be appended thereto.
6. CenterPoint is permitted to repay JMB in the full amount of all funds owing to JMB from Debtor and to obtain a release of JMB's lien if this bankruptcy case is dismissed, with such amount paid to be added to the principal amount of CenterPoint's loan to Debtor subject to its mortgage. A condition of this Order is that JMB shall provide a payoff letter to CenterPoint within seven days after any date that this bankruptcy case is dismissed.
7. No law firm or attorney shall be paid under this Order until and unless:
  - a. The firm or attorney is approved by the Court under 11 U.S.C. § 327 and makes proper application for fees; or
  - b. An order is entered determining that the firm or attorney is not subject to 11 U.S.C. § 327.

8. Upon entry of this Order, the following provisions, which are consistent with the credit agreement between Debtor and JMB, are approved:
- a. Without the prior express written approval of JMB and until the JMB loan may be fully repaid by available funding, Debtor shall not seek the entry of an order or judgment in this bankruptcy case modifying, limiting, subordinating, recharacterizing, or avoiding the priority or validity of any indebtedness owed to JMB or the perfection, priority, or validity of JMB's liens on any collateral or imposing, surcharging, or assessing against JMB or its claims or any collateral of any costs or expenses, except as provided under § 506(c) of the Bankruptcy Code.
  - b. The loan documents, which were filed with the court [Docket No. 485 ex. A], are hereby approved for execution by Debtor and JMB, but are effective herein only as is consistent with this Order and to the extent set forth herein. Debtor is authorized to that extent:
    - i. to incur and perform obligations in accordance with the loan documents to the extent allowed by this Order, and
    - ii. to execute and deliver all instruments and documents that reasonably may be required or necessary for the performance by Debtor under the loan documents to the extent hereby authorized and the creation and perfection of liens described in and provided for by this Order and the loan documents.
  - c. Debtor is further authorized to perform all acts, and subject to the provisions of this Order, pay the principal, interest, and fees in connection with the loan as they become due and as provided for in the loan documents. Debtor's obligations under

this Order and the loan documents represent valid and binding obligations of Debtor enforceable against Debtor in accordance with their terms.

- d. **Authorization to Borrow.** Notwithstanding any provision of its certificate or articles of incorporation, bylaws, operating agreement, partnership agreement, membership agreement, certificate of formation, certificate of limited partnership, regulations, or comparable governing documents to the contrary, Debtor is authorized to, and each officer, member, manager, partner, or other comparable authorized signatory of Debtor is hereby authorized to cause Debtor to pledge, mortgage, and grant security interests in its assets to secure the JMB's loan, and to execute and enter into any and all of the loan documents and all other documents and transactions necessary to implement and effectuate the terms of the loan and the loan documents to the extent approved hereby.
- e. **Conditions Precedent.** JMB shall have no obligation to make any portion of the loan referred to in this Order.
- f. **Grant of DIP Liens.** Effective automatically and immediately upon the entry of this Order, to the extent of the moneys loaned under authority of this Order and as to each loan made, JMB is hereby granted (a) pursuant to § 364(c)(2) of the Bankruptcy Code, valid, enforceable, non-avoidable, first priority, perfected liens on, and senior security interests in, all unencumbered property of Debtor in favor of JMB; and (b) pursuant to § 364(d) of the Bankruptcy Code, valid, enforceable, non-avoidable, perfected, first priority priming liens on, and security interests (the "Priming Lien") as to all property of Debtor, including Debtor's real property, Debtor's long-term parking lease with the Metropolitan Pier and Exposition Authority (the "Parking

Lease”), and any other collateral subject to any pre-petition liens in favor of CenterPoint. Except as set forth above, the collateral securing the JMB loan includes, without limitation, (1) all of Debtor’s real estate and improvements and its Parking Lease,<sup>1</sup> (2) a first-priority, valid, perfected, and enforceable security interest on Debtor’s accounts, whether now owned or hereafter arising, and (3) a first-priority, valid, perfected, and enforceable lien on and security interest in all of the following types of property of Debtor, whether now owned or hereafter acquired:

