

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:

**GREEN MOUNTAIN
MANAGEMENT, LLC, *et al.*,**¹

Debtors.

)
) Chapter 11
)
) Case No. 14-64287-BEM
) (Jointly Administered)
)
)
)

**EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS
(1) AUTHORIZING DEBTORS IN POSSESSION TO OBTAIN
FINANCING, GRANT SECURITY INTERESTS AND ACCORD
PRIORITY STATUS PURSUANT TO 11 U.S.C. §§ 361, 364(c) AND 364(d);
(2) GIVING NOTICE OF FINAL HEARING PURSUANT TO BANKRUPTCY
RULE 4001(b)(2) AND (c)(2); AND (3) MODIFYING AUTOMATIC STAY**

Georgia Flattop Partners, LLC (“**Georgia Flattop**”) and Green Mountain Management, LLC (“**Green Mountain**,” and, together with Georgia Flattop, the “**Debtors**”) hereby file this motion (the “**Motion**”) seeking the entry of interim and final orders (1) authorizing debtors in possession to obtain financing, grant security interests and accord priority status pursuant to 11 U.S.C. §§ 361, 364(c) and 364(d); (2) giving notice of final hearing pursuant to Federal Rules of Bankruptcy Procedure 4001(b)(2) and (c)(2); and (3) modifying automatic stay. In support of the Motion, the Debtors respectfully represent as follows:

¹ The last four digits of the employer identification number for each of the Debtors follow in parenthesis: (i) Green Mountain Management, LLC (0734) and (ii) Georgia Flattop Partners, LLC (3208). The Debtors’ mailing address is 3740 Davinci Court, Suite 460, Norcross, Georgia 30092.

I. JURISDICTION

1. This Court has jurisdiction over these cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicate for the relief requested in this Motion is 11 U.S.C. §§ 105, 361, 362, 363, and 364, and Federal Rules of Bankruptcy Procedure 4001 and 9014.

II. BACKGROUND

3. On July 25, 2014 (the “**Petition Date**”), Debtors filed voluntary petitions with the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “**Bankruptcy Court**”) under chapter 11 of the Bankruptcy Code.

4. On July 31, 2014, the Court entered an order approving the Debtors’ application seeking joint administration of the Debtors’ Chapter 11 cases for procedural purposes.

5. Debtors have continued to operate and manage their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

6. The factual background relating to Debtors’ commencement of these cases is set forth in detail in the Declaration of Daniel B. Cowart in Support of Emergency Motions (“**Cowart Declaration**”) filed on July 28, 2014. The Cowart Declaration is incorporated into this Motion by reference.

7. As of the date of this filing, no official committee of unsecured creditors has been appointed, and UMB Bank, n.a.’s request for the appointment of a trustee was

resolved consensually pursuant to this Court's order entered on November 20, 2014 (the "**Order Resolving the Chapter 11 Trustee Motion**," Docket No. 124).

8. Pursuant to the Order Resolving the Chapter 11 Trustee Motion, Lee Katz was appointed as the "GMM Manager" with full decision making and operational authority over the Debtors.

III. RELIEF REQUESTED

9. By this Motion and pursuant to Sections 105, 361, 362, 363 and 364 of the United States Bankruptcy Code (the "**Bankruptcy Code**"), as supplemented by Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Debtors seeks entry of an interim order (the "**Interim DIP Financing Order**"), substantially in the form attached hereto as Exhibit A:

- a. authorizing the Debtors to obtain, on an interim basis, secured priming (to the extent necessary) postpetition financing (the "**DIP Financing**"), pursuant to Sections 364(c) and (d) of the Bankruptcy Code from the DIP Lender (as defined below) and related documents (collectively with the DIP Credit Agreement (defined below), the "**DIP Documents**") up to an aggregate principal or face amount not to exceed \$2,000,000 in incremental borrowings (the "**DIP Loan**");
- b. authorizing the Debtors to execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;
- c. granting super priority claims to the DIP Lender payable from, and having recourse to, all prepetition and postpetition property of the Debtors' estates and all proceeds thereof, in each case subject to the Carve Out (as defined below) and other exceptions;
- d. granting releases to the Indenture Trustee as set forth in the Interim DIP Financing Order;

- e. modifying the automatic stay provisions of Section 362 of the Bankruptcy Code to the extent necessary so as to permit the DIP Lender to exercise, upon the occurrence of an Event of Default (as defined in the DIP Credit Facility and the proposed Interim Order), all rights and remedies provided for in the DIP Credit Facility and the proposed Interim Order as entered by the Court; and
- f. scheduling a final hearing (the “**Final DIP Financing Hearing**”), to be held within 30 days of the entry of the Interim DIP Financing Order to consider entry of a final order regarding the DIP Financing (the “**Final DIP Financing Order**”).

IV. FACTS SPECIFIC TO RELIEF REQUESTED

10. Green Mountain is a 125 million cubic yard, subtitle D, municipal solid waste landfill northwest of Birmingham, Alabama (the “**Landfill**”). The Landfill is permitted to accept for disposal municipal solid waste (“**MSW**”), industrial solid waste, special waste and construction and demolition debris. Based upon permitted air-space, it is the largest MSW landfill in the southeast.

11. The vast majority of waste received by the Landfill is disposed of in lined “cells.”² To create a lined cell, a footprint is graded into the land, into which a specially engineered liner is placed to collect leachate resulting from decomposing waste. Each cell can accommodate only a finite amount of waste, based upon its footprint. In its five (5) year history of accepting waste, the Landfill has filled one lined cell to capacity. Based on current volumes, the Debtors expect that the Landfill’s second lined cell will reach capacity in the Spring of 2015.

12. Accordingly, the Debtors have an urgent need to obtain DIP Financing to, among other things, fund the building of a third cell to increase capacity at the Landfill.

² Construction and demolition debris is disposed of in unlined cells.

13. The Debtors entered bankruptcy with a liquidity cushion, but no agreements with any party to provide necessary financing. Although the Debtors have made progress in these first several months of these cases in terms of cutting costs and managing payables, the cash with which they entered bankruptcy is insufficient to fund the capital expenditures necessary to continue and grow the Debtors' business.

14. For these reasons, the Debtors estimate that they will require significant and immediate financing to avoid disruption of operations. Based on the Debtors' current cash forecast, the Debtors require access to immediate postpetition financing. The DIP Facility described herein contemplates a revolving credit line of \$2,000,000.

A. The Debtors Conducted an Exhaustive Search for the Most Competitive Financing

15. Given the Debtors' liquidity situation as they entered bankruptcy, the Debtors concluded that they needed to obtain postpetition financing. The Debtors have faced certain difficulties in securing such financing. Given the tight timing requirements of the postpetition financing and the need to secure a financing commitment without material contingencies, it was not only prudent but ultimately necessary to focus on a wide variety of potential lenders.

16. Accordingly, the Debtors', together with their previous financial advisors, approached more than twenty-three (23) potential DIP financing lenders. Following discussions with several of these potential lenders, seven (7) different lenders (or groups of lenders), indicated strong interest in providing the necessary financing by entering into

non-disclosure agreements with the Debtors, and two (2) submitted proposed term sheets to the Debtors.

17. After discussions with all potential lenders, the Debtors determined that the proposal of Bay Point Capital Partners, LP (“**BPCP**” or the “**DIP Lender**”), contained the most favorable pricing and other terms and effectively addressed the Debtors’ working capital and liquidity requirements. As a result of the negotiations, the DIP Lender was able to provide a firm commitment for \$2,000,000 of postpetition financing on an expedited basis.

B. The DIP Credit Agreement

18. The Debtors and the DIP Lender engaged in good faith and extensive arm’s length negotiations that culminated in an agreement by the DIP Lender to provide the Debtors with up to \$2,000,000 of secured postpetition financing, on the terms and subject to the conditions set forth in that term sheet dated December 8, 2014 (the “**Term Sheet**”) attached hereto as Exhibit B. The parties are currently working on definitive loan documents (collectively, the “**DIP Credit Agreement**”), and anticipate filing forms of same prior to any hearing on the Motion.

19. Debtors believe that the DIP Facility (as defined below) will provide it with sufficient liquidity to maximize the value of its assets for the benefit of its creditors during the Chapter 11 Cases. Without the DIP Facility, Debtors will have little to no available cash and will be unable to continue operations after their current cell reaches capacity and otherwise maximize the value of their assets. Consequently, the Debtors request that this Court approve the DIP Credit Agreement and the documents related

thereto (collectively, the “**DIP Loan Documents**”) and authorize Debtors to obtain the postpetition financing contemplated therein.

C. Terms of the DIP Credit Facility

20. As set forth in the Term Sheet, the significant terms on which BPCP³ are committing to make a senior secured, super-priority debtor-in-possession credit facility (the “**DIP Facility**”) are as follows:⁴

Loan Type and Amount:	The DIP Facility will consist of a revolving credit line of up to \$2,000,000 at any one time outstanding (the “ DIP Revolving Commitment ”)
Loan purpose:	<p>Proceeds of the DIP Facility shall be used solely for the following purposes (and to the extent identified in the Budget): (a) capital improvements, including without limitation construction of a new waste management cell at 100 Green Mountain Parkway Adamsville, AL 35005; (b) to fund post-petition operating expenses and working capital needs of the Borrower, including, but not limited to, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. § 959; (c) to pay interest, fees and expenses to the DIP Lender in accordance with the DIP Facility; (d) to fund fees and expenses incurred in connection with a refinancing or a sale of all or substantially all of GMM’s assets pursuant to 11 U.S.C. § 363 (“363 Sale”); (e) to pay permitted pre-petition claim payments and adequate protection payments, if any, to the Indenture Trustee; (f) to pay professional fees and expenses; and (g) to pay certain other costs and expenses of administration of the Chapter 11 Cases.</p> <p>Proceeds of the DIP Facility shall <u>not</u> be used (a) to permit the Borrower or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (i) the validity, perfection or priority of security interests in favor of the DIP Lender, or (ii) the enforceability of the obligations of the Borrower under the DIP Facility, (b) to investigate, commence, prosecute or defend any claim, motion, proceeding or cause of action against the DIP Lender and their agents, attorneys, advisors or representatives including, without limitation, any lender liability claims, subordination claims or any claims attempting to invalidate any lock-up agreement, or (c) to fund acquisitions, capital expenditures, capital leases, or any other expenditure other than as set forth in the Budget.</p>

³ BPCP or its related or affiliated parties will act as administrative agent for the DIP Lender (in such capacity, BPCP is herein referred to as the “**DIP Agent**”).

