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**UNITED STATES BANKRUPTCY COURT**  
 SOUTHERN DISTRICT OF CALIFORNIA  
 325 West "F" Street, San Diego, California 92101-6991

In re:  
 SOUTH BAY EXPRESSWAY, L.P. and CALIFORNIA  
 TRANSPORTATION VENTURES, INC.,  
 Debtors.

BANKRUPTCY NO. 10-04516-LA11

Date of Hearing:  
 Time of Hearing:  
 Name of Judge: Hon. Louise D. Adler

**ORDER ON**

Motion of the Debtors for Entry of Interim Order  
 (A) Authorizing Use of Cash Collateral; (B) Granting Adequate Protection  
 to Certain Prepetition Secured Parties; (C) Granting Related Relief; and (D) Scheduling Final Hearing Thereon

IT IS ORDERED THAT the relief sought as set forth on the continuation pages and numbered \_\_\_\_ through  
 \_\_\_\_, with exhibits, if any, for a total of \_\_\_\_ pages, is granted. Motion Docket Entry No. \_\_\_\_.

Dated:

Signature by the attorney constitutes a certification  
 under Fed. R. of Bankr. P. 9011 that the relief on the  
 Order is the relief granted by the Court.

\_\_\_\_\_  
 Judge, United States Bankruptcy Court

Submitted by:

Kirkland & Ellis LLP  
 (Firm Name)

By: /DRAFT  
 Attorney for  Movant  Respondent

This matter having come before this Court upon the motion (the "Motion") of South Bay Expressway, L.P. ("SBX") and California Transportation Ventures, Inc. ("CTV") as debtors and debtors in possession (SBX and CTV collectively, the "Debtors") in the above-captioned chapter 11 cases, (a) seeking the entry of an interim order (the "Order") and a final order (the "Final Order") (i) authorizing the Debtors' use of cash collateral, as such term is defined in section 363(a) of title 11 of the United States Code (the "Bankruptcy Code") (as so defined, "Cash Collateral"), solely on the terms and conditions set forth in this Order and the Budget (as defined below); (ii) granting adequate protection to the Secured Financing Parties (as hereinafter defined); and (b) requesting, pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), that an emergency interim hearing (the "Interim Hearing") on the Motion be held for the Court to consider entry of this Order, on an interim basis; and (c) requesting, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), that this Court (i) schedule a final hearing (the "Final Hearing") on the Motion within thirty-five (35) days of the Petition Date (as hereinafter defined) to consider entry of the Final Order, and (ii) approve notice procedures with respect thereto; and the Interim Hearing having been held by this Court on \_\_\_\_\_; and the Court having considered the Motion and all pleadings related thereto, including the record made by the Debtors at the Interim Hearing; and after due deliberation and consideration, and good and sufficient cause appearing therefore:

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

A. **Petition Date.** On March 22, 2010 (the "Petition Date"), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Cases"). The Debtors are continuing to operate their respective businesses and manage their respective properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no statutory committee or trustee has been appointed in these cases.

B. **Jurisdiction and Venue.** The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Notice.** The Debtors have provided notice of this Motion and the Interim Hearing by facsimile or overnight mail to: (i) the Office of the United States Trustee for this District (the "US Trustee"); (ii) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis; (iii) counsel to the Administrative Agent (as hereinafter defined); (iv) the Administrative Agent (as hereinafter defined) and each of the Senior Financing Parties (as hereinafter defined); (v) TIFIA (as hereinafter defined); (vi) all other parties with liens of record on assets of the Debtors as of the Petition Date; (vii) all financial institutions at which the Debtors maintain deposit accounts; (viii) the landlords for all non-residential real properties occupied by the Debtors as of the Petition Date; and (ix) all other parties requesting notice pursuant to Bankruptcy Rule 2002. Given the nature of the relief sought in the Motion, the Court concludes that the foregoing notice was sufficient and adequate under the circumstances and complies with Bankruptcy Rule 4001 in all respects.

D. **Debtors' Acknowledgements and Agreement.** Subject to the rights of parties in interest as set forth in paragraph 5 below, the Debtors hereby admit, stipulate, acknowledge and agree that (collectively, paragraphs D(i) through D(ix) hereof shall be referred to herein as the "Debtors' Stipulations"):

(i) **Pre-Petition Senior Loan Agreement.** Prior to the commencement of the Cases, certain loans were made to the Debtors pursuant to that certain Construction and Term Loan Agreement dated as of May 22, 2003 (as amended, restated, supplemented or otherwise modified from time to time, the "Senior Loan Agreement"), by and among South Bay Expressway, L.P., formerly known as San Diego Expressway, L.P. ("SBX"), as borrower, Banco Bilbao Vizcaya Argentaria, S.A. as the Administrative Agent (in such capacity, the "Administrative Agent"), DEPFA Bank plc, as the Technical Bank; and Banco Bilbao Vizcaya Argentaria, S.A. and DEPFA Bank plc, as Joint Lead Arrangers ("Joint Lead Arrangers") and the other lenders party thereto from time to time (collectively, the "Senior Financing Parties"). The Senior Financing Parties made a loan to SBX in the initial original stated principal amount of \$400,000,000. The Pre-Petition Senior Loan Agreement was subsequently partially repaid and the remainder converted into a \$340,000,000 term loan pursuant to the terms of that certain Letter Agreement, dated April 16, 2008 (the "Pre-Petition Conversion Agreement") from SBX and Macquarie Infrastructure Trust (I) ("MIT (I)"), Macquarie Infrastructure Trust (II) ("MIT (II)"), Macquarie European Infrastructure PLC ("MEIP") and Macquarie Infrastructure Group International Limited ("MIGIL" and, together with MIT (I), MIT (II) and MEIP, collectively "MIG") to the Administrative Agent, the Collateral Agent (as defined below), and TIFIA (as defined below).

(ii) **Pre-Petition Senior Obligations.** Each Debtor stipulates and agrees that as of the Petition Date, SBX is indebted to the Senior Financing Parties in the approximate aggregate outstanding principal sum and accrued interest of [\$341,530,000.00] in "Senior Loans" and "Letter of Credit Usage" (as defined in the Agreement of Common Definitions), costs, fees, reimbursement obligations, attorney costs and other professional fees and expenses, and all other "Senior Obligations" (as defined in the Agreement of Common Definitions). All present and future indebtedness and obligations of the Debtors arising under the Pre-Petition Senior Loan Agreement or any other Pre-Petition Senior Loan Documents, including all loans, obligations with respect to letters of credit, advances, debts, liabilities, principal, interest (including interest accruing after the commencement of a bankruptcy proceeding by the Borrower), fees, premium, collections costs and expenses, charges, expenses and obligations for the performance of covenants, tasks or duties, or for the payment of monetary amounts owing to the Administrative Agent or the Senior Financing Parties by SBX, all whether fixed or contingent, matured or unmatured, liquidated or unliquidated of any kind or nature, whether or not evidenced by any note,

agreement or other instrument, shall hereinafter be referred to as the “Pre-Petition Senior Obligations.”