- i. all tangible and intangible assets, proceeds, cash collateral or any other property of Debtor whatsoever, collateral assignment of all material leases, contracts, licenses and permits;
- ii. all other goods and personal property of Debtor, whether tangible or intangible and wherever located, including money, cash, cash equivalents or other assets of Debtor that now or hereafter come into the possession, custody, or control of the JMB;

---

1. Regarding the Parking Lease, Debtor and JMB have sought language granting JMB: “an irrevocable and absolute grant, transfer and assignment of such lease for the purpose of securing the Loans and the right to receive all revenue and rents therefrom.” Additionally, they request the following language:

Although the parties intend that the assignment of the Parking Lease be a present assignment without modification, so long as there shall exist no event of default as defined in Appendix A to this Final Order (an ‘Event of Default’), Borrower shall have the right to the use, occupancy, and any and all benefits under the Parking Lease, and no further assignments of the Parking Lease or the Debtor’s rights to and interests thereunder may be made by Lender except in connection with Lender exercising its rights and remedies with respect to the Collateral pursuant to the Financing Orders and the Loan Documents.

Debtor represents that the Metropolitan Pier and Exposition Authority (the “MPEA”) has consented to this language. However, Debtor must give formal notice to the MPEA before it can assign the lease under 11 U.S.C. § 365(f), and no such notice has been given here. Jurisdiction is reserved to incorporate the quoted language once the required notice has been served and hearing set thereon, unless valid objection is posed thereto.

- iii. all present and future rights, titles, and interests Debtor may now have or become entitled to under or by virtue of any leases (and proceeds from the disposition thereof), licenses, consents, permits, franchises, variances, certifications, approvals of governmental agencies, goodwill, rights of action, books and records, and all other similar tangible and intangible property of Debtor and the proceeds thereof;
- iv. (1) all of Debtor's rights, title and interest in, to and under all policies of insurance now or hereafter held by or on behalf of Debtor, including casualty, liability, key man life insurance, business interruption, foreign credit insurance, and any title insurance; (2) all proceeds of insurance, and (3) all rights, now or hereafter held by Debtor to any warranties of any manufacturer or contractor;
- v. all of Debtor's rights, title and interest in, to and under all contracts (including all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of any contract);
- vi. all of Debtor's rights, title and interest in all buildings, structures, and other improvements now or hereafter constructed, erected, installed, situated, or placed upon its real property (collectively, the "Improvements"); and
- vii. the rents, income, proceeds and products, whether tangible or intangible, of any of the foregoing in this Paragraph 8(e), including proceeds of insurance covering any or all of the foregoing in this Paragraph 8(e).

The property listed in Paragraph 8.f.i–vii are collectively the “Collateral.” JMB’s liens and security interests in the Collateral are collectively referred to as the “DIP Liens” and all of the DIP Liens shall be cross-collateralized and cross-defaulted as to all of the Collateral, however the Collateral does not include actions for preferences, fraudulent conveyances, and other avoidance power claims under chapter 5 of the Bankruptcy Code (the “Avoidance Actions”).

- g. **DIP Lien Priority.** The DIP Liens granted hereby shall be priming and senior in priority and shall not be made subject to, or *pari passu* with any pre-petition lien or security interest by any court order heretofore or hereafter entered in this Case and shall be valid and enforceable against any trustee or examiner appointed in the Case, upon the conversion of the Case to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any “Successor Case”), and/or upon the dismissal of the cases. Without limiting the foregoing, no court order in this Case heretofore or hereafter shall authorize any lien or other encumbrance to be placed on any of the Collateral, including, but not limited to the real property and the Parking Lease. The DIP Liens shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code.
- h. **Post-Petition Lien Perfection.** This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect the DIP