⁴ To the extent that the terms set forth herein differ from the terms in the attached proposed Interim DIP Order and the DIP Credit Agreement, the Interim DIP Order and the DIP Credit Agreement shall govern.

<p>Draw Procedure:</p>	<p>DIP Lender's obligation to the funding of the DIP Facility ("Draws") shall be subject to the fulfillment of the following conditions on or prior to the date of each Draw Request:</p> <ul style="list-style-type: none"> a. <i>Written Request.</i> Borrower shall have delivered to DIP Agent, with a copy simultaneously to the Indenture Trustee, a written request for such Draw in the minimum amount of \$50,000. The initial Draw shall be \$400,000.00, <i>provided, however</i>, that Borrower may issue additional Draw Requests in accordance with the conditions set forth below; b. <i>Budget.</i> The Draws shall be used to fund expenditures identified in the Budget as such may be modified in accordance with the DIP Facility and with the approval of the DIP Lender and the Indenture Trustee. c. <i>No Event of Default.</i> No Event of Default that has not been cured by Maker shall have occurred at the time of Draw Request. d. <i>Notice Required.</i> Subject to the conditions set forth above, Draw Requests in amounts between \$50,000 and \$250,000 shall be funded by DIP Agent to Borrower on or before ten (10) days after DIP Agent receives a Draw Request. Draw Requests in amounts in excess of \$250,000 shall be funded by DIP Agent to Borrower on or before thirty (30) days after DIP Agent receives a Draw Request.
<p>Budget and Variances:</p>	<p>Borrowings under the DIP Facility shall be limited by and subject to the Budget. The Budget may be further modified and amended from time to time only with the consent of the DIP Lender, the Indenture Trustee and the Borrower. Subject to the terms and conditions contained herein, the DIP Lender shall advance borrowings under the DIP Facility to fund expenditures identified in the Budget.</p> <p>The borrowings under the DIP Facility shall not exceed the DIP Revolving Commitment (the "DIP Availability").</p> <p>The DIP Agent shall be provided reporting consistent with the terms of the Interim Cash Collateral Order or the Final Cash Collateral Order, as may be in effect.</p>
<p>Interest Rate and Payment Terms:</p>	<p>Non-Default Interest Rate and Payment Terms: Interest shall be paid monthly on all outstanding advances under the DIP Facility, accruing at a per annum floating rate equal to the sum of (a) the Base Rate (as defined below), plus (b) 10.0% (the "Non-Default Interest Rate"). The "Base Rate" means the prime rate as quoted in the "Money Rates" section of the <i>Wall Street Journal</i>. In the event the <i>Wall Street Journal</i> is no longer publishing the "Money Rates" section, the prime rate shall be the prime lending rate charged by the Bank of America to its most favored borrowers.</p>

	Default Interest Rate: Effective immediately upon Borrower learning of an Event of Default, (i) unless waived in writing by the DIP Lender, interest on the outstanding loans under the DIP Facility shall accrue at a rate that is 4% per annum in excess of the Non-Default Interest Rate.
Loan Payments:	Interest only payments shall be paid on the 1st of each month on all outstanding advances under the DIP Facility. All unpaid principal, interest, fees, costs and expenses on the DIP Facility shall be due and payable in full on the Termination Date, whether at maturity, upon acceleration or otherwise.
Mandatory Prepayments:	Upon (a) closing of a 363 Sale, (b) any casualty event, provided, however, that Borrowers may use proceeds of any casualty event to repair or replace assets or improvements without turning over such proceeds to DIP Agent, or (c) the issuance of any approved post-petition debt or equity, 100% of any net cash proceeds from such sale, casualty (subject to certain reinvestment rights) or issuance shall be paid to DIP Agent no later than five (5) days after the date that such net cash proceeds are received by Borrower, and applied first, to the amount outstanding under the DIP Loan Documents, second to the amount outstanding under the Bonds, and third to GMM, subject to holders of valid liens on such proceeds, to be distributed pursuant to further order of the Bankruptcy Court. Approved postpetition debt or equity shall be (i) subject to the consent of the DIP Agent and the Indenture Trustee, and (ii) in an amount that is no less than the amount of the outstanding DIP Facility and the Bonds.
Fees:	<p>Borrower shall pay an origination fee of two percent (2.0%) of the DIP Revolving Commitment at closing of the DIP Facility.</p> <p>Upon entry of the Final DIP Order, Borrower shall pay the fees and other charges payable in the amounts and at the times separately agreed upon between Borrower and the DIP Agent, including without limitation, all closing costs, recording costs and legal fees in connection with the closing of the DIP Facility, such closing costs, recording costs and legal fees not to exceed \$20,000 (this amount does not include any fees and expenses incurred in connection with the occurrence of an Event of Default that requires DIP Agent to seek relief from the Bankruptcy Court).</p> <p>On the Termination Date, Borrower agrees to pay DIP Agent, for the benefit of DIP Lender, a non-refundable, unused line fee equal to the unused portion of the DIP Revolving Commitment up to \$750,000 multiplied by 1.5% on a per annum basis, accruing monthly in arrears.</p>
Collateral Security:	The DIP Facility (including accrued interest, fees, costs and expenses not to exceed \$20,000) shall be secured, subject and subordinate to any valid, perfected prior liens and security interests existing as of the Petition Dates other than those in favor of the Indenture Trustee, by first priority liens and security interests (the “ DIP Liens ”) in all of the Borrower’s property, including, without limitation, the cash held in the Borrower’s bank accounts, all of Borrower’s existing and future acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, including

	without limitation coal reserves, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Borrower; <i>provided, however</i> , that DIP Lender shall have no lien on or interest in the Lease Agreement (collectively, the “ DIP Collateral ”). The DIP Lender are not seeking to take a lien on any avoidance actions available to the bankruptcy estate of any Borrower pursuant to the Bankruptcy Code (the “ Avoidance Actions ”).
Super-Priority Administrative Claim:	Amounts owed by Borrower to the DIP Lender pursuant to the DIP Facility (including all accrued interest, fees, costs and expenses) shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, a claim having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code, subject only to the Carve-Out. “Carve-Out” means: (i) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) (“ Clerk Fees ” and “ UST Fees ” respectively) and (ii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid fees and expenses (“ Professional Fees ”) in amounts equal to the lesser of (x) the amounts provided for in the Budget and (y) the amounts actually incurred by persons or firms retained by Borrowers pursuant to 11 U.S.C. §§ 327, 328, or 363, and the Indenture Trustee and counsel to the Indenture Trustee (collectively, the “ Professionals ”), prior to the Termination Date. Nothing in the Interim DIP Order or the Final DIP Order, as applicable, shall impair the right of any party to object to the reasonableness or allowance of any such Professional Fees to be paid by Borrowers’ estates. The Carve-Out shall be senior to the security interests in and liens on all of the DIP Collateral.
Adequate Protection:	As adequate protection and in consideration for their respective consent to being primed by the DIP Lender’s claims and liens, the Indenture Trustee (a) shall receive a claim having priority over any and all expenses of the kind specified in, among other sections of the Bankruptcy Code, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, and 1114, subject only to the Carve-Out and any other exceptions set forth in the Final Cash Collateral Order (the “ Adequate Protection Liens ”).
Events of Default:	Defaults and Events of Default under the DIP Facility shall be consistent with those set forth in the Final Cash Collateral Order.
Remedies:	Upon the Termination Date, the DIP Agent and the DIP Lender shall have customary remedies, including, without limitation, the right to realize on all DIP Collateral, the right to exercise any remedy available under applicable law, without the necessity of obtaining any further relief or order from the Bankruptcy Court; <i>provided, however</i> , that the DIP Agent and the DIP Lender and Indentured Trustee shall agree to an intercreditor agreement providing that the DIP Agent and the DIP Lender “standstill” and allow the Indenture Trustee to control the default process and/or liquidation of the collateral upon default and stay relief (the “ ICA ”).

Indemnification:	The Borrower shall indemnify and hold DIP Agent, and all DIP Lender and their respective officers, directors, employees and agents (including all of their professionals) (each an “ Indemnified Party ”) harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all fees and disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, the DIP Loan Documents, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct.
Conditions Precedent	The closing of the DIP Facility shall be subject to conditions precedent customary and appropriate for financings of this type, including, but not limited to, (a) satisfaction of all conditions to be set forth in the DIP Loan Documents, (b) approval of the Budget by the DIP Agent and the DIP Lender, together with all financial information and projections regarding the Borrower reasonably requested by DIP Agent or any DIP Lender, all in form and substance satisfactory to DIP Agent and the DIP Lender, (c) entry of an Interim DIP Order approving the DIP Facility, its super-priority administrative claims and all first priority and other liens securing the DIP Facility, and containing such other orders and findings as DIP Agent or DIP Lender may require, including modification of the automatic stay upon the occurrence of an Event of Default enabling the DIP Agent to exercise certain rights and remedies against the DIP Collateral consistent with the terms of this Term Sheet, which Interim Order or Final Order, as applicable, shall not have been modified or amended without reasonable approval of DIP Agent and DIP Lender, and shall not have been reversed, vacated or stayed pending appeal, in form and substance satisfactory to DIP Agent, (d) receipt of customary due diligence items reasonably requested by DIP Agent and DIP Lender, which items shall be requested no later than November 21, 2014, and which diligence shall be completed no later than the initial hearing on the Motion.
Conditions Subsequent:	Entry of a Final Order by the Bankruptcy Court within 45 days of the Interim DIP Order, which Final DIP Order shall not have been modified or amended without approval of DIP Agent and DIP Lender, and shall not have been reversed, vacated or stayed pending appeal, which Final Order shall be in form and substance satisfactory to DIP Agent and DIP Lender.