(iii) Pre-Petition TIFIA Loan Agreement. Prior to the commencement of the Cases, the United States Department of Transportation, acting by and through the Federal Highway Administrator (“TIFIA”), made a loan to SBX in the original stated principal amount of \$140,000,000 pursuant to that certain United States Department of Transportation TIFIA Loan Agreement dated as of May 22, 2003 (as amended, restated, supplemented or otherwise modified from time to time, the “TIFIA Loan Agreement”) by and among SBX as borrower and TIFIA as lender for the SR 125 South Toll Road Project (TIFIA 20031002).

(iv) Pre-Petition TIFIA Obligations. Each Debtor stipulates and agrees that as of the Petition Date, SBX is indebted to TIFIA in the approximate aggregate outstanding principal sum and accrued interest of \$172,005,767.19 in “TIFIA Debt” (as defined in the Agreement of Common Definitions), costs, fees, reimbursement obligations, attorney costs and other professional fees and expenses, and all other “TIFIA Obligations” (as defined in the Agreement of Common Definitions). All present and future indebtedness and obligations of SBX arising under the TIFIA Loan Agreement or any other TIFIA Loan Document, including all loans, obligations with respect to letters of credit, advances, debts, liabilities, principal, interest, fees, charges, expenses and obligations for the performance of covenants, tasks or duties, or for the payment of monetary amounts owing to TIFIA by SBX, all whether fixed or contingent, matured or unmatured, liquidated or unliquidated of any kind or nature, whether or not evidenced by any note, agreement or other instrument, shall hereinafter be referred to as the “Pre-Petition TIFIA Obligations”, together with the Pre-Petition Senior Obligations, the “Pre-Petition Obligations.”

(v) Pre-Petition Intercreditor Agreement. Prior to the Petition Date, SBX, the Administrative Agent, on behalf of the Senior Financing Parties, TIFIA and Wells Fargo Bank, National Association, as Collateral Agent (the “Collateral Agent”, collectively with the Administrative Agent, the Senior Financing Parties and TIFIA, the “Secured Financing Parties”) entered into that certain Intercreditor Agreement dated May 22, 2003 (as amended and in effect, the “Intercreditor Agreement”), which addresses the respective rights, interests, obligations, priority and the positions of the Administrative Agent, the Senior Financing Parties and TIFIA and remedies with respect to the Pre-Petition Collateral. The Intercreditor Agreement, the TIFIA Loan Agreement, the Pre-Petition Senior Loan Agreement and the Pre-Petition Conversion Agreement along with, any other agreements, instruments, notes, guaranties and other

documents evidencing, securing, guaranteeing or otherwise relating thereto are collectively referred to herein as the “Pre-Petition Secured Loan Documents”.<sup>1</sup>

(vi) Pre-Petition Collateral. To secure the Pre-Petition Obligations, SBX granted security interests and liens (the “Pre-Petition Liens”) to the Secured Financing Parties upon all of SBX’s tangible and intangible real and personal property, including, without limitation (a) the “Property,” as defined in the Construction Deed of Trust and the Lease Deed of Trust, together with, among other property, the Land, all Improvements and Fixtures, the Leases and Revenues, and the Franchise Agreement; (b) Accounts; Deposit Accounts (other than the Distribution Account); Instruments; Documents; Chattel Paper, including all Electronic Chattel Paper; Inventory; Equipment; Fixtures; Goods; Letters of Credit and Letter-of-Credit Rights; Intellectual Property; Investment Property; Commercial Tort Claims; Payment Intangibles, Software and General Intangibles; Project Agreements (including all Principal Project Agreements) and all amounts payable to Borrower under any Project Agreement; any and all rights of the Borrower in, to and under the Equity Funding Documents; and any present or future right, title or interest of the Borrower under any insurance, indemnity, warranty or guaranty in respect of the Project and any rents, revenues, incomes, profits, Insurance Proceeds or other rights to compensation in respect of the Project; all Proceeds and products in whatever form of all or any part of the other Collateral, including all rents, profits, income and benefits and all proceeds of insurance and all condemnation awards and all other compensation for any event of loss with respect to all or any part of the other Collateral (together with all rights to recover and proceed with respect to the same), and all accessions to, substitutions for and replacements of all or any part of the other Collateral; all other personal property and fixtures of Borrower, wheresoever located, whether or not of type which may be subject to a security interest under the UCC, and any replacements, renewals, or substitutions for any of the foregoing or additional tangible or intangible personal property of Borrower; and (c) the Equity Interests, including the Proceeds thereof; (each capitalized term as defined in the Pre-Petition Secured Loan Documents) and CTV granted security interests and liens on CTV’s Pledged Partnership Interests in SBX, representing CTV’s only asset (collectively, the “Pre-Petition Collateral”).

(vii) As of the Petition Date, all Pre-Petition Secured Loan Documents executed and delivered by the Debtors to the Secured Financing Parties are valid and enforceable by the Secured Financing Parties against each of the Debtors.

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<sup>1</sup> Capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Agreement of Common Definitions among SBX, TIFIA, the Administrative Agent and the Collateral Agent, dated as of May 22, 2003, and if not defined therein, then as defined in the Pre-Petition Secured Loan Documents.

The Secured Financing Parties duly perfected their liens upon and security interests in the Pre-Petition Collateral by, among other things, filing financing statements, deeds of trust, mortgages and fixture filings and, where necessary, by possession of relevant instruments, certificates or other property. All of such financing statements, mortgages and fixture filings were validly authorized by the Debtors or validly executed by authorized representatives of the Debtors. Pursuant to the Pre-Petition Secured Loan Documents, the Secured Financing Parties have a perfected first priority security interest in and liens on all of the Pre-Petition Collateral, including the Cash Collateral.

(viii) Pre-Petition Liens. (a) As of the Petition Date, (i) the Pre-Petition Liens and security interests of the Secured Financing Parties in the Pre-Petition Collateral, as security for the Pre-Petition Obligations, constitute valid, properly perfected liens that are binding, enforceable and perfected first priority liens and security interests and are not subject to avoidance, recharacterization, disallowance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (ii) the Pre-Petition Obligations constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms of the Pre-Petition Secured Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no offsets, defenses or counterclaims to any of the Pre-Petition Obligations exists, and no portion of the Pre-Petition Obligations is subject to avoidance, recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (iii) the Pre-Petition Obligations constitute allowable secured claims; and (b) the Debtors do hereby and have irrevocably waived, discharged and released the Secured Financing Parties, together with their affiliates, agents, attorneys, officers, directors and employees, of any right the Debtors may have (x) to challenge or object to any of the Pre-Petition Obligations, (y) to challenge or object to the security for the Pre-Petition Obligations, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or in any way related to the Pre-Petition Senior Loan Agreement, the TIFIA Loan Agreement (including with respect to any payments made by the Debtors pursuant thereto prior to the Petition Date), or otherwise.