Liens, or to entitle JMB to the priorities granted herein. Notwithstanding the foregoing, Debtor and JMB are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to JMB hereunder. Whether or not JMB shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to it hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge or dispute or subordination, at the time and on the date of entry of this Order. Upon the request of JMB, without any further consent of any party or this Court, Debtor is authorized to take, execute, deliver, and file such instruments (in each case without representation or warranty of any kind) to enable JMB to further validate, perfect, preserve and enforce the DIP Liens and claims. Debtor shall execute and deliver to JMB all such agreements, financing statements, instruments and other documents as JMB may reasonably request to more fully evidence, confirm, validate, perfect, preserve, and enforce the DIP Liens and claims. All such documents will be deemed to have been recorded and filed as of the Petition Date. A certified copy of this Order may, in the discretion of JMB, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy

of this Order for filing and recording. JMB, in its discretion, may also file a certified copy of this Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized and is directed to file or record such copy of this Order.

- i. Unless and until Debtor's obligations are irrevocably repaid in full, the protections afforded to JMB pursuant to this Order and under the loan documents, and any actions taken pursuant thereto, shall survive the entry of any order confirming a Plan or converting the Case into a Successor Case, or dismissing the Case, and the DIP Liens and DIP Superpriority Claim shall continue in this Case and in any Successor Case, and such Liens and Claim shall maintain their priority as provided by this Order.
- j. **Exclusive Jurisdiction.** The Court shall retain exclusive jurisdiction with respect to all matters relating to the exercise of rights and remedies under the loan documents, this Order, and with respect to the Collateral unless and until the bankruptcy case is dismissed. Subsequent to the occurrence of an event of default
  - i. JMB shall have no obligation to fund and no proceeds of loans or cash collateral of JMB will be available to fund any administrative expenses; and
  - ii. the enforcement of the rights and remedies of JMB provided for under this paragraph and the in the Loan Documents are protected by § 364(e) of the Bankruptcy Code and may not be subsequently conditioned, limited, modified, vacated, reversed, or eliminated for cause under § 363(k) of the

Bankruptcy Code or otherwise, regardless whether Debtor's estate is administratively insolvent before or after the exercise of such rights.

k. Events of Default are defined in Appendix A to this Order.

l. **Other Rights and Obligations.**

i. **Good Faith under Section 364(e) of the Bankruptcy Code.** No Modification or Stay of this Final DIP Order. JMB has acted in good faith in connection with this Order and its reliance on the Order has been and is in good faith. Based on the findings set forth in the Amended Findings of Fact and Conclusions of Law of this date, and in accordance with § 364(e) of the Bankruptcy Code, which is applicable to the loans contemplated by this Order, in the event any or all of the provisions of this Order are hereafter modified, stayed, amended, or vacated by a subsequent order of this Court, JMB is entitled to the protections provided in § 364(e) of the Bankruptcy Code and no such modification, stay, amendment, or vacation shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby, regardless whether Debtor's estate is administratively insolvent before or after the exercise of such rights. Notwithstanding any such modification, amendment or vacation, any claim or lien granted to JMB hereunder arising prior to the effective date of such modification, amendment, or vacation of any DIP Protections granted to JMB shall be governed in all respects as to loans made prior thereto by the original provisions of this Order, and JMB shall be entitled to all of the rights, remedies, privileges, and benefits, including the DIP Protections granted

herein, with respect to any such claim or lien. Since the loans made pursuant to the loan documents in reliance on this Order, the obligations owed to JMB prior to the effective date of any stay, modification, or vacation of this Order cannot, as a result of any subsequent order in this Case or in any Successor Case, be subordinated, lose their lien priority or super priority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to JMB under this Order and/or the loan documents.