D. The Indenture Trustee Has Consented to the DIP Facility on Certain Conditions

21. UMB Bank, n.a. (“**Indenture Trustee**” or “**UMB**”), the indenture trustee under that certain Mortgage and Trust Indenture (the “**Trust Indenture**”) dated August 1, 2010,⁵ has consented to the DIP Facility, including the granting of priming liens and super-priority claims to the DIP Lender provided, together with the terms set forth in the Term Sheet, the Indenture Trustee and the Bondholders receive a full and complete release by the Debtors of any and all claims relating to or arising from the Bonds, as set forth in the proposed Interim DIP Financing Order and to become effective upon the entry of the Final DIP Financing Order.

V. BASIS FOR RELIEF REQUESTED

A. The Necessary Showings Under Section 364

22. As described above, the Debtors’ reorganization efforts depend critically on immediate access to sufficient postpetition financing. Absent granting of the relief requested in this Motion, the Debtors’ ability to continue their operations and to successfully reorganize will be seriously jeopardized.

⁵ Pursuant to that Mortgage and Trust Indenture (the “**Trust Indenture**”) dated August 1, 2010, by and among Debtor Green Mountain Management, LLC, The Solid Waste Disposal Authority of the city of Adamsville (“**SWDA**” or the “**Issuer**”), as “Issuer,” and UMB Bank, N.A. (“**Indenture Trustee**” or “**UMB**”) as “Trustee” (as those terms are used in the Trust Indenture), SWDA issued the \$17,000,000 Solid Waste Disposal Revenue Bonds, Series 2010 (the “**Bonds**”) to finance the acquisition, construction and equipping of a solid waste disposal facility, including the underlying real property (the real property, solid waste disposal facility and improvements are collectively referred to as the “**Landfill**”). SWDA leased the Landfill to Green Mountain pursuant to a Lease Agreement (the “**Lease Agreement**”), which provides for rental payments at times and in amounts equal to the amounts owing on the Bonds. SWDA’s interests in the Lease Agreement have been pledged and assigned to the Indenture Trustee as security for the Bonds and Green Mountain has guaranteed the payment of the amounts owing on the Bonds. The Bonds were purchased by the Nuveen High Yield Municipal Bond Fund and Nuveen Municipal High Income Opportunity Fund (together with their investment advisor Nuveen Asset Management, LLC, “**Nuveen**” or the “**Bondholder**”).

23. Section 364 of the Bankruptcy Code “provides bankruptcy courts with the power to authorize postpetition financing for a Chapter 11 debtor-in-possession.” *See In re Defender Drug Stores, Inc.*, 126 B.R. 76, 81 (Bankr. D. Ariz. 1991). “Having recognized the natural reluctance of lenders to extend credit to a company in bankruptcy, Congress designed [Section] 364 to provide ‘incentives to the creditor to extend post-petition credit.’” *Id.* In particular, Section 364(c) of the Bankruptcy Code establishes the conditions under which a debtor can obtain certain types of secured credit.

24. Section 364 of the Bankruptcy Code provides, in pertinent part, as follows:

(a) If the trustee is authorized to operate the business of the debtor under Section 721, 1108, 1203, 1204, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt --

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d) (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal

lien on property of the estate that is subject to a lien only if --

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior lien is proposed to be granted.

11 U.S.C. § 364(a)-(d).

25. Generally, courts apply a three-part test to determine whether a debtor may obtain secured credit pursuant to Section 364(c) of the Bankruptcy Code. Specifically, the debtor must demonstrate that (i) it cannot obtain credit unencumbered or without superpriority status, (ii) the credit transaction is necessary to preserve the assets of the debtor's estate, and (iii) the terms of the credit transaction are fair, reasonable and adequate given the particular circumstances of the debtor and the proposed lender. *See In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987), *aff'd*, 75 B.R. 553 (E.D. Pa. 1987) (debtor must show that it has made a reasonable effort to seek other sources of financing under Sections 364(a) and (b) of the Bankruptcy Code).

26. Against this statutory backdrop, courts will evaluate the facts and circumstances of a debtor's case, and will accord significant weight to the necessity for obtaining the financing. *See, e.g., In re Snowshoe*, 789 F.2d at 1088; *In re Ames*, 115 B.R. at 40. Debtors are generally permitted to exercise their basic business judgment consistent with their fiduciary duties when evaluating the necessity of proposed protections for a party extending credit under Section 364 of the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 RR. 964, 974 (Bankr. D. Del. 1994) (noting

that an interim loan, receivables facility and asset-based facility were approved because they “reflect[ed] sound and prudent business judgment. . . [were] reasonable under the circumstances and in the best interest of [the debtor] and its creditors”).

1. The Debtors Could Not Obtain Postpetition Financing on an Unsecured Basis

27. Debtors made a serious and good faith effort to obtain postpetition financing pursuant to Sections 364(a) and (b) of the Bankruptcy Code (*i.e.*, financing on terms that did not implicate the escalating series of inducements embodied in the DIP Credit Agreement). The Debtors were not able to obtain a postpetition financing facility on the terms and of the type and magnitude required in these Chapter 11 Cases on an unsecured basis or, indeed, without offering terms substantially similar to those of the DIP Financing.

28. To show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate “by a good faith effort that credit was not available” without the protections afforded to potential lenders by Section 364(c) of the Bankruptcy Code. *See In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986). The Debtors’ efforts to seek postpetition financing from the DIP Lender satisfy the statutory requirements of Section 364(c) of the Bankruptcy Code. *See, e.g., Ames*, 115 B.R. at 40 (approving Section 364(c) financing facility and holding that the debtor made reasonable efforts to obtain less onerous terms where it approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992)

(debtor “must make an effort to obtain credit without priming a senior lien”); *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987) (requiring demonstration that less onerous financing was unavailable); *In re Phoenix Steel Corp.*, 39 B.R. 218, 222 and n.9 (D. Del. 1984) (same).

2. The DIP Financing is Necessary to Preserve the Assets of the Debtors’ Estates

29. As described above, the Debtors urgently require the DIP Financing to satisfy working capital and operational needs. Without immediate access to sufficient liquidity and working capital via the DIP Financing, the Debtors’ business operations will be severely disrupted and their going concern value jeopardized, to the detriment of the Debtors’ creditors, employees, and other parties in interest in the Chapter 11 Cases. For these reasons, the Debtors estimate that they will require significant and immediate financing to continue their operations and preserve estate value.

3. The Terms of the DIP Financing are Fair, Reasonable, and Adequate

30. The terms and conditions of the DIP Financing are fair, reasonable, and adequate and were negotiated by the parties in good faith and at arm’s length. The Debtors, in the reasonable exercise of their business judgment, have determined that the DIP Financing is the best financing option available to them under the present circumstances and that its pricing and other economic terms are fair, reasonable, and consistent with market practice. Likewise, the various fees and charges required by the DIP Lender under the DIP Financing are reasonable and appropriate under the circumstances. Indeed, courts routinely authorize similar lender incentives beyond the

explicit liens and rights specified in Section 364 of the Bankruptcy Code. *See In re Defender Drug Stores*, 145 B.R. 312, 316 (9th Cir. BAP 1992) (approving financing facility pursuant to Section 364 of the Bankruptcy Code that included a lender “enhancement fee”).

31. Aside from DIP Lender, prior to filing the petition, Debtors sought and were unable to obtain financing from other sources. Based upon these efforts, as well as the short timeframe in which Debtors need to obtain financing to continue their operations, Debtors concluded that (a) unsecured financing on any basis would not be available, and (b) super-priority claims and liens would, as a practical matter, be the only basis upon which to structure an alternative facility. Debtors believe that the proposal contained in the DIP Credit Agreement is the best financing available to Debtors.

VI. REQUEST FOR INTERIM AND FINAL HEARING AND WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

32. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to obtain credit pursuant to Section 364 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize use of cash collateral and obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors’ estates.

33. The Debtors request that the Court hold and conduct an interim hearing immediately to consider entry of the proposed Interim Order authorizing the Debtors from and after the entry of the Interim Order until the Final Hearing to borrow under the

DIP Credit Facility in an amount not more than \$2,000,000. This relief will enable the Debtors to operate their businesses in a manner that will enable them to preserve and maximize value and therefore avoid immediate and irreparable harm and prejudice to its estate and all parties in interest, pending the Final Hearing.

34. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors also respectfully request that the Court set a date for the Final DIP Hearing no later than thirty (30) days following the date of the initial hearing on the Motion.

35. Finally, because any delay in authorizing the relief requested in this Motion would also be detrimental to the Debtors, their estates and their creditors, the Debtors seek a waiver of the stay imposed under FED. R. BANKR. P. 6004(h), to the extent that provision may be applicable to the order approving this Motion.

VII. NOTICE

36. No trustee or examiner has been appointed in the Debtors' cases and the United States Trustee has not yet appointed an official committee of unsecured creditors.

37. Notice of this Motion has been given to the Office of the United States Trustee and the parties on the Debtors' Master Service List. In light of the nature of the relief requested, Debtors respectfully submit that no further notice is necessary.

WHEREFORE, Debtors respectfully request that the Court (i) enter an order substantially in the form attached hereto and (ii) grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 8th day of December, 2014.

ALSTON & BIRD LLP

/s/ Sage M. Sigler

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EXHIBIT A

PROPOSED INTERIM DIP ORDER

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:

**GREEN MOUNTAIN
MANAGEMENT, LLC, *et al.*,**¹

Debtors.

)
) Chapter 11
)
) Case No. 14-64287-BEM
) (Jointly Administered)
)
)
)
)

**INTERIM ORDER (1) AUTHORIZING DEBTORS-IN-POSSESSION TO
OBTAIN FINANCING, GRANT SECURITY INTERESTS AND ACCORD
PRIORITY STATUS PURSUANT TO 11 U.S.C. §§ 361, 364(c) AND 364(d);
(2) GIVING NOTICE OF FINAL HEARING PURSUANT TO BANKRUPTCY
RULE 4001(b)(2) AND (c)(2); AND (3) MODIFYING AUTOMATIC STAY**

On December 8, 2014, Georgia Flattop Partners, LLC (“**Georgia Flattop**”) and
Green Mountain Management, LLC (“**Green Mountain**,” and, together with Georgia

¹ The last four digits of the employer identification number for each of the Debtors follow in parenthesis: (i) Green Mountain Management, LLC (0734) and (ii) Georgia Flattop Partners, LLC (3208). The Debtors’ mailing address is 3740 Davinci Court, Suite 460, Norcross, Georgia 30092.