The Debtors do not possess and shall not assert any claim (as such term is defined in section 101(5) of the Bankruptcy Code), counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition Senior Loan Agreement, the TIFIA Loan Agreement, or the Pre-Petition Liens, or any claim of the Secured Financing Parties pursuant to the Senior Loan Agreement or the TIFIA Loan Agreement, as applicable.

(ix) Cash Collateral. The Secured Financing Parties have a security interest in Cash Collateral, including all amounts on deposit in the Debtors' banking,

checking or other deposit accounts and all proceeds of the Pre-Petition Collateral to secure the Pre-Petition Obligations and to the same extent and order of priority as that which was held by such party prior to the commencement of these Cases.

**E. Findings Regarding the Use of Cash Collateral.**

(i) Need for the Use of Cash Collateral. The Debtors have an immediate and critical need to use Cash Collateral in order to, among other things, fund the ordinary costs of their operations, maintain business relationships with vendors, suppliers and customers, make payroll, make capital expenditures, complete construction of the Project and satisfy other working capital and operational needs. The Debtors' access to sufficient working capital and liquidity through the use of Cash Collateral under the terms of this Order is vital to the preservation and maintenance of the going concern value of the Debtors' estates so that the Debtors can maximize the value of their estates. Consequently, without the continued use of Cash Collateral, to the extent authorized pursuant to this Order, the Debtors and their estates would suffer immediate and irreparable harm.

(ii) Prior Liens. Nothing herein shall constitute a finding or ruling by this Court that any Pre-Petition Liens or Existing Prior Liens (as defined below) are valid, senior, perfected and unavoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors (other than with respect to the Secured Financing Parties), the Secured Financing Parties (other than with respect to each other), or any committee appointed pursuant to section 1102 of the Bankruptcy Code to challenge the validity, priority, perfection and extent of any such Pre-Petition Lien, Permitted Prior Encumbrance, Permitted Prior Lien and/or security interest.

**F. Adequate Protection for Secured Financing Parties.** As a result of the use of Cash Collateral authorized herein, the subordination to the Carve-Out and any Diminution in Value of their respective interest in the Pre-Petition Collateral (including Cash Collateral), the Secured Financing Parties are entitled to receive adequate protection pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. As adequate protection, the Administrative Agent, TIFIA and the Collateral Agent on behalf of the Secured Financing Parties will receive, subject in each case to the Intercreditor Agreement: (1) "Post-Petition Replacement Liens" (as defined below), (2) the "Post-Petition Superpriority Claim" (as defined below), and (3) "Adequate Protection Payments" (as defined below).

**G. Section 552.** In light of the Secured Financing Parties' agreement to subordinate their liens and superpriority claims to the Carve-Out, the Secured Financing Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception shall not apply.

**H. Consent of Secured Financing Parties.** The Secured Financing Parties and the Collateral Agent have indicated a willingness to consent to the entry of this Order in good faith and the superpriority claims, security interests and liens and other protections granted to the Secured Financing Parties pursuant to this Order will not be affected by any subsequent reversal,

modification, vacatur or amendment of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

I. **Relief Essential; Best Interest.** The relief requested in the Motion (and as provided in this Order) is necessary, essential and appropriate for the continued operation of the Debtors' business and the management and preservation of the Project, and the Debtors' other real and personal property and to avoid immediate and irreparable harm to the Debtors' estates, in order to pursue to preserve and maximize the Debtors' assets and personal property. It is in the best interest of the Debtors' estates to be allowed to grant the requested relief.

J. **Entry of Order.** For the reasons stated above, the Debtors have requested immediate entry of this Order and waiver of any of the stay provisions of Bankruptcy Rule 6004(h).

**NOW, THEREFORE**, on the Motion of the Debtor and the record before this Court with respect to the Motion and with the consent of the Debtor and the Secured Financing Parties to the form and entry of this Order, and good and sufficient cause appearing therefore,

**IT IS ORDERED** that:

1. **Motion Granted.** The Motion is granted in its entirety in accordance with the terms and conditions set forth in this Order and the Motion.

2. **Authorization to Use Cash Collateral.**

a. Pursuant to the terms and conditions of this Order and in accordance with the budget (as the same may be modified from time to time with the prior consent of the Administrative Agent and TIFIA, the "Budget"), attached here as Exhibit 1 and filed of record in the Case, the Debtors are authorized to use Cash Collateral during the period commencing immediately after the entry of this Order and terminating upon written notice being provided by the Administrative Agent to the Debtors, their counsel and lead counsel to any official committee that an Event of Default (as defined below) has occurred and is continuing. Nothing in this Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business or other proceeds resulting therefrom, except in accordance with the Budget. In no event shall the Debtors request any transfer, nor use any of the Cash Collateral to pay any disbursement item in excess of 115% during the first three months after the Petition Date and 110% for the following three months of the Cases, of the cumulative amount set forth for such disbursement item in the Budget (tested on a monthly basis), plus the amounts benefiting from the Carve Out (as defined below) solely for the payments to professionals, for the period from the Petition Date through the month in which the Debtors use such Cash Collateral or advances (x) by line item or (y) in the aggregate; *provided, however* that costs relating to Project Completion (as hereinafter defined) must be approved by the Project Independent Engineer pursuant to the Secured Loan Documents and the Debtors shall not, without the consent of the Administrative Agent and TIFIA, incur any such costs relating to Project Completion (other than in respect of the Park Betterments) that is more than 110% of the amounts reflected on the Budget relating to Project Completion (other than in respect of the Park Betterments), nor shall



the Debtors, without the consent of the Administrative Agent and TIFIA, incur any costs relating to the Park Betterments that is more than the amount available under the letter of credit posted in respect of Park Betterments (variance on the Project Completion and Park Betterments line items shall not be tested in April 2010) and the overall cost to complete the Park Betterments shall not exceed the letter of credit. Further, any unused portion of a line item in the Budget may not be reallocated to another line item in the Budget.

b. No Cash Collateral may be used by the Debtors, any official committee, or any other person or entity to object to or contest in any manner, or raise any defenses to the validity, extent, perfection, priority or enforceability of the Pre-Petition Obligations, or any liens or security interests with respect thereto or any other rights or interests of the Secured Financing Parties, or to assert any claims or causes of action, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, against the Secured Financing Parties; *provided that* nothing in this paragraph 2 shall limit any official committee from using the Carve-Out to fund its investigative work as and to the extent provided for in paragraph 5 below.