- ii. **Modification of Stay.** The automatic stay imposed under § 362(a) of the Bankruptcy Code is hereby modified pursuant to and to the extent necessary to implement the loan documents and this Order, including without limitation to (1) permit Debtor to grant the DIP Liens and to incur all liabilities and obligations to JMB under the loan documents and this Order, and (2) authorize JMB to retain and apply payments hereunder in accordance with the provisions of this Order and the loan documents.
- iii. **Protection of DIP Liens.** Upon entry of this Order, JMB shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by Debtor that in any way relates to the Collateral. In addition, Debtor shall provide to JMB proof of adequate insurance to the satisfaction of JMB and proof that JMB has been named as additional insured and loss payee on all policies to the satisfaction of JMB.
- iv. **Preservation of DIP Liens.** No claim or lien having a priority superior to or *pari passu* with those granted by this Order to JMB shall be granted or

allowed while any portion of the Debtor's obligations remain outstanding, and the DIP Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of Debtor's estate under Bankruptcy Code section 551, or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under Bankruptcy Code section 364(d) or otherwise.

v. **Amendment.** No amendment, modification, termination, or waiver of any provision of any of the loan documents, or any consent to any departure by Debtor therefrom, shall in any event be effective, except as set forth in the loan documents.

vi. **Survival of Order, Expiration of Order.** The provisions of this Order (including without limitation, the DIP Protections and all DIP Liens granted hereunder) and any actions taken pursuant to this Order shall be effective on the entry hereof ("Effective Date") and shall survive entry of any order that may be entered:

- (1) confirming any plan in this Case,
- (2) converting this Case to a Successor Case,
- (3) dismissing this Case,
- (4) withdrawing of the reference of this Case from this Court, or
- (5) providing for abstention from handling or retaining of jurisdiction of this Case in this Court.

The terms and provisions of this Order, including the DIP Protections granted pursuant to this Order, and the loan documents, shall continue in full force

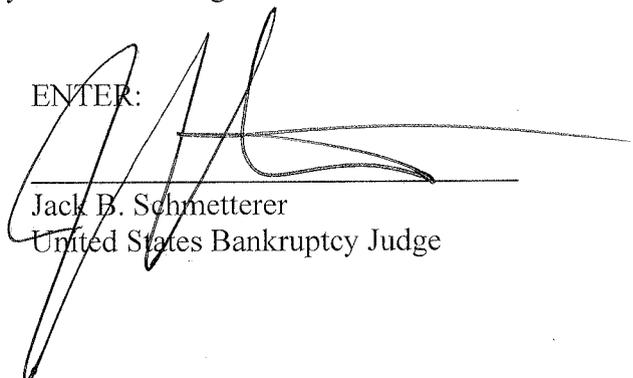
and effect notwithstanding the entry of such order, and such DIP Protections shall maintain their priority as provided by this Order until all of Debtor's obligations to JMB pursuant to the loan documents and this Order have been indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the loan documents or this Order that survive such discharge by their terms). These obligations shall not be discharged by the entry of an order confirming any plan or Debtor having waived such discharge pursuant to Section 1141(d)(4) of the Bankruptcy Code.

- vii. **Waiver.** Without limitation, Debtor waives any right it may have to seek authority to, and no proceeds of the loan may be used to
- (1) challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability, or priority of JMB's liens and claims,
  - (2) challenge the application of any payments or collections received by JMB to the obligations of Debtor as provided for herein and in the loan documents,
  - (3) propose or support a plan of reorganization that does not provide for the indefeasible payment in full and satisfaction of all obligations of Debtor under this Order on the effective date of such plan, or
  - (4) seek relief under the Bankruptcy Code, including without limitation, under § 105, to the extent any such relief would in any way restrict or impair the rights and remedies of JMB as provided herein.