Flattop, the “**Debtors**”), filed a motion (the “**Motion**”)² seeking entry of interim and final orders (1) authorizing debtors in possession to obtain financing, grant security interests and accord priority status pursuant to 11 U.S.C. §§ 361, 364(c) and 364(d); (2) giving notice of final hearing pursuant to Federal Rules of Bankruptcy Procedure 4001(b)(2) and (c)(2); and (3) modifying automatic stay. Based upon the Court’s review of the Motion and all matters brought to the Court’s attention at the interim hearing, which was held on December __, 2014, pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2) (the “**Interim Hearing**”), and after due deliberation and consideration, the Court makes the following findings of fact and conclusions of law applicable to the financing sought by Debtors from Bay Point Capital Partners, LP (“**BPCP**” or the “**DIP Lender**”):

THE COURT HEREBY FINDS AND DETERMINES:

A. Petition Date. On July 25, 2014 (the “**Petition Date**”), Debtors filed with the Court their voluntary petitions under chapter 11 of the Bankruptcy Code and are continuing to operate their business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. Pursuant to the Court’s order entered on November 20, 2014, Lee Katz was appointed as the “GMM Manager” with full decision making and operational authority over the Debtors.

B. Nature of Business. Green Mountain is a 125 million cubic yard, subtitle D, municipal solid waste landfill northwest of Birmingham, Alabama (the “**Landfill**”). The Landfill is permitted to accept for disposal municipal solid waste, industrial solid

² Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Motion.

waste, special waste and construction and demolition debris. Based upon permitted air-space, it is the largest MSW landfill in the southeast

C. Pre-Petition Financing. Pursuant to that Mortgage and Trust Indenture (the “**Trust Indenture**”) dated August 1, 2010, by and among Debtor Green Mountain Management, LLC, The Solid Waste Disposal Authority of the city of Adamsville (“**SWDA**” or the “**Issuer**”), as “Issuer,” and UMB Bank, N.A. (“**Indenture Trustee**” or “**UMB**”) ¹ as “Trustee” (as those terms are used in the Trust Indenture), SWDA issued the \$17,000,000 Solid Waste Disposal Revenue Bonds, Series 2010 (the “**Bonds**”) to finance the acquisition, construction and equipping of a solid waste disposal facility, including the underlying real property (the real property, solid waste disposal facility and improvements are collectively referred to as the “**Landfill**”). SWDA leased the Landfill to Green Mountain pursuant to a Lease Agreement (the “**Lease Agreement**”), which provides for rental payments at times and in amounts equal to the amounts owing on the Bonds. SWDA’s interests in the Lease Agreement have been pledged and assigned to the Indenture Trustee as security for the Bonds and Green Mountain has guaranteed the payment of the amounts owing on the Bonds. The Bonds were purchased by the Nuveen High Yield Municipal Bond Fund and Nuveen Municipal High Income Opportunity Fund (together with their investment advisor Nuveen Asset Management, LLC, “**Nuveen**” or the “**Bondholder**”).

D. Need for Financing. An immediate and ongoing need exists for Debtors to obtain financing to continue the operation of their business as debtors-in-possession under Chapter 11 of the Bankruptcy Code, and to minimize disruption of Debtors’

business. Despite diligent efforts, Debtors have been unable to obtain financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense or solely in exchange for the grant of a special administrative expense priority pursuant to Section 364(c)(1) of the Bankruptcy Code; and other than the financing from DIP Lender pursuant to the DIP Credit Agreement (as hereinafter defined), Debtors are unable to obtain financing in the form of credit secured by liens that are junior to existing liens on property of the estate pursuant to Sections 364(c)(2) and (c)(3) of the Bankruptcy Code. For these reasons, the Debtors estimate that they will require significant and immediate financing to avoid disruption of operations. Based on the Debtors' current cash forecast, the Debtors require access to immediate postpetition financing. The DIP Facility described herein contemplates a revolving credit line of \$2,000,000.

E. Proposed DIP Facility. Debtors have requested DIP Lender to establish a secured revolving credit facility in favor of Debtors (the “**DIP Facility**”) pursuant to which Debtors may obtain loans from time to time (“**DIP Loans**”), in an aggregate amount up to \$2,000,000 outstanding at any time, secured by all assets of Debtors, subject to the Carve Out (as defined below).

F. Certain Conditions to DIP Facility. DIP Lender is willing to establish the DIP Facility, upon the terms and conditions set forth herein and in that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated December __, 2014 (the “**DIP Credit Agreement**”) entered into by Green Mountain Management, LLC (“**Borrower**”) and DIP Lender (the DIP Credit Agreement together with all schedules,

exhibits and annexes thereto, and any other documents entered into in connection with the DIP Credit Agreement, including without limitation, that certain Intercreditor Agreement, by and among the DIP Lender, GMM and the Indenture Trustee, and as at any time amended or restated, the “**DIP Documents**”). DIP Lender’s willingness to make the DIP Loans and other extensions of credit (collectively, the “**Credit Extensions**”) is conditioned upon, among other things, Debtors obtaining Court approval of the Credit Extensions. An additional condition to the willingness of DIP Lender to establish the DIP Facility is that the DIP Facility (including accrued interest, fees, costs and expenses not to exceed \$20,000) shall be secured, subject and subordinate to any valid, perfected prior liens and security interests existing as of the Petition Dates other than those in favor of the Indenture Trustee, by first priority liens and security interests (the “**DIP Liens**”) in all of the Borrower’s property, including, without limitation, the cash held in the Borrower’s bank accounts, all of Borrower’s existing and future acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, including without limitation coal reserves, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Borrower; *provided, however*, that DIP Lender shall have no lien on or interest in the Lease Agreement (collectively, the “**DIP Collateral**”).

G. Service of Motion. Debtors have certified that copies of the Motion and notice of the Interim Hearing have been served by electronic mail, facsimile, hand

delivery, overnight courier or first class United States mail upon the United States Trustee (the “**U.S. Trustee**”) and the parties on the Debtors’ Master Service List. The Court finds that notice of the Motion, as it relates to this Order (the “**Interim DIP Order**”), is sufficient for all purposes under the Bankruptcy Code and the Bankruptcy Rules, including, without limitation, Sections 102(1) and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(b) and (c).

H. Finding Cause. Good cause has been shown for the entry of this Order and authorization for Debtors to obtain Credit Extensions pursuant to the DIP Credit Agreement as hereinafter provided and to grant releases to the Bondholders and Indenture Trustee in connection with the grant of priming liens to the DIP Lender, pending a final hearing on the Motion pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2) (the “**Final Hearing**”) and entry of a final order approving the DIP Facility (the “**Final DIP Order**”). Debtors’ need for financing of the type afforded by the DIP Credit Agreement is immediate and critical. Entry of this Order will minimize disruption of Debtors’ business and operation, will preserve the assets of Debtors’ estates and is in the best interests of Debtors, their creditors and their estate. The terms of the proposed financing appear fair and reasonable, reflect Debtors’ exercise of business judgment and are supported by reasonably equivalent value and fair consideration.

I. Finding of Good Faith. Based upon the record presented at the Interim Hearing, it appears that the DIP Credit Agreement and related documents, as well as the terms of this Order, have been negotiated in good faith and at arm’s length between Debtors, on the one hand, and DIP Lender, on the other. Therefore, all Credit Extensions

to Debtors pursuant to the DIP Credit Agreement shall be deemed to have been made in good faith within the meaning of Section 364(e) of the Bankruptcy Code.

J. Jurisdiction; Core Proceeding. This Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding, as defined in 28 U.S.C. § 157(b)(2).

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED,
as follows:

1. Grant of Motion; Authorization of Interim Financing. The Motion is hereby granted and the Court hereby authorizes and approves (i) Debtors' execution and delivery of the DIP Documents; (ii) Debtors' obtaining DIP Loans and other Credit Extensions in accordance with the DIP Credit Agreement from time to time in accordance with the terms of the DIP Documents; and (iii) Debtors' satisfying all conditions precedent and performing all obligations hereunder and thereunder in accordance with the terms hereof and thereof; provided, however, that, pending the Final Hearing and subject to all of the terms and conditions in the DIP Credit Agreement, Debtors may obtain Credit Extensions only to the extent necessary to avoid immediate and irreparable harm to Debtors, which, for purposes hereof, shall mean proceeds of DIP Loans used (a) to pay the fees and expenses due and amounts owing by Debtors at any time to DIP Lender under the DIP Documents, and (b) to pay other expenses that are required to be paid, prior to the Final Hearing, under the DIP Credit Agreement and pursuant to the budget approved in connection with the Debtors' use of cash collateral (the "**Budget**," Docket No. 139). DIP Lender shall not have any obligation or

responsibility to monitor Debtors' use of the DIP Loans and may rely upon Debtors' representations that the amount of Credit Extensions requested at any time, and the use thereof, are in accordance with the requirements of this Order, the DIP Documents and Bankruptcy Rule 4001(c)(2).

2. Execution and Delivery of DIP Documents. Upon execution and delivery thereof, the DIP Documents shall constitute valid and binding obligations of Debtors, enforceable against Debtors in accordance with their terms. In furtherance of the provisions of paragraph 1 of this Interim DIP Order, Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of security agreements, pledge agreements, mortgages, deeds of trust, deeds to secure debt, financing statements and intellectual property filings), to the extent required by the DIP Credit Agreement, and to pay all filing and recording fees, in each case as may be necessary or, in the opinion of DIP Lender, desirable to give effect to any of the terms and conditions of the DIP Documents, to validate the perfection of the DIP Liens (as defined below) or as otherwise required or contemplated by the DIP Documents.