c. The Budget may be updated by the Debtors from time to time, *provided that* such updated Budget shall be in form and substance reasonably acceptable to the Administrative Agent and TIFIA at their sole discretion (any such change, a “Budget Change”), and the Debtors shall be required always to comply with the Budget subject to permitted variances as set forth in paragraph 2(a) above.

d. In addition to the reports and information required to be provided by the Debtors under the Pre-Petition Secured Loan Documents (except to the extent such reports are modified by this Order), the Debtors shall provide periodic reports to the Administrative Agent and TIFIA as follows:

- (i) on a weekly basis, within three (3) calendar days after the end of the preceding calendar week, a report in a form reasonably satisfactory to the Administrative Agent and TIFIA showing (x) traffic and revenues for the previous week and operating costs and other expenditures incurred during the previous week; and (y) subject to paragraph 2(a) above, the variances for such period between the actual amounts and the budgeted amounts (as shown in the Budget), together with a brief narrative explanation of the reasons for any such variance (the “Weekly Budget Report”);
- (ii) on a monthly basis commencing for the first full month following the Petition Date, within fifteen (15) days after the end of the preceding calendar month, a monthly operating report in a form reasonably satisfactory to the Administrative Agent and TIFIA showing (x) all operating data for the Debtors for the previous month detailing total revenues for the Project and operating costs and other expenditures incurred during the prior month and (y) subject to paragraph 2(a) above, the variances for such period between the actual amounts and the budgeted amounts (as shown in the Budget) together with a brief

narrative explanation of the reasons for any such variance (the "Monthly Operating Budget Report");

- (iii) on a monthly basis, within three (3) calendar days after the end of the preceding calendar month, a monthly Project Completion report in a form satisfactory to the Administrative Agent and TIFIA showing (x) the costs incurred during such month relating to the completion of the Project, including the FOE stabilization, installation of the Park Betterments, installation of the golf course bridge and completion of the "punch list" items (collectively, "Project Completion Budget Report"), and (y) subject to paragraph 2(a) above, the variances for such period between the actual amounts and the budgeted amounts (as shown in the Project Completion Budget) together with a brief narrative explanation of the reasons for any such variance (the "Project Completion Budget Report", together with the Weekly Budget Report and Monthly Operating Report, the "Budget Reports");
- (iv) on a weekly basis, within three (3) calendar days after the end of the preceding calendar week, a report in a form reasonably satisfactory to the Administrative Agent and TIFIA showing (x) progress of project completion on the FOE Rehabilitation work against schedule; (y) lane performance against baseline for completed lanes; and (z) identification of open issues, corrective action taken and explanations for issues not yet corrected (the "FOE Report"); and
- (v) promptly, such additional reasonably available financial and other information with respect to the Debtors or the Project, as either the Administrative Agent or TIFIA may reasonably request but only to the extent such information is not privileged.

e. The Debtors further agree to use their commercially reasonable efforts to complete the Project in accordance with the Project Completion Schedule and Project Completion Budget;

f. The Debtors agree that funds will be released from the Construction Reserve Account in respect of the Project Completion Costs upon certification from the Independent Engineer, acting reasonably and without delay, that such amounts are in compliance with the Project Completion Budget and the Project Completion Schedule.

g. The Debtors shall provide to the Administrative Agent and TIFIA any and all material information related to Force Majeure events, departure of key management personnel, the availability of funds or any other developments that are material to the achievement of Project Completion.

3. **Adequate Protection for Pre-Petition Obligations.** Subject to the rights afforded to any official committee under paragraph 5 of this Order, as adequate protection for the interest of the Secured Financing Parties in the Pre-Petition Collateral (including Cash Collateral) for any diminution in value of the Pre-Petition Collateral for any reason, including, without limitation resulting from subordination to the Carve-Out, the Debtors' use of Cash Collateral, other decline in value arising out of the automatic stay or the Debtors use, sale, lease, depreciation or disposition of the Pre-Petition Collateral (including Cash Collateral) and change in market value of the Collateral (collectively, the "Diminution in Value"), and as security for the Secured Financing Parties' willingness to allow the Debtors to use Cash Collateral, the Secured Financing Parties shall receive adequate protection as follows:

(a) **Post-Petition Replacement Liens.** The Debtors, jointly and severally, hereby grant to the Collateral Agent on behalf of the Secured Financing Parties, subject to the terms and conditions set forth below and subject to the Intercreditor Agreement, pursuant to sections 361, 363(e) and 364 of the Bankruptcy Code replacement security interests in and liens and mortgages upon all of the Debtors' now owned and hereafter acquired real and personal property, assets and rights of any kind or nature, including without limitation the Pre-Petition Collateral and the proceeds, products, rents and profits thereof (including, upon entry of the Final Order, the proceeds of any avoidance actions under chapter 5 of the Bankruptcy Code) (collectively, the "Post-Petition Replacement Liens"), which shall be junior only to the Carve-Out and valid, perfected, enforceable liens in favor of third parties which liens existed on May 22, 2003, if any, but only to the extent that such lien in favor of a third party was senior to the liens in favor of the Collateral Agent or the Secured Financing Parties (the "Existing Prior Liens").<sup>2</sup> The Post-Petition Replacement Liens herein granted: (i) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of the Secured Financing Parties on the Petition Date; (ii) are and shall be valid, perfected, enforceable and effective as of the Petition Date without any further action by the Debtors, the Collateral Agent or the Secured Financing Parties and without the necessity of the execution, filing or recordation of any financing statements, security agreements, filings with the United States Patent and Trademark Offices, mortgages or other document, obtaining control agreements over bank accounts or possession of stock certificates; and (iii) shall secure the payment of indebtedness to the Collateral Agent and the Secured Financing Parties in amount equal to the extent of any Diminution in Value of the Secured Financing Parties' interest in the Collateral from and after the Petition Date. Notwithstanding the foregoing, the Administrative Agent and TIFIA may, in their sole discretion, file (or cause the Collateral Agent to file) such financing statements,

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<sup>2</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Prior Liens are valid, senior, perfected and unavoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited, to the Debtor, the Administrative Agent, TIFIA and any committee appointed pursuant to Section 1102 of the Bankruptcy Code to challenge the validity, priority, perfection and extent of any such Permitted Prior Lien and/or security interest.

mortgages, leasehold mortgages, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, leasehold mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date.

(b) Post-Petition Superpriority Claim. The Collateral Agent and the Secured Financing Parties shall have an allowed superpriority administrative expense claim (the "Post-Petition Superpriority Claim"), against the Debtors, jointly and severally, which shall have priority (except with respect to the Carve-Out and the Existing Prior Liens) in these Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of a Final Order), 507(a), 507(b), 546(c), 546(d), 726(b), 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all Collateral and all proceeds thereof. Other than the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in this proceeding, and no priority claims are, or will be, senior to, prior to or on a parity with the Post-Petition Superpriority Claim.