- viii. **Indemnity.** Debtor will indemnify JMB and its respective members, directors, officers, agents, subsidiaries, affiliates, representatives, successors and assigns, attorneys, professionals, advisors, and employees in their respective capacities as such and hold them harmless from and against all losses, claims, damages, costs, expenses (including fees, disbursements, and other charges of counsel) and liabilities arising out of or relating to any litigation or other proceeding (regardless of whether JMB is a party thereto) that relate to the transactions contemplated by this Order, the loan documents, or any transactions related thereto, including the enforcement of any rights of JMB, except to the extent finally determined by a court of competent jurisdiction to have resulted primarily from such person's gross negligence or willful misconduct.
- ix. **No Waivers or Modification of Order.** Debtor irrevocably waives any right to seek any modification or extension of this Order without the prior written consent of JMB and no such consent shall be implied by any other action, inaction, or acquiescence of JMB.
- x. **No Marshalling.** JMB shall not be subject to the equitable doctrine of marshalling or any other similar doctrine with respect to any of the Collateral, and all proceeds shall be received and applied in accordance with this Order and the loan documents.
- m. **No Third Party Rights.** Except as explicitly provided for herein, this Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

9. The original Motion and Motion to Alter or Amend are otherwise denied.
10. Jurisdiction is reserved to enforce or modify this Order for good cause shown.

ENTER:



Jack B. Schmetterer  
United States Bankruptcy Judge

Dated this 31st day of March, 2011.

## APPENDIX A - EVENTS OF DEFAULT

If any of the following events shall occur and be continuing:

(a) Payment Defaults. The Borrower shall fail to (i) pay any principal of or interest on any Loan when the same shall become due and payable or (ii) make any other payment under any Loan Document within three (3) Business Days after the same shall become due and payable;

(b) Misrepresentation. Any representation, warranty, certification or other statement made by the Borrower (or any of its officers) under or in connection with any Loan Document shall prove to have been incorrect in any material respect (without duplication of materiality qualifiers contained herein) when made;

(c) Material Adverse Change. A Material Adverse Change shall have occurred since the Effective Date;

(d) Covenants. The Borrower shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed;

(e) Cross Default. The Borrower shall fail to pay (other than as prohibited by an order of the Bankruptcy Court) any principal of, premium or interest on or any other amount payable in respect of any Debt of the Borrower (but excluding Debt outstanding under the Loan Documents) when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise); or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt or otherwise to cause, or to permit the holder thereof to cause, such Debt to become due and payable prior to the stated maturity thereof;

(f) Judgments. One or more judgments or decrees shall be entered against the Borrower involving in the aggregate for the Borrower a liability (not paid or fully covered by a reputable and solvent insurance company) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of sixty (60) consecutive days, and the aggregate amount of all such judgments, to the extent not covered by insurance equals or exceeds \$1,000,000;

(g) The Case. The occurrence of any of the following in the Case:

(i) except for new financing that fully pays the JMB loans, the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto, in each case, by the Borrower in the Case, or the entry of any order by the Bankruptcy Court in the Case: (w) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (x) to grant any Lien other than those set forth in Section 5.02(a) upon or affecting any Collateral; (y) except as provided herein, as the case may be, to use cash collateral of JMB under Section 363(c) of the Bankruptcy Code without the prior written consent of JMB; or (z) that requests or seeks authority for or that (in the case of an order entered by the Bankruptcy Court) approves or provides authority to take any other action or actions materially adverse to JMB or its rights and remedies hereunder or their interest in the Collateral;

(ii) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by the Borrower that does not provide for the payment in full in cash of all DIP Obligations hereunder on the effective date of such plan;

(iii) the entry of an order in the Case confirming a plan of reorganization that does not contain a provision for termination of the Commitments and repayment in full in cash of all of the DIP Obligations under this Agreement on or before the effective date of such plan;

(iv) the entry of an order amending, supplementing, reversing, staying, vacating or otherwise

modifying the Loan Documents or any Order or, pending entry of the Final Order, the Interim Order, without the prior written consent of JMB;

(v) the payment of, or application by the Borrower for authority to pay, any pre-petition claim without JMB's prior written consent other than as provided herein in form and substance acceptable to JMB, or unless otherwise permitted herein;