3. The Terms. The terms and conditions summarized herein represent the material terms and conditions on which the DIP Lender is authorized to make the DIP Facility available to the Borrower pursuant to definitive documentation reflecting the terms hereof:

- i. Loan Type and Amount: The DIP Facility will consist of a revolving credit line of up to \$2,000,000 at any one time outstanding (the "**DIP Revolving Commitment**").

ii. Loan purpose: Proceeds of the DIP Facility shall be used solely for the following purposes (and to the extent identified in the Budget): (a) capital improvements, including without limitation construction of a new waste management cell at 100 Green Mountain Parkway Adamsville, AL 35005; (b) to fund post-petition operating expenses and working capital needs of the Borrower, including, but not limited to, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. § 959; (c) to pay interest, fees and expenses to the DIP Lender in accordance with the DIP Facility; (d) to fund fees and expenses incurred in connection with a refinancing or a sale of all or substantially all of GMM's assets pursuant to 11 U.S.C. § 363 ("363 Sale"); (e) to pay permitted pre-petition claim payments and adequate protection payments, if any, to the Indenture Trustee; (f) to pay professional fees and expenses; and (g) to pay certain other costs and expenses of administration of the Chapter 11 Cases. Proceeds of the DIP Facility shall not be used (a) to permit the Borrower or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (i) the validity, perfection or priority of security interests in favor of the DIP Lender, or (ii) the enforceability of the obligations of the Borrower under the DIP Facility, (b) to investigate, commence, prosecute or defend any claim, motion, proceeding or cause of action against the DIP Lender and their agents, attorneys, advisors or representatives including, without limitation, any lender liability claims, subordination claims or any claims attempting to invalidate any lock-up agreement, or (c) to fund acquisitions, capital expenditures, capital leases, or any other expenditure other than as set forth in the Budget.

iii. Draw Procedure: DIP Lender's obligation to the funding of the DIP Facility ("**Draws**") shall be subject to the fulfillment of the following conditions on or prior to the date of each Draw Request:

a. Written Request. Borrower shall have delivered to DIP Agent, with a copy simultaneously to the Indenture Trustee, a written request for such Draw in the minimum amount of \$50,000 (a "**Draw Request**"). The initial Draw shall be \$400,000.00, provided, however, that Borrower may issue additional Draw Requests in accordance with the conditions set forth below;

b. Budget. The Draws shall be used to fund expenditures identified in the Budget, as such may be modified as provided for herein.

c. No Event of Default. No Event of Default that has not been cured by Maker shall have occurred at the time of Draw Request.

d. Notice Required. Subject to the conditions set forth above, Draw

Requests in amounts between \$50,000 and \$250,000 shall be funded by DIP Agent to Borrower on or before ten (10) days after DIP Agent receives a Draw Request. Draw Requests in amounts in excess of \$250,000 shall be funded by DIP Agent to Borrower on or before thirty (30) days after DIP Agent receives a Draw Request

- iv. Budget and Variances: Borrowings under the DIP Facility shall be limited by and subject to the Budget. The Budget may be further modified and amended from time to time only with the consent of the DIP Lender, the Indenture Trustee and the Borrower. Subject to the terms and conditions contained herein, the DIP Lender shall advance borrowings under the DIP Facility to fund expenditures identified in the Budget. The borrowings under the DIP Facility shall not exceed the DIP Revolving Commitment (the “**DIP Availability**”). The DIP Agent shall be provided reporting consistent with the terms of the Final Cash Collateral Order.
- v. Interest Rate and Payment Terms: Non-Default Interest Rate and Payment Terms: Interest shall be paid monthly on all outstanding advances under the DIP Facility, accruing at a per annum floating rate equal to the sum of (a) the Base Rate (as defined below), plus (b) 10.0% (the “**Non-Default Interest Rate**”). The “Base Rate” means the prime rate as quoted in the “Money Rates” section of the Wall Street Journal. In the event the Wall Street Journal is no longer publishing the “Money Rates” section, the prime rate shall be the prime lending rate charged by the Bank of America to its most favored borrowers.
- vi. Default Interest Rate: Effective immediately upon Borrower learning of an Event of Default, (i) unless waived in writing by the DIP Lender, interest on the outstanding loans under the DIP Facility shall accrue at a rate that is 4% per annum in excess of the Non-Default Interest Rate.
- vii. Loan Payments: Interest only payments shall be paid on the 1st of each month on all outstanding advances under the DIP Facility. All unpaid principal, interest, fees, costs and expenses on the DIP Facility shall be due and payable in full on the Termination Date, whether at maturity, upon acceleration or otherwise.
- viii. Mandatory Prepayments: Upon (a) closing of a 363 Sale, (b) any casualty event, provided, however, that Borrowers may use proceeds of any casualty event to repair or replace assets or improvements without turning over such proceeds to DIP Agent, or (c) the issuance of any approved post-petition debt or equity, 100% of any net cash proceeds from such sale, casualty (subject to certain reinvestment rights) or issuance shall be paid to DIP Agent no later than five (5) days after the date that such net cash

proceeds are received by Borrower, and applied first, to the amount outstanding under the DIP Loan Documents, second to the amount outstanding under the Bonds, and third to GMM, subject to holders of valid liens on such proceeds, to be distributed pursuant to further order of the Bankruptcy Court. Approved postpetition debt or equity shall be (i) subject to the consent of the DIP Agent and the Indenture Trustee, and (ii) in an amount that is no less than the amount of the outstanding DIP Facility and the Bonds.

ix. Fees: Borrower shall pay an origination fee of two percent (2.0%) of the DIP Revolving Commitment at closing of the DIP Facility. Upon entry of the Final DIP Order, Borrower shall pay the fees and other charges payable in the amounts and at the times separately agreed upon between Borrower and the DIP Agent, including without limitation, all closing costs, recording costs and legal fees in connection with the closing of the DIP Facility, such closing costs, recording costs and legal fees not to exceed \$20,000 (this amount does not include any fees and expenses incurred in connection with the occurrence of an Event of Default that requires DIP Agent to seek relief from the Bankruptcy Court). On the Termination Date, Borrower agrees to pay DIP Agent, for the benefit of DIP Lender, a non-refundable, unused line fee equal to the unused portion of the DIP Revolving Commitment up to \$750,000 multiplied by 1.5% on a per annum basis, accruing monthly in arrears.

x. Collateral Security: The DIP Facility (including accrued interest, fees, costs and expenses not to exceed \$20,000) shall be secured, subject and subordinate to any valid, perfected prior liens and security interests existing as of the Petition Dates, other than those in favor of the Indenture Trustee, by first priority liens and security interests (the “**DIP Liens**”) in all of the Borrower’s property, including, without limitation, the cash held in the Borrower’s bank accounts, all of Borrower’s existing and future acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, including without limitation coal reserves, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Borrower; provided, however, that DIP Lender shall have no lien on or interest in the Lease Agreement (collectively, the “**DIP Collateral**”). The DIP Lender are not granted a lien on any avoidance actions available to the bankruptcy estate of any Borrower pursuant to the Bankruptcy Code (the “**Avoidance Actions**”).

- xi. Super-Priority Administrative Claim: Amounts owed by Borrower to the DIP Lender pursuant to the DIP Facility (including all accrued interest, fees, costs and expenses) shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, a claim having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code, subject only to the Carve-Out (the “**DIP Lender’s Super-Priority Administrative Claim**”). “Carve-Out” means: (i) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) (“**Clerk Fees**” and “**UST Fees**” respectively) and (ii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid fees and expenses (“**Professional Fees**”) in amounts equal to the lesser of (x) the amounts provided for in the Budget and (y) the amounts actually incurred by persons or firms retained by Borrowers pursuant to 11 U.S.C. §§ 327, 328, or 363, and the Indenture Trustee and counsel to the Indenture Trustee (collectively, the “**Professionals**”), prior to the Termination Date. Nothing in the Interim DIP Order or the Final DIP Order, as applicable, shall impair the right of any party to object to the reasonableness or allowance of any such Professional Fees to be paid by Borrowers’ estates. The Carve-Out shall be senior to the security interests in and liens on all of the DIP Collateral.
- xii. Adequate Protection and Releases for the Indenture Trustee: As adequate protection and in consideration for their respective consent to being primed by the DIP Lender’s claims and liens, the Indenture Trustee (a) shall receive a claim having priority over any and all expenses of the kind specified in, among other sections of the Bankruptcy Code, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, and 1114, subject only to the Carve-Out and any other exceptions set forth in the Final Cash Collateral Order other than the DIP Lender’s Super-Priority Administrative Claim (the “**Indenture Trustee’s Adequate Protection Liens**”). As further adequate protection and consideration, subject to entry of the Final DIP Order, the Investigation Period and the Challenge Period (as defined in the Final Cash Collateral Order, Docket No. 139), Debtors will waive, release, and discharge the Indenture Trustee, the Bondholder in its capacity as such, and their respective affiliates, agents, attorneys, professionals, officers, directors, and employees (collectively, the “**Released Parties**”), from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, the Bonds and the Bond Documents; any aspect of the prepetition relationship between the Indenture Trustee and/or the Bondholder, and the Debtors; and any other acts or omissions by the Indenture Trustee and/or the Bondholder in connection with either the Bond Documents or the Indenture Trustee’s and/or Bondholder’s prepetition relationship with the Debtors, including the operation of their business.

- xiii. Events of Default: Defaults and Events of Default under the DIP Facility shall be those set forth in the Final Cash Collateral Order.
- xiv. Remedies: Upon the Termination Date, the DIP Agent and the DIP Lender shall have customary remedies, including, without limitation, the right to realize on all DIP Collateral, the right to exercise any remedy available under applicable law, without the necessity of obtaining any further relief or order from the Bankruptcy Court; provided, however, that the DIP Agent and the DIP Lender and Indentured Trustee shall agree to an intercreditor agreement providing that the DIP Agent and the DIP Lender “standstill” and allow the Indenture Trustee to control the default process and/or liquidation of the collateral upon default and stay relief.
- xv. Indemnification: The Borrower shall indemnify and hold DIP Agent, and all DIP Lender and their respective officers, directors, employees and agents (including all of their professionals) (each an “**Indemnified Party**”) harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all fees and disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, the DIP Loan Documents, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct.
- xvi. Conditions Precedent: The closing of the DIP Facility shall be subject to conditions precedent customary and appropriate for financings of this type, including, but not limited to, (a) satisfaction of all conditions to be set forth in the DIP Loan Documents and (b) entry of this Interim DIP Order approving the DIP Facility.
- xvii. Conditions Subsequent: Entry of a Final DIP Order within forty-five (45) days of the entry of this Interim DIP Order, which Order shall not have been modified or amended without approval of DIP Agent and DIP Lender, and shall not have been reversed, vacated or stayed pending appeal and which Final DIP Order shall be in form and substance satisfactory to DIP Agent and DIP Lender.