(c) Adequate Protection Payment. The Secured Financing Parties shall receive adequate protection payments from the Debtors, jointly and severally, in an amount equal to (i) the lesser of (A) the difference between the value of the funds in the Additional Equity Account (as defined in the Agreement of Common Definitions) as of the Petition Date and the value of the funds in the Additional Equity Account as of the date that this Order becomes a final order and (B) \$1 million (which amount will be payable on the date that this Order becomes a final order) and (ii) upon this Order becoming a final order, in a fixed monthly amount to be determined (the "Adequate Protection Payment").

4. **Section 507(b) Reservation.** Nothing herein shall impair or modify the Secured Financing Parties' rights under section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Secured Financing Parties hereunder is insufficient to compensate for the Diminution in Value of the interest of such Secured Financing Parties in the applicable Pre-Petition Collateral during the Cases or any Successor Cases; *provided, however*, that any claim granted in the Cases to the Secured Financing Parties pursuant to section 507(b) of the Bankruptcy Code shall be subject to the Carve-Out and the Intercreditor Agreement. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgement by any of the Administrative Agent, TIFIA or other Secured Financing Parties that the adequate protection granted herein does in fact adequately protect the Secured Financing Parties against

any Diminution in Value of their respective interests in the Pre-Petition Collateral (including Cash Collateral), subject to the Intercreditor Agreement.

5. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.**

a. Nothing in this Order shall prejudice whatever rights any official committee, or court appointed trustee or examiner (i) to file an adversary proceeding or contested matter or otherwise to object to or challenge (x) the validity, extent, perfection, enforceability or priority of the mortgage, security interests and liens of the Secured Financing Parties in and to the Pre-Petition Collateral, or (y) the validity, allowability, priority, status, enforceability or amount of the Pre-Petition Obligations; or (ii) to bring suit against any of the Secured Financing Parties in connection with or related to the Pre-Petition Obligations, or the actions or inactions of any of the Secured Financing Parties arising out of or related to the Pre-Petition Obligations (including but not limited to, a claim or suit under sections 506, 510, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code), any such action referred to herein as a “Challenge Action”.

b. Notwithstanding the foregoing, unless any official committee, trustee or examiner commences a Challenge Action against the Secured Financing Parties, within (i) seventy-five (75) days from the entry of this Order, or (ii) if an official committee of unsecured creditors is appointed, sixty (60) days following the later of the date of its formation or the date of its retention of counsel to investigate such matters (collectively, (i) and (ii) shall be referred to as the “Challenge Period,” with the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, being referred to as the “Challenge Period Termination Date”), then upon the Challenge Period Termination Date, any and all such challenges and objections by any party (including, without limitation, the any official committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Cases, receiver, administrator, trustee, examiner, responsible officer, other estate representative and any other creditor, interest holder or party in interest) shall be deemed to be forever waived and barred, and (x) the Debtors’ Stipulations shall be binding on all creditors, interest holders, and parties in interest (including, without limitation, any official committee, any creditor or Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Cases, receiver, administrator, trustee, examiner, responsible officer and other estate representative) and (y) the Administrative Agent’s, TIFIA’s, the Collateral Agent’s and other Secured Financing Parties’ security interests and Encumbrances upon the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, enforceable, and perfected security interests and Encumbrances, not subject to recharacterization, subordination or otherwise avoidable.

c. To the extent any such Challenge is filed, the Collateral Agent and the Secured Financing Parties shall be entitled to include such costs and expenses, including but not limited to reasonable attorneys’ fees, incurred in defending the objection or complaint as part of the Pre-Petition Obligations. In the event these cases are converted

to Chapter 7 on or prior to expiration of the Challenge Termination Date, the Challenge Termination Date shall be abrogated and be of no further force and effect.

6. **Carve-Out.**

a. Notwithstanding anything in this Order to the contrary, subject only to the terms and conditions contained in paragraph [6(c)], the Post-Petition Replacement Liens, and the Post-Petition Superpriority Claims are subordinate to the sum of the amounts described in subparagraphs (i), (ii), (iii) and (iv) below (with the sum of those amounts hereinafter referred to as the “Carve-Out”):

(i) Allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6);

(ii) The sum of (A) and (B), where (A) is the aggregate amount of the Debtors’ and any official committee’s professional fees, costs, expenses and disbursements which have been incurred, accrued or invoiced (but remain unpaid) on or prior to the business day following the business day on which the Administrative Agent provides written notice that an Event of Default has occurred and the Administrative Agent has triggered the Carve-Out (a “Carve Out Trigger Notice”), whether or not allowed prior to or after the date of the Carve Out Trigger Notice, for any professional retained by the Debtors and any official committee under Section 327 of the Bankruptcy Code and (B) is \$800,000; and

(iii) The lesser of (A) the aggregate amount of any official committee’s professional fees and disbursements which have been incurred, accrued, or invoiced (but remain unpaid) for any professional retained by a final order of the Court by an official committee under section 1103 of the Bankruptcy Code (which order has not been vacated, stayed or appealed), and (B) \$50,000 (the “Litigation Carve-Out”), which may be used by the official committee (x) to fund the investigation, prosecution and settlement of any challenge to the validity, extent, perfection, enforceability or priority of the mortgage, security interests and liens of the Secured Financing Parties in and to the Pre-Petition Collateral or (y) to bring suit against any of the Secured Financing Parties in connection with or related to the Pre-Petition Obligations, or the actions or inactions of any of the Secured Financing Parties arising out of or related to the Pre-Petition Obligations, and to litigate any adversary proceeding or contested matter with regard to the foregoing.

b. Except in connection with the adversary proceeding to be commenced by the Debtors seeking entry of a declaration that the lien of the Secured Financing Parties is senior to any Existing Prior Lien, the Carve-Out (other than the Litigation Carve-Out) shall exclude any fees and expenses (x) incurred in connection with the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment,

determination, or similar relief (A) invalidating, setting aside, avoiding or subordinating in whole or in part, (i) the Pre-Petition Obligations, (ii) the Pre-Petition Liens in the Pre-Petition Collateral, or (iii) the Post-Petition Replacement Liens in the Collateral; or (B) preventing, hindering or delaying, whether directly or indirectly, the Administrative Agent's, TIFIA's or the Secured Financing Parties' assertions or enforcement of their Encumbrances, security interests, or their realization upon any Collateral, the Pre-Petition Collateral, or the Post-Petition Replacement Liens, and no Cash Collateral may be used to accomplish any of the foregoing, *provided, however*, that such exclusion in subsection (x) does not apply to the Litigation Carve-Out nor encompass any investigative work conducted by attorneys and financial advisors employed by any official committee pursuant to sections 327 and 1103 of the Bankruptcy Code prior to bringing any action relating to the foregoing to the extent such fees and expenses do not exceed the Litigation Carve-Out, (y) in using Cash Collateral of the Secured Financing Parties, selling or otherwise disposing of any other Collateral or incurring any indebtedness without the Administrative Agent's express written consent or (z) arising after the conversion of these Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code.