(vi) the appointment of an interim or permanent trustee in the Case or the appointment of a receiver or an examiner under section 1104 of the Bankruptcy Code in the Case with expanded powers (beyond those set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code) to operate or manage the financial affairs, the business, or reorganization of the Borrower or with the power to conduct an investigation of (or compel discovery from) JMB; or the sale without JMB's consent of all or substantially all of the Borrower's assets either through a sale under section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Case, or otherwise that does not provide for payment in full in cash of the DIP Obligations and termination of the Commitments;

(vii) the dismissal of the Case, or the conversion of the Case from one under chapter 11 to one under chapter 7 of the Bankruptcy Code or the Borrower shall file a motion or other pleading seeking the dismissal of the Case under section 1112 of the Bankruptcy Code or otherwise;

(viii) the entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any asset of the Borrower or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority;

(ix) entry of an order granting any other superpriority claim or Lien equal to or superior in priority to that granted to JMB;

(x) the commencement of any enforcement action by any material creditor of the Borrower, and with respect to any action by an unsecured creditor, such action remains undismissed or unstayed for thirty (30) days after commencement, except where any such action could not reasonably be expected to result in a Material Adverse Effect (which means a material adverse effect on (x) the condition (financial or otherwise), business, assets, liabilities, prospects, or results of operations of the Borrower, (y) the rights and remedies of JMB under any Loan Document or (z) the ability of the Borrower to perform its obligations under the Loan Documents);

(xi) the commencement of any action (whether under Bankruptcy Rule 2004 or otherwise), litigation, contested matter or adversary proceeding or assertion of any setoff or offset by the Borrower against JMB;

(xii) the entry of an order in the Case avoiding or requiring repayment of any portion of the payments made on account of the DIP Obligations owing under the Loan Documents;

(xiii) the failure of the Borrower to perform any of its obligations under any Order or, pending entry of the Final Order, the Interim Order, or any violation of any of the terms of any Order or, pending entry of the Final Order, the Interim Order;

(xiv) the entry by any court with valid jurisdiction of an order or judgment in the Case modifying, limiting, subordinating, recharacterizing or avoiding the priority, validity or amount of any indebtedness owed to JMB or the perfection, priority or validity of the Liens in favor of JMB on any Collateral or imposing, surcharging or assessing against JMB or its claims or any Collateral of any costs or expenses, whether pursuant to Section 506(c) of the Bankruptcy Code or otherwise;

(xv) the Borrower files any application for approval or allowance of, or any order is entered approving or allowing, any administrative expense claim in the Case, having any priority over, or being pari passu with, the superadministrative priority of JMB hereunder, under the Cash Collateral Order, the

Final Order, the Interim Order or the Loan Documents (other than those, after the entry of the Final Order, covered by the Carve-Out);

(xvi) any Committee files any application for approval or allowance of, or any order is entered approving or allowing, any administrative expense claim in the Case, having any priority over, or being *pari passu* with, the superadministrative priority of JMB hereunder, under the Cash Collateral Order, the Final Order, the Interim Order or the Loan Documents (other than those, after the entry of the Final Order, covered by the Carve-Out) and either (i) the Borrower does not immediately and diligently oppose such application or (ii) an order is entered approving such application;

(xvii) except to the extent JMB supports the motion or application in their sole and absolute discretion, any motion or application is filed by or on behalf of the Borrower in the Case seeking the entry of an order, or an order is entered in the Case, approving any subsequent debtor-in-possession facility for borrowed money or other extensions of credit unless such motion or applications and such order expressly provide for the indefeasible payment and complete satisfaction in full in cash of all DIP Obligations prior to, or concurrently with, any initial borrowings or other extensions of credit under such subsequent facility;