4. Final Hearing. The Final Hearing shall be held at _____ a/p.m., on _____, at Courtroom 1402, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303. If no objection to the Motion or this Order is timely filed and asserted at the Final Hearing, then this Order shall continue in effect in accordance with its terms subject to such modifications as the Court may make at the Final Hearing and that are acceptable to DIP Lender. If any or all of the provisions of this Order are modified, vacated or stayed as the result of any objection timely filed and asserted at the Final Hearing, then, any DIP Obligations incurred prior to the effective date of such modification, vacation or stay shall be governed in all respects by the original provisions of this Order, and DIP Lender shall be entitled to the protections afforded under Section 364(e) of the Bankruptcy Code and to all the rights, remedies, privileges, and benefits, including, without limitation, the DIP Liens and superiority claim status granted herein and pursuant to the DIP Documents with respect to all such DIP Obligations.

5. Objection Deadline. If any party in interest shall have an objection to any of the provisions of this Order, such party shall be authorized to assert such objection at the Final Hearing, provided that a written statement setting forth the basis for such objection is filed with the Court, and concurrently served upon the Office of the United States Trustee, Room 365, Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303; counsel for Debtor, Alston & Bird LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia 30309, Attention: Sage Sigler, Esq.; counsel for Bay Point Capital Partners, LP, MendenFreiman LLP, Two Ravinia Drive, Suite 1200,

Atlanta, Georgia 30346, Attention: Nathan T. Johns., Esq., so that such objections and responses are filed on or before 5:00 p.m., prevailing Eastern time on _____.

Unless an objecting party appears at the Final Hearing to assert the basis for such objection before the Court, such objection shall be deemed to have been waived and abandoned by such objecting party.

6. Modification of the Automatic Stay. The automatic stay imposed by Section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit the DIP Lender to: (i) receive payments to be made by the Debtors to the DIP Lender, (ii) apply and allocate such payments, and (iii) take any action expressly authorized or contemplated by this Interim DIP Order. Except as otherwise provided herein, any of the aforementioned actions may be taken without further order of this Court.

7. Binding Effect. This Interim DIP Order shall be binding on all creditors and parties in interest in these Bankruptcy Cases, including, but not limited to, the Debtors and any successors thereto, any Chapter 11 or Chapter 7 trustee that is appointed or elected in this case, and any Committee.

8. Survival; Successors and Assigns. The provisions of this Interim DIP Order shall be binding upon and inure to the benefit of the DIP Lender and Debtors and their respective successors and assigns (including, to the extent permitted by applicable law, any chapter 7 or chapter 11 trustee or other fiduciary hereafter appointed or elected for the estate or as a legal representative of Debtors or with respect to the property of the estates of Debtors). If an order dismissing either of these Bankruptcy Cases under 11

U.S.C. § 1112 or otherwise is at any time entered, such order shall provide (in accordance with 11 U.S.C. §§ 105 and 349 that the DIP Lender's Super-Priority Administrative Claim, the DIP Liens, the Indenture Trustee's Adequate Protection Liens and any other replacement security interests and liens and other protections afforded or granted to the DIP Lender or the Indenture Trustee pursuant to this Interim DIP Order as of the date of such dismissal shall continue in full force and effect and shall maintain their priorities as provided in this Interim DIP Order until all obligations shall have been paid and satisfied in full (and that such DIP Lender's Super-Priority Administrative Claim, the DIP Liens, and the Indenture Trustee's Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest). Notwithstanding any reversal, stay, modification, or vacation of this Interim DIP Order, any DIP Loans prior to such reversal, stay, modification, or vacation shall be governed in all respects by the original provisions of this Interim DIP Order, and the DIP Lender shall be entitled to all the rights, remedies, privileges, and benefits granted in this Interim DIP Order with respect to such use.

9. Inconsistencies. To the extent that any provisions in the DIP Credit Agreement are inconsistent with any of the provisions of this Interim DIP Order, the provisions of this Interim DIP Order shall govern and control.

10. Effectiveness. This Interim DIP Order shall be deemed effective immediately and, of the avoidance of doubt, FED. R. BANKR. P. 6004(h) shall not apply hereto.

11. Findings of Fact and Conclusions of Law. This Interim DIP Order constitutes findings of fact and conclusions of law.

12. Adequate Notice. The notice given by Debtors of the Interim Hearing was given in accordance with FED. R. BANKR. P. 4001(c)(2). Within three (3) business days after the Court's entry of this Order, Debtors or their agent shall mail copies of this Interim DIP Order to the Notice Parties.

***** End of Order *****

APPROVED AS TO FORM AND CONTENT:

ALSTON & BIRD LLP

/s/ Sage M. Sigler
Dennis J. Connolly (Bar No. 182275)
David A. Wender (Bar No. 748117)
Sage M. Sigler (Bar No. 300707)
Kevin M. Hembree (Bar No. 157405)

Counsel to Debtors and Debtors-in-Possession

MENDEN FREIMAN LLP

/s/ Nathan T. Johns
Nathan T. Johns (Bar No. 142455)

Counsel for Bay Point Capital Partners, LP

**MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO, P.C.,**

/s/ Kevin J. Walsh
Colleen A. Murphy (admitted pro hac vice)
Kevin J. Walsh

Counsel to UMB Bank, N.A., as Indenture Trustee

NO OPPOSITION BY:

**OFFICE OF THE UNITED STATES
TRUSTEE**

/s/
David S. Weidenbaum (Bar No. 745892)
Trial Attorney for the Office of the United States Trustee

EXHIBIT B

TERM SHEET

**Summary of Terms and Conditions
Proposed Senior Secured, Super-Priority
Debtor-in-Possession Credit Facility
(Green Mountain Management, LLC - \$2,000,000)**

The terms and conditions (the “**DIP Term Sheet**”) summarized herein represent the material terms and conditions on which Bay Point Capital Partners, LP, (“**BPCP**”) and/or certain other related parties or affiliates (collectively with **BPCP**, the “**DIP Lenders**”) are committing to make a senior secured, super-priority debtor-in-possession credit facility (the “**DIP Facility**”) available to the Borrower (as defined below), pursuant to definitive documentation reflecting the terms hereof.

DIP Lender:	BPCP or its related or affiliated parties shall act as administrative agent for the DIP Lenders (in such capacity, BPCP is herein referred to as the “ DIP Agent ”).
Borrower:	Green Mountain Management, LLC (“ GMM ”)
Guarantors:	None
Loan Type and Amount:	After entry of the Final Order (as defined below), the DIP Facility will consist of a revolving credit line of up to \$2,000,000 at any one time outstanding (the “ DIP Revolving Commitment ”)
Documentation:	The DIP Facility will be reflected in a definitive credit agreement and related loan documents, pledges, security documents and other supporting instruments and agreements embodying the terms set forth herein which are reasonably satisfactory to the Borrowers, DIP Agent and DIP Lenders, and each of the foregoing shall contain terms and conditions customary in debtor-in-possession financing agreements, consistent with the Borrowers’ rights and obligations as debtors-in-possession and the terms and conditions of this DIP Term Sheet (the “ DIP Loan Documents ”).
Representations and Warranties:	The DIP Loan Documents shall contain representations and warranties appropriate in the context of the proposed DIP Facility and acceptable to the DIP Agent and the DIP Lenders.
Loan purpose:	Proceeds of the DIP Facility shall be used solely for the following purposes (and to the extent identified in the Budget): (a) capital improvements, including without limitation construction of a new waste management cell at 100 Green Mountain Parkway Adamsville, AL 35005; (b) to fund post-petition operating expenses and working capital needs of the Borrower, including, but not limited to, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. § 959; (c) to pay interest, fees and expenses to the DIP Lenders in accordance with the DIP Facility; (d) to fund fees and expenses incurred in connection with a sale of all or substantially all of GMM’s assets pursuant to 11 U.S.C. § 363 (“ 363 Sale ”); (e) to pay permitted pre-petition claim payments and adequate protection payments, if any, to the Indenture Trustee; (f) to pay professional fees and expenses; and (g) to pay certain other costs and expenses of

	<p>administration of the Chapter 11 Cases.</p> <p>Proceeds of the DIP Facility shall <u>not</u> be used (a) to permit the Borrower or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (i) the validity, perfection or priority of security interests in favor of the DIP Lenders, or (ii) the enforceability of the obligations of the Borrower under the DIP Facility, (b) to investigate, commence, prosecute or defend any claim, motion, proceeding or cause of action against the DIP Lenders and their agents, attorneys, advisors or representatives including, without limitation, any lender liability claims, subordination claims or any claims attempting to invalidate any lock-up agreement, or (c) to fund acquisitions, capital expenditures, capital leases, or any other expenditure other than as set forth in the Budget.</p>
Draw Procedure:	<p>DIP Lender's obligation to the funding of the DIP Facility ("Draws") shall be subject to the fulfillment of the following conditions on or prior to the date of each Draw Request:</p> <ol style="list-style-type: none"> <i>Written Request.</i> Borrower shall have delivered to DIP Agent, with a copy simultaneously to the Indenture Trustee, a written request for such Draw in the minimum amount of \$50,000. The initial Draw shall be \$400,000.00, <i>provided, however</i>, that Borrower may issue additional Draw Requests in accordance with the conditions set forth below; <i>Budget.</i> The Draws shall be used to fund expenditures identified in the Budget and any other expenses approved by the DIP Lenders. <i>No Event of Default.</i> No Event of Default that has not been cured by Maker shall have occurred at the time of Draw Request. <i>Notice Required.</i> Subject to the conditions set forth above, Draw Requests in amounts between \$50,000 and \$250,000 shall be funded by DIP Agent to Borrower on or before ten (10) days after DIP Agent receives a Draw Request. Draw Requests in amounts in excess of \$250,000 shall be funded by DIP Agent to Borrower on or before thirty (30) days after DIP Agent receives a Draw Request [Why the long draw timing? Does this work for the debtor's cash management?].
Budget and Variances:	<p>Borrowings under the DIP Facility shall be limited by and subject to the Budget. The Budget may be further modified and amended from time to time only with the consent of the DIP Lenders, the Indenture Trustee and the Borrower. Subject to the terms and conditions contained herein, the DIP Lenders shall advance borrowings under the DIP Facility to fund expenditures identified in the Budget.</p> <p>The borrowings under the DIP Facility shall not exceed the DIP Revolving Commitment (the "DIP Availability").</p>