c. Except as otherwise provided in this paragraph, nothing contained in this Order shall be deemed a consent by the Secured Financing Parties to any charge, lien, assessment, or claim against any of them or the Pre-Petition Collateral or the Post-Petition Replacement Liens under section 506(c) of the Bankruptcy Code or otherwise. Nothing herein shall be construed to obligate the Secured Financing Parties in any way, to pay the Debtors' or any official committee's professional fees or disbursements, or to assure that the Debtors have sufficient funds on hand to pay any of those professional fees and disbursements. So long as no Event of Default exists that has not been waived in writing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget with the variations permitted in paragraph [ ] hereof, as the same may be due and payable and the same shall not reduce the Carve-Out.

7. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses by the Debtors, any official committee or of any person, or shall affect the right of the Secured Financing Parties to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Budget after taking into account the variations permitted in paragraph [ ] hereof.

8. **Section 506(c) Claims.** Subject to the entry of a Final Order, no costs or expenses of administration which have been or may be incurred in the cases at any time shall be charged against the Secured Financing Parties, their claims, or the Pre-Petition Collateral, pursuant to sections 105 and 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the Secured Financing Parties and no such consent shall be implied from any other action, inaction or acquiescence by the Secured Financing Parties.

9. **Termination Date.** All authority to use Cash Collateral (other than to pay administrative expenses already incurred and professional fees benefiting from the Carve Out) shall cease on the date ("Termination Event") that is the earliest to occur of: (a) the passage of

thirty-five (35) days after entry of the Order if the Final Order shall not have been entered by the Bankruptcy Court on or before such date (which order shall not have been stayed, modified or reversed), (b) September 30, 2010 unless a Plan has been filed that contains terms relating to the treatment of the secured claims of the Secured Financing Parties that are reasonably acceptable to the Secured Financing Parties or provides for payment in full in cash on the effective date of the Plan of the Pre-Petition Obligations, has been filed and then such date that may be mutually agreed but in no event later than the effective date of such Plan; (c) the occurrence and continuation of an Event of Default and two (2) business days' prior written notice from the Secured Financing Parties; (d) consummation of a sale of all or substantially all of the assets of the Debtor; or (e) the effective date of the Plan related to the Debtors and its assets.

10. **Payment from Proceeds of Collateral.** All products and proceeds of the Collateral (including, for the avoidance of doubt, proceeds from receivables and sales in the ordinary course of business or from a 363 Sale, insurance proceeds and proceeds of all dispositions of Collateral, whether or not in the ordinary course) regardless of whether such Collateral came into existence prior to the Petition Date, shall be remitted to the Administrative Agent (net of payments required to be made to professionals to the extent included in the Carve Out) for application in accordance with the terms of this Order and the Pre-Petition Secured Loan Documents; *provided*, that 100% of the proceeds from the sale or disposition of assets from a 363 Sale and insurance proceeds (not to exceed the then outstanding professional fees included in the Carve Out plus \$800,000 in the aggregate at any one time) shall be deposited into a segregated account and used solely to fund professional fees to the extent included in the Carve Out.

11. **Disposition of Collateral.** The Debtors shall not (a) sell, transfer, lease, encumber or otherwise dispose of any portion of the Pre-Petition Collateral, without the prior written consent of the Secured Financing Parties (and no such consent shall be implied, from any other action, inaction or acquiescence by the Secured Financing Parties, or an order of this Court), except (i) for sales of the Debtors' inventory in the ordinary course of business, (ii) for sale(s) of assets in connection with an approved 363 sale, so long as the proceeds thereof are paid in cash to the Secured Financing Parties at closing on the 363 sale for application as provided in this Order, or (iii) as otherwise provided for in this Order and approved by the Court, or (b) assume, reject or assign any material lease without the consent of the Administrative Agent and TIFIA.

12. **Events of Default.** The occurrence of any of the following events shall constitute an event of default ("Event of Default") under this Order:

- a. failure by the Debtors to comply with any term of this Order;
- b. the occurrence of the Termination Date;
- c. entry of an order by the Bankruptcy Court appointing a trustee or an examiner with expanded powers in either of the Debtors' Chapter 11 Cases;



- d. entry of an order by the Bankruptcy Court converting or dismissing either of the Debtors' Chapter 11 Cases;
- e. entry of an order by the Bankruptcy Court reversing, staying, vacating or otherwise modifying in any material respect the terms of this Order;
- f. entry of an order by the Bankruptcy Court authorizing the Debtors to obtain credit or the incurring of indebtedness that is secured by a security, mortgage, lien, collateral interest or other Encumbrances on all or any portion of the Pre-Petition Collateral and/or entitled to priority administrative status which is equal or senior to that granted to the Secured Financing Parties herein;
- g. entry of an order by the Bankruptcy Court authorizing relief from stay by any person on or with respect to all or any portion of the Pre-Petition Collateral with a value in excess of \$250,000 shall constitute an Event of Default hereunder;
- h. entry of an order by the Bankruptcy Court authorizing the Debtors' return of goods constituting Collateral pursuant to section 546(h) of the Bankruptcy Code;
- i. entry of an order by the Bankruptcy Court, without the prior written consent of the Administrative Agent, seeking authorization to obtain post-petition financing that is senior or *pari passu* to the Pre-Petition Obligations;
- j. the failure by the Debtors to comply with any material provision of this Order, including, but not limited to, paragraph 2 relating to the limitations on expenditures in the Budget and timely providing the Administrative Agent and TIFIA with any of the Budget Reports; and
- k. the filing of a plan of reorganization by any party other than the Debtors or the Secured Financing Parties unless such plan requires the payment in full of each of the secured claims of the Secured Financing Parties.

Unless and until the Pre-Petition Obligations have been indefeasibly repaid in full have been established and fully funded, the protections afforded to the Secured Financing Parties pursuant to this Order and any actions taken pursuant thereto, shall survive the entry of any order confirming a Plan or converting these Cases into Successor Cases, and the Post-Petition Replacement Liens and the Pre-Petition Superpriority claims shall continue in this proceeding and in any Successor Cases, and such Post-Petition Replacement Liens and the Pre-Petition Superpriority Claims shall maintain their priority as provided by this Order.