(xviii) except to the extent JMB supports the motion or application in their sole and absolute discretion, any motion or application is filed by or on behalf of any Committee or other party in interest in the Case seeking the entry of an order, or an order is entered in the Case, approving any subsequent debtor-in-possession facility for borrowed money or other extensions of credit unless such motion or applications and such order expressly provide for the indefeasible payment and complete satisfaction in full in cash to JMB of all DIP Obligations prior to, or concurrently with, any initial borrowings or other extensions of credit under such subsequent facility and either (i) the Borrower does not immediately and diligently oppose such application or (ii) an order is entered approving such subsequent debtor-in-possession facility for borrowed money or other extension of credit;

(xix) the Borrower submits, supports or files any plan of reorganization that is not supported by JMB;

(xx) the Borrower procures, solicits or enters into an agreement with respect to any additional debtor-in-possession facility for borrowed money or exit facility for borrowed money (a) that does not provide for the repayment in full of all DIP Obligations under the Loan Documents and (b) without providing JMB with a right of first refusal to provide such facility on the same terms;

(xxi) the Borrower shall take any action, including, without limitation, the filing of a motion or an application in support of any of the foregoing or any person other than the Borrower shall do so and such motion or application is not contested in good faith by the Borrower;

(xxii) a plan of reorganization or liquidation in form and substance satisfactory to JMB is not confirmed by the Bankruptcy Court by September 30, 2011, unless the confirmed plan provides for payment of all debt due to JMB on or before the effective date.

(h) Invalidity. Any provision of any Loan Document after delivery thereof shall for any reason (except as a result of acts or omissions of JMB) cease to be valid and binding on or enforceable against the Borrower or the Borrower shall so state in writing;

(i) Collateral. Any Collateral Document or financing statement after delivery thereof shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first senior super-priority lien on and security interest in any material portion of the Collateral purported to be covered thereby;

(j) Change of Control. A Change of Control (which means (a) the failure of the Permitted Holders (which means Karl Norberg and Pamela Gleichman) to own, directly or indirectly, of record and beneficially, at least 51% of all voting interests in the Borrower or (b) at any time, any "person" or "group" (within the meaning of

Rules 13(d) of the Exchange Act and the rules of the Securities and Exchange Commission thereunder as in effect on the Effective Date) (other than the Permitted Holders) shall have acquired ownership, directly or indirectly, beneficially or of record, of more than 35% on a fully diluted basis of the aggregate voting power represented by the issued and outstanding Voting Interests in the Borrower) shall have occurred;

(l) Loss Proceeds. The occurrence of a Casualty Event (which means any event that gives rise to the receipt by the Borrower of any insurance proceeds in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property) or an Event of Loss (which means condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of Property) with respect to (A) all or a material portion of the Property or (B) all or a material portion of the Collateral, unless the JMB loan be fully paid out of the proceeds thereof.

Then,

(A) Upon the occurrence of any Event of Default, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, JMB shall continue to have all rights and remedies available to it under this Agreement, the other Loan Documents and under applicable law, and under the provisions of Section 362 of the Bankruptcy Code, on Motion and Notice may seek on ten days' notice (the "*Waiting Period*") hearing before, or order from, the Bankruptcy Court, seeking permission to take actions to enforce its contractual rights and obtain modification of the automatic stay to do so. During the Waiting Period, the Borrower shall not use any Cash Collateral or any Loan proceeds to pay any administrative expenses.

(B) The Bankruptcy Court shall retain exclusive jurisdiction with respect to all matters relating to the exercise of rights and remedies under the Loan Documents and this Order. The Borrower may seek Bankruptcy Court intervention at any scheduled hearing to determine or contest whether an Event of Default has in fact occurred and is continuing.

Case No. 10 B 22668  
In re: Olde Prairie Block Owner, LLC  
Updated: March 7, 2011

**CERTIFICATE OF SERVICE**

I, Dorothy Clay, certify that on March 31, 2011, I caused to be served copies of the foregoing AMENDED ORDER to the following by electronic service through the Court's CM/ECF system or regular U.S. mail.

  
Secretary/Deputy Clerk

**SERVICE LIST**

**Electronic Service through CM/ECF System**

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