	<p>The DIP Agent shall be provided reporting consistent with the terms of the Interim Cash Collateral Order or the Final Cash Collateral Order, as may be in effect.</p>
Interest Rate and Payment Terms:	<p>Non-Default Interest Rate and Payment Terms: Interest shall be paid monthly on all outstanding advances under the DIP Facility, accruing at a per annum floating rate equal to the sum of (a) the Base Rate (as defined below), plus (b) 10.0% (the “Non-Default Interest Rate”). The “Base Rate” means the prime rate as quoted in the “Money Rates” section of the <i>Wall Street Journal</i>. In the event the <i>Wall Street Journal</i> is no longer publishing the “Money Rates” section, the prime rate shall be the prime lending rate charged by the Bank of America to its most favored borrowers.</p> <p>Default Interest Rate: Effective immediately upon Borrower learning of an Event of Default, (i) unless waived in writing by the DIP Lenders, interest on the outstanding loans under the DIP Facility shall accrue at a rate that is 4% per annum in excess of the Non-Default Interest Rate.</p>
Loan Payments:	<p>Interest only payments shall be paid on the 1st of each month on all outstanding advances under the DIP Facility. All unpaid principal, interest, fees, costs and expenses on the DIP Facility shall be due and payable in full on the Termination Date, whether at maturity, upon acceleration or otherwise.</p>
Mandatory Prepayments:	<p>Upon (a) closing of a 363 Sale, (b) any casualty event, provided, however, that Borrowers may use proceeds of any casualty event to repair or replace assets or improvements without turning over such proceeds to DIP Agent, or (c) the issuance of any approved post-petition debt or equity, 100% of any net cash proceeds from such sale, casualty (subject to certain reinvestment rights) or issuance shall be paid to DIP Agent no later than five (5) days after the date that such net cash proceeds are received by Borrower, and applied first, to the amount outstanding under the DIP Loan Documents, second to the amount outstanding under the Bonds, and third to GMM, subject to holders of valid liens on such proceeds, to be distributed pursuant to further order of the Bankruptcy Court. Approved postpetition debt or equity shall be (i) subject to the consent of the DIP Agent and the Indenture Trustee, and (ii) in an amount that is no less than the amount of the outstanding DIP Facility and the Bonds.</p>
Fees:	<p>Borrower shall pay an origination fee of two percent (2.0%) of the DIP Revolving Commitment at closing of the DIP Facility.</p> <p>Upon entry of the Final DIP Order, Borrower shall pay the fees and other charges payable in the amounts and at the times separately agreed upon between Borrower and the DIP Agent, including without limitation, all closing costs, recording costs and legal fees in connection with the closing of the DIP Facility, such closing costs, recording costs and legal fees not to exceed \$20,000 (this amount does not include any fees and expenses incurred in connection with the occurrence of an Event of Default that requires DIP Agent to seek relief from the Bankruptcy Court).</p>

	<p>On the Termination Date, Borrower agrees to pay DIP Agent, for the benefit of DIP Lenders, a non-refundable, unused line fee equal to the unused portion of the DIP Revolving Commitment up to \$750,000 multiplied by 1.5% on a per annum basis, accruing monthly in arrears.</p>
Termination Date:	<p>The earliest to occur of: (a) the Maturity Date; (b) 45 days after the entry of any Interim DIP Order if the Final DIP Order has not been entered; (c) acceleration of the obligations under the DIP Facility; (d) the effective date of a confirmed plan of reorganization or liquidation that provides for indefeasible payment in full, in cash of all obligations owing under the DIP Facility or is otherwise acceptable to DIP Agent and the Required DIP Lenders; (e) the date which is the closing date of any sale of all or substantially all of the Borrowers' assets; (f) the entry of an Order by the Bankruptcy Court granting relief from the automatic stay permitting foreclosure of any assets of the Borrowers by DIP Agent (any motion by the DIP Agent seeking such relief shall be subject to the ICA) or the Indenture Trustee; (g) the entry of an Order by the Bankruptcy Court terminating the use of cash collateral; (h) the entry of an Order by the Bankruptcy Court granting a motion seeking the appointment of a trustee or an estate fiduciary or an examiner with special powers; (i) the entry of an order by the Bankruptcy Court approving the dismissal or conversion of the Chapter 11 Cases; and (j) the filing or support by any Borrower of a plan of reorganization that does not provide for indefeasible payment in full, in cash of all obligations owing under the DIP Facility.</p> <p>The date on which the earliest of clauses (a) through (j) above occurs being referred to hereinafter as the "Termination Date," On the Termination Date, the DIP Revolving Commitment shall be deemed terminated, and DIP Lenders shall have no further obligation to provide financing pursuant to the DIP Facility.</p> <p>Borrower shall have the option to extend the term of the DIP Facility (the "Option to Extend") from the Maturity Date for another three hundred sixty five (365) days ("Extended Maturity Date"), upon receipt of written notice from Borrower of Borrower's request to exercise the Option to Extend, which notice shall be provided to DIP Agent not more than forty five (45) days but not less than ten (10) days prior to the Maturity Date, and upon satisfaction of each of the following conditions precedent:</p> <ul style="list-style-type: none"> (i) As of the date of Borrower's delivery of its notice of request to exercise the Option to Extend, and as of the Maturity Date, no Default (as hereinafter defined) shall have occurred and be continuing, and no event or condition which, with the giving of notice or the passage of time or both, would constitute a Default shall have occurred and be continuing, and Borrower shall so certify in writing; (ii) Maker shall execute or cause the execution of all documents reasonably required by Lender to exercise the Option to Extend;

	<p>(iii) There shall have occurred no material adverse change, as determined by DIP Agent in its reasonable business discretion, in the financial condition of Borrower from that which existed as of the date of the DIP Facility;</p> <p>(iv) On or before the Maturity Date, Borrower shall pay to Lender an extension fee in the amount of 1% of the DIP Revolving Commitment; and</p> <p>(v) The Indenture Trustee, in its sole and absolute discretion, consents to such extension.</p>
Pre-Petition Obligations:	<p>As of the date of this DIP Term Sheet, Green Mountain Management, LLC is party to a Mortgage and Trust Indenture (the “Trust Indenture”) dated August 1, 2010, with The Solid Waste Disposal Authority of the city of Adamsville (“SWDA” or the “Issuer”), as “Issuer,” and UMB Bank, N.A. (“Indenture Trustee” or “UMB”) as “Trustee” (as those terms are used in the Trust Indenture). Pursuant to the Trust Indenture, the Issuer issued its \$17,000,000 Solid Waste Disposal Revenue Bonds, Series 2010 (the “Bonds”) to finance the acquisition, construction and equipping of a solid waste disposal facility, including the underlying real property (the real property, solid waste disposal facility and improvements are collectively referred to as the “Landfill”). Also on August 1, 2010, Green Mountain entered into a Bond Guaranty Agreement (the “Bond Guaranty”), guarantying the payment of the amounts owing on the Bonds. In connection with the Trust Indenture, on August 1, 2010, SWDA leased the Landfill to Green Mountain pursuant to a Lease Agreement (the “Lease Agreement”), which provides for rental payments at times and in amounts equal to the amounts owing on the Bonds. SWDA’s interests in the Lease Agreement, including payments due thereunder, were contemporaneously pledged and assigned to the Indenture Trustee as security for the Bonds.</p> <p>The rights of the Indenture Trustee under the Trust Indenture, the Interim Cash Collateral Order or the Final Cash Collateral Order shall not be affected by the DIP Facility, the entry of the Interim DIP Order or the Final DIP Order, the execution and delivery of the DIP Financing credit documents or application of any portion of the proceeds from Collateral against any of the outstanding amounts under the DIP Facility, other than as specifically set forth in the Final DIP Order.</p>
Collateral Security:	<p>The DIP Facility (including accrued interest, fees, costs and expenses not to exceed \$20,000) shall be secured, subject and subordinate to any valid, perfected prior liens and security interests existing as of the Petition Dates other than those in favor of the Indenture Trustee, by first priority liens and security interests (the “DIP Liens”) in all of the Borrower’s property, including, without limitation, the cash held in the Borrower’s bank accounts, all of Borrower’s existing and future acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, including without limitation coal reserves, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial</p>

	tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Borrower; <i>provided, however</i> , that DIP Lender shall have no lien on or interest in the Lease Agreement (collectively, the “ DIP Collateral ”). The DIP Lenders are not seeking to take a lien on any avoidance actions available to the bankruptcy estate of any Borrower pursuant to the Bankruptcy Code (the “ Avoidance Actions ”).
Super-Priority Administrative Claim:	Amounts owed by Borrower to the DIP Lenders pursuant to the DIP Facility (including all accrued interest, fees, costs and expenses) shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, a claim having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code, subject only to the Carve-Out. “Carve-Out” means: (i) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) (“ Clerk Fees ” and “ UST Fees ” respectively) and (ii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid fees and expenses (“ Professional Fees ”) in amounts equal to the lesser of (x) the amounts provided for in the Budget and (y) the amounts actually incurred by persons or firms retained by Borrowers pursuant to 11 U.S.C. §§ 327, 328, or 363, and counsel to the Indenture Trustee (collectively, the “ Professionals ”), prior to the Termination Date. Nothing in the Interim DIP Order or the Final DIP Order, as applicable, shall impair the right of any party to object to the reasonableness or allowance of any such Professional Fees to be paid by Borrowers’ estates. The Carve-Out shall be senior to the security interests in and liens on all of the DIP Collateral.
Lien Validation and Perfection:	All liens authorized and granted pursuant to the Interim Order or the Final Order entered by the Bankruptcy Court approving the DIP Facility or with respect to adequate protection shall be deemed effective and perfected as of the applicable Petition Dates, and no further filing, notice or act will be required to effect such perfection.
Adequate Protection:	As adequate protection and in consideration for their respective consent to being primed by the DIP Lenders’ claims and liens, the Indenture Trustee (a) shall receive a claim having priority over any and all expenses of the kind specified in, among other sections of the Bankruptcy Code, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, and 1114, subject only to the Carve-Out and any other exceptions set forth in the Final Cash Collateral Order (the “ Adequate Protection Liens ”).
Affirmative and Negative Covenants	Affirmative and negative covenants customarily included in debtor-in-possession financing agreements or as otherwise agreed to by the DIP Lenders and the Borrowers.
Bankruptcy Court Approval:	<u>Bankruptcy Court Filings</u> . As soon as practicable in advance of filing with the Bankruptcy Court, Borrower shall furnish to DIP Agent and each DIP Lender (i) the motion seeking approval of and proposed forms of the Interim DIP