13. **Rights and Remedies Upon Event of Default.**

- a. Any automatic stay provisions otherwise applicable to the Secured Financing Parties is hereby modified so that after the occurrence of any Event of Default or the Termination Date and at any time thereafter, upon five (5) business days prior written notice of such occurrence, in each case given by the Administrative Agent or

TIFIA to each of (i) the Debtors, (ii) counsel to the Debtors, (iii) counsel to the Administrative Agent and/or counsel to TIFIA, as the case may be, (iv) counsel to any official committee, and (v) the United States Trustee, the Secured Financing Parties shall be entitled to exercise their rights and remedies in accordance with the Pre-Petition Secured Loan Documents.

b. Immediately following the giving of notice by the Administrative Agent or TIFIA of the occurrence of an Event of Default or the Termination Date, as the case may be (i) the Debtors shall continue to deliver and cause the delivery of the proceeds of Collateral to the Administrative Agent as provided in this Order; (ii) the Administrative Agent shall continue to apply such proceeds in accordance with the provisions of this Order and the Pre-Petition Secured Loan Documents; (iii) the Debtors and/or the official committee shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether an Event of Default or the Termination Date has occurred (such hearing, an “Emergency Stay Hearing”). If the Debtors do not within the time period specified above contest the right of the Secured Financing Parties to exercise their remedies based upon whether an Event of Default or the Termination Date has occurred, or if the Debtors do timely contest the occurrence of an Event of Default and this Court, after notice and hearing, declines to stay the enforcement thereof, the automatic stay as to the Secured Financing Parties shall automatically terminate at the end of such notice period. After the applicable Emergency Stay Hearing, unless this Court shall have entered an order to the contrary the Debtors shall have no right to use any of such proceeds, nor any other Cash Collateral other than towards the satisfaction of the Pre-Petition Obligations and the Carve-Out. For the avoidance of doubt, the service of any notice of the occurrence of an Event of Default shall be subject to the Intercreditor Agreement.

c. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified to permit the Debtors to grant the Post-Petition Replacement Liens and to incur all Obligations and obligations to the Secured Financing Parties under this Order.

d. Nothing included herein shall prejudice, impair or otherwise affect the Secured Financing Parties’ rights to seek any other or supplemental relief in respect of the Debtors.

14. **Proofs of Claim.** Each Debtor acknowledges and agrees that the Pre-Petition Obligations and the related liens, rights, priorities and protections granted to or in favor of the applicable Secured Financing Parties as set forth herein and in the Pre-Petition Senior Loan Agreement and the TIFIA Loan Agreement, as applicable, shall each constitute a proof of claim on behalf of the applicable Secured Financing Parties in the Cases. The Secured Financing Parties are not required to file proofs of claim in the Cases or in any Successor Cases, however, each are hereby authorized and entitled to file (and amend and/or supplement) proofs of claim (including the proofs of claim provided for by this paragraph 15) in the Cases or any Successor Cases.

15. **Other Rights and Obligations.**

a. **Expenses.** As provided in the Pre-Petition Secured Loan Documents, all costs and expenses of the Secured Financing Parties in connection with the Pre-Petition Senior Loan Agreement and the TIFIA Loan Agreement, including, without limitation, reasonable, documented legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses and other out of pocket costs and expenses will be paid by the Debtors, whether or not the transactions contemplated hereby are consummated. Payment of such fees shall not be subject to allowance by the Bankruptcy Court. The Secured Financing Parties shall provide the U.S. Trustee and counsel to any official committee of unsecured creditors appointed in the Cases, on a monthly basis, the total amount of professional fees and expenses incurred per calendar month in the Cases along with the invoices relating to such fees and expenses. Under no circumstances shall professionals for the Secured Financing Parties be required to comply with the U.S. Trustee fee guidelines.

b. **No Duty to Monitor Compliance.** Except as set forth herein, the Administrative Agent and Secured Financing Parties may assume that the Debtors will comply with all terms and conditions of this Order and the Budget and the Administrative Agent and the Secured Financing Parties shall not (i) have any obligation with respect to the Debtors' use of Cash Collateral, (ii) be obligated to ensure or monitor the Debtors' compliance with any financial covenants, formulae or other terms and conditions of this Order or the Senior Secured Financing Documents, (iii) be obligated to pay (directly or indirectly from Cash Collateral or otherwise) any expenses incurred or authorized to be incurred pursuant to this Order or in connection with the operation of the Debtors' business, or (iv) be obligated to ensure or monitor that Cash Collateral exists to pay such expenses.

c. **Monitoring of Collateral.** The Debtors shall permit representatives, agents and/or employees of the Administrative Agent and TIFIA to have reasonable access to their premises and their records during normal business hours (without unreasonable interference with the proper operation of the Debtors' business) and shall cooperate, consult with, and provide to such persons all such non-privileged public information as they may request.

d. **Binding Effect.** The provisions of this Order shall be binding upon and inure to the benefit of the Secured Financing Parties, the Debtor and its successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) whether in the Cases, in any Successor Cases or upon dismissal of any such Chapter 11 or Chapter 7 Cases.

e. **No Waiver.** The failure of the Secured Financing Parties to seek relief or otherwise exercise their rights and remedies under this Order, the Senior Loan Agreement or the TIFIA Loan Agreement, as applicable, shall not constitute a waiver of any of the

Secured Financing Parties' rights hereunder, thereunder or otherwise. Notwithstanding anything herein, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly or otherwise impair the Secured Financing Parties under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Secured Financing Parties to (i) request conversion of any one or more of the Cases to Cases under Chapter 7, dismissal of any one or more of the Cases, or the appointment of a trustee or examiner in any one or more of the Cases, or (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Plan or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Secured Financing Parties.

f. No Third Party Rights. Except as explicitly provided for herein, this Order does not create any rights for the benefit of any third party, creditor, equity holders or any direct, indirect or incidental beneficiary.

g. No Marshaling. The Secured Financing Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral.

h. 363 Sale. Any proposed order approving the sale of the Debtors' assets or procedures for bidding on such sale, shall be in a form and in substance reasonably acceptable to the Administrative Agent and TIFIA and shall provide consultation and notice rights to the Administrative Agent and TIFIA. All documents implementing the 363 Sale shall permit the Secured Financing Parties to "credit bid" all or part of their claims to the extent permitted pursuant to section 363(k) of the Bankruptcy Code.

i. Section 552(b). In light of their agreement to subordinate their liens and superpriority claims to the Carve-Out, the Secured Financing Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Secured Financing Parties with respect to proceeds, product, offspring or profits of any of the Pre-Petition Collateral.