	<p>Order and the Final DIP Order, which motion shall be in form and substance satisfactory to the DIP Agent in its sole discretion and (ii) all other proposed orders and pleadings related to the DIP Facility, which orders and pleadings shall be in form and substance reasonably satisfactory to the DIP Agent.</p> <p><u>CRO Report.</u> Borrower shall cause the CRO to be made available to provide periodic telephonic updates of such reports to the DIP Agent and the DIP Lenders from time to time (but not less than weekly), as reasonably requested by the DIP Agent.</p> <p><u>Sales Process Milestones.</u> Borrower shall be required to comply with the “Milestones” established in the Final Cash Collateral Order.</p>
Additional Conditions To Financing:	<p>Compliance with Bankruptcy Rule 4001 and any applicable Local Bankruptcy Rules, the entry of the Interim Order and the Final Order, together with any other order requested by DIP Agent authorizing and approving the DIP Facility in form, substance and amount and providing for the DIP Collateral, all acceptable to DIP Agent in its sole discretion.</p> <p>Payment of all fees and expenses owing to DIP Agent and the DIP Lenders in connection with the DIP Facility not to exceed \$20,000.</p> <p>The DIP Loan Documents and the Interim and DIP Orders shall include such waivers, indemnities, and other provisions as are acceptable to the DIP Agent and the DIP Lenders in their respective sole discretion.</p> <p>As of the date of this DIP Term Sheet, the Bankruptcy Court has entered an order approving the appointment of Lee Katz as the “GMM Manager” with full decision making and operational authority over the Borrowers (Docket. No. 124). The Borrowers shall, at all times, have a duly appointed and acting GMM Manager, with the duties and powers of a chief restructuring officer (the “CRO”). Without limiting the foregoing, the GMM Manager shall (a) have direct and complete access to the Borrowers’ managers, officers, advisors, employees and other representatives, and shall at all times be entitled to take all action necessary or appropriate to be fully informed with respect to the Borrowers’ financial condition, operations, customers and business prospects; (b) respond to all reasonable information requests or inquiries of the DIP Agent, and the DIP Lenders and their respective representatives concerning any and all matters relating to the activities of such GMM Manager.</p>
Additional Conditions to Each Borrowing Under the Facility:	<p>There shall exist no Event of Default (or event that would constitute an Event of Default with the giving of notice or lapse of time) under any of the DIP Loan Documents, and the representations and warranties therein shall be true and correct in all material respects.</p>
Events of Default:	<p>Defaults and Events of Default under the DIP Facility shall be consistent with those set forth in the Final Cash Collateral Order.</p>
Remedies:	<p>Upon the Termination Date, the DIP Agent and the DIP Lenders shall have</p>

	customary remedies, including, without limitation, the right to realize on all DIP Collateral, the right to exercise any remedy available under applicable law, without the necessity of obtaining any further relief or order from the Bankruptcy Court; <i>provided, however</i> , that the DIP Agent and the DIP Lenders and Indentured Trustee shall agree to an intercreditor agreement providing that the DIP Agent and the DIP Lenders “standstill” and allow the Indenture Trustee to control the default process and/or liquidation of the collateral upon default and stay relief (the “ICA”).
Indemnification:	The Borrower shall indemnify and hold DIP Agent, and all DIP Lenders and their respective officers, directors, employees and agents (including all of their professionals) (each an “ Indemnified Party ”) harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all fees and disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, the DIP Loan Documents, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct.
Governing Law:	All documentation in connection with the DIP Facility shall be governed by the laws of the state of Georgia, subject to applicable federal bankruptcy laws.
Assignments and Participations:	DIP Lenders shall not be permitted to assign their rights and obligations with respect to the DIP Facility. DIP Lenders shall be permitted to grant or sell participations (with in such rights and obligations, or any part thereof, to any person or entity other than a natural person, subject to customary limitations. In the event of any such grant by DIP lenders of a participating interest, DIP Lenders shall remain responsible for the performance of their obligations under the DIP Facility, the participant shall not have any rights under the DIP Loan Documents, except the participant’s rights against the DIP Lenders in respect of such participation, and GMM shall continue to deal solely and directly with DIP Agent in connection with the DIP Facility.
Waivers and Amendments:	Except as otherwise expressly provided in this DIP Term Sheet, amendments and waivers of the provisions of the definitive credit documentation for the DIP Facility will require the approval of the DIP Lenders
Other Definitions:	<p>“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended.</p> <p>“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Georgia.</p> <p>“Budget” means the budget of Borrower relative to the operations of</p>

	<p>Borrower in the Chapter 11 Cases for any fiscal period, as approved by the Bankruptcy Court in connection with the Final Cash Collateral Order, which Budget shall be delivered to DIP Agent and DIP Lenders in form and substance satisfactory to DIP Agent and the DIP Lenders.</p> <p>“Chapter 11 Cases” means the Chapter 11 Cases commenced by Green Mountain Management, LLC and Georgia Flattop Partners, LLC on July 25, 2014, jointly administered under Case No. 14-64287.</p> <p>“Final Cash Collateral Order” means a final, non-appealable order of the Bankruptcy Court, that, without limitation, approves the Borrower’s continued use of cash collateral.</p> <p>“Final DIP Order” means a final, non-appealable order of the Bankruptcy Court, that, without limitation, approves the DIP Facility and grants the liens and security interests contained therein, on terms satisfactory to DIP Agent and the DIP Lenders.</p> <p>“Interim Cash Collateral Order” means the interim orders of the Bankruptcy Court approving the Borrower’s continued use of cash collateral, including the interim cash collateral orders entered on August 5, 2014, September 29, 2014, October 16, 2014 and November 19, 2014 (Docket Nos. 32, 79, 87 and 121]), and any subsequent interim cash collateral order entered by the Bankruptcy Court.</p> <p>“Interim DIP Order” means an interim order of the Bankruptcy Court authorizing Borrower, among other things, to obtain interim financing and incur post-petition indebtedness on terms satisfactory to DIP Agent and the DIP Lenders.</p> <p>“Maturity Date” means the date that is 365 days after the Final DIP Order.</p> <p>“Petition Date” means, with respect to any Borrower, the date on which the Chapter 11 Case for such Borrower was filed with the Bankruptcy Court.</p>
Good Faith Deposit:	None
Conditions Precedent	<p>The closing of the DIP Facility shall be subject to conditions precedent customary and appropriate for financings of this type, including, but not limited to, (a) satisfaction of all conditions to be set forth in the DIP Loan Documents, (b) approval of the Budget by the DIP Agent and the DIP Lenders, together with all financial information and projections regarding the Borrower reasonably requested by DIP Agent or any DIP Lender, all in form and substance satisfactory to DIP Agent and the DIP Lenders, (c) entry of an Interim DIP Order approving the DIP Facility, its super-priority administrative claims and all first priority and other liens securing the DIP Facility, and containing such other orders and findings as DIP Agent or DIP Lenders may require, including modification of the automatic stay upon the occurrence of an Event of Default enabling the DIP Agent to exercise certain rights and remedies against the DIP Collateral consistent with the terms of this Term Sheet, which Interim Order or Final Order, as applicable, shall not</p>

	have been modified or amended without reasonable approval of DIP Agent and DIP Lenders, and shall not have been reversed, vacated or stayed pending appeal, in form and substance satisfactory to DIP Agent, (d) receipt of customary due diligence items reasonably requested by DIP Agent and DIP Lenders, which items shall be requested no later than November 21, 2014, and which diligence shall be completed no later than the initial hearing to approve the Interim DIP Order.
Conditions Subsequent:	Entry of a Final Order by the Bankruptcy Court within 45 days of the Interim DIP Order, which Final DIP Order shall not have been modified or amended without approval of DIP Agent and DIP Lenders, and shall not have been reversed, vacated or stayed pending appeal, which Final Order shall be in form and substance satisfactory to DIP Agent and DIP Lenders.

The undersigned agree to the terms of the DIP Term Sheet as outlined above.

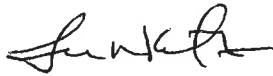
BORROWER:

**GREEN MOUNTAIN MANAGEMENT,
LLC**

By: _____

Lee N. Katz, GMM Manager

Date: _____



12/8/14

DIP AGENT:

BAY POINT CAPITAL PARTNERS, LP

By: BAY POINT ADVISORS, LLC, its
General Partner,

By: _____

Charles Andros, its Manager

Date: _____

	have been modified or amended without reasonable approval of DIP Agent and DIP Lenders, and shall not have been reversed, vacated or stayed pending appeal, in form and substance satisfactory to DIP Agent, (d) receipt of customary due diligence items reasonably requested by DIP Agent and DIP Lenders, which items shall be requested no later than November 21, 2014, and which diligence shall be completed no later than December 4, 2014.
Conditions Subsequent:	Entry of a Final Order by the Bankruptcy Court within 45 days of the Interim DIP Order, which Final DIP Order shall not have been modified or amended without approval of DIP Agent and DIP Lenders, and shall not have been reversed, vacated or stayed pending appeal, which Final Order shall be in form and substance satisfactory to DIP Agent and DIP Lenders.

The undersigned agree to the terms of the DIP Term Sheet as outlined above.

BORROWER:

GREEN MOUNTAIN MANAGEMENT, LLC

By: _____

Title: _____

Date: _____

DIP AGENT:

BAY POINT CAPITAL PARTNERS, LP

By: BAY POINT ADVISORS, LLC, its General Partner,

By:  _____

Charles Andros, its Manager

Date: 12/7/14