j. Survival of Order. The provisions of this Order and any actions taken pursuant hereto, shall survive the entry of any order which may be entered (i) confirming any Plan in the Cases; (ii) dismissing the Cases; (iii) converting the Cases to any other Chapter under the Code; (iv) withdrawing of the references of the Cases from the Court; and (v) providing for abstention from handling or retaining of jurisdiction of these Cases in the Court. The terms and provisions of this Order shall continue in full force and effect notwithstanding the entry of such order and all obligations of the Debtors to the Secured Financing Parties under the Senior Loan Agreement and the TIFIA Loan Agreement have been indefeasibly paid in full in cash and discharged. The Adequate Protection granted to and conferred upon the Secured Financing Parties shall continue in full force and effect and shall maintain their priorities as provided in this Order and the Intercreditor Agreement until such Adequate Protection has been satisfied. The Debtors shall not (without the consent of the Administrative Agent and TIFIA) propose or support any Plan

that is not conditioned upon the payment in full in cash of the Pre-Petition Obligations, on or prior to the earlier to occur of (x) the effective date of such Plan and (y) the Termination Date.

k. Enforceability. This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

l. Objections Overruled. All objections to the Motion to the extent not withdrawn or resolved are hereby overruled.

m. No Waivers or Modifications of Order. Each Debtor irrevocably waives any right to seek any modifications or extension of this Order without the prior written consent of the Administrative Agent and TIFIA and no such consent shall be implied by any other action, inaction or acquiescence of the Administrative Agent or TIFIA.

n. Waiver of any Applicable Stay. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Order.

16. **Final Hearing.**

a. The Final Hearing to consider entry of the Final Order is scheduled for \_\_\_\_\_, 2010 at \_\_\_\_\_ at the United States Bankruptcy Court for the Southern District of California, San Diego, California. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

b. On or before \_\_\_\_\_, 2010, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Order, the proposed Final Order and the Motion, on: (i) the parties having been given notice of the Interim Hearing, including the parties listed in Finding [ ] above; (ii) counsel to the Administrative Agent, the Collateral Agent and TIFIA, (iii) any party which has filed prior to such date a request for notices with this Court; and (iv) counsel for any official committee, if no official committee has been formed, then to the creditors holding the twenty (20) largest claims as set forth in the list of creditors filed with the Debtors' petitions. The Final Hearing Notice shall state that any party-in-interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court no later than 4:00 p.m. on \_\_\_\_\_, 2010, which objections shall be served so that the same are received on or before such date and time by: **[fill in parties to be served]**. Any objections by creditors or other parties-in-interest to any provisions of this Order shall be deemed waived unless timely filed and served in accordance with this paragraph 17.

ORDER ON: Motion of the Debtors for Entry of Interim Order (A) Authorizing Use of Cash Collateral; (B) Granting Adequate Protection to Certain Prepetition Secured Parties; (C) Granting Related Relief; and (D) Scheduling Final Hearing Thereon  
DEBTORS: South Bay Expressway, L.P. and California Transportation Ventures, Inc.  
CASE NO: 10-04516-LA11

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17. **Retention of Jurisdiction.** The Bankruptcy Court has and will retain jurisdiction to enforce this Order according to its terms.

**SO ORDERED** by the Bankruptcy Court this \_\_\_ of March 2010.

**Exhibit 1 - Budget**

## SOUTH BAY EXPRESSWAY, L. P.

CASH COLLATERAL BUDGET  
PAYMENTS ACCOUNT

Source of Funds	m/ending 4/30/2010	m/ending 5/31/2010	m/ending 6/30/2010	m/ending 7/31/2010	m/ending 8/31/2010	m/ending 9/30/2010	TOTAL US\$000s
	US\$000s	US\$000s	US\$000s	US\$000s	US\$000s	US\$000s	
Debt Service Reserve Account	1,000	TBD	TBD	TBD	TBD	TBD	1,000
Additional Equity Account (AEA)	3,342	101	291	(12)	94	9	3,825
Construction Reserve Account	209	3,436	2,002	1,202	870	634	8,353
Litigation Reserve Account	345	113					458
Project Account	2,072	1,892	1,952	1,855	1,858	1,850	11,480
<b>Total Source of Funds</b>	<b>6,968</b>	<b>5,542</b>	<b>4,246</b>	<b>3,045</b>	<b>2,822</b>	<b>2,493</b>	<b>25,116</b>
<b>Application of Funds</b>							
Project Completion Costs	196	2,648	774	469	305	269	4,661
Park Betterments	13	788	1,228	733	565	365	3,692
Operating Costs including property taxes	4,254	838	1,164	778	917	804	8,755
Professional Fees	1,505	1,268	1,080	1,065	1,035	1,055	7,008
Adequate Protection Payments	1,000	0	0	0	0	0	1,000
<b>Total Application of Funds</b>	<b>6,968</b>	<b>5,542</b>	<b>4,246</b>	<b>3,045</b>	<b>2,822</b>	<b>2,493</b>	<b>25,116</b>
<b>Balance Brought Forward</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
<b>Surplus/(Deficit)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Balance Carried Forward</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

## Budget Variance Tests

<b>Cumulative Project Completion Costs</b>	<b>2,844</b>	<b>3,618</b>	<b>4,087</b>	<b>4,392</b>	<b>4,661</b>
<i>Allowed Variance</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>
<b>Maximum Project Completion Costs</b>	<b>3,128</b>	<b>3,980</b>	<b>4,496</b>	<b>4,831</b>	<b>5,127</b>
<b>Cumulative Operating Costs</b>	<b>4,254</b>	<b>5,092</b>	<b>6,256</b>	<b>7,034</b>	<b>8,755</b>
<i>Allowed Variance</i>	<i>15%</i>	<i>15%</i>	<i>15%</i>	<i>10%</i>	<i>10%</i>
<b>Maximum Operating Costs</b>	<b>4,892</b>	<b>5,856</b>	<b>7,194</b>	<b>7,737</b>	<b>9,630</b>
<b>Cumulative Professional Fees</b>	<b>1,505</b>	<b>2,773</b>	<b>3,853</b>	<b>4,918</b>	<b>5,953</b>
<i>Allowed Variance</i>	<i>15%</i>	<i>15%</i>	<i>15%</i>	<i>10%</i>	<i>10%</i>
<b>Maximum Professional Fees</b>	<b>1,731</b>	<b>3,189</b>	<b>4,431</b>	<b>5,410</b>	<b>7,709</b>
<b>Cumulative Total Cash Outflows <sup>(1)</sup></b>	<b>5,955</b>	<b>10,709</b>	<b>13,727</b>	<b>16,039</b>	<b>18,296</b>
<i>Allowed Variance</i>	<i>15%</i>	<i>15%</i>	<i>15%</i>	<i>10%</i>	<i>10%</i>
<b>Maximum Total Cash Outflows</b>	<b>6,848</b>	<b>12,316</b>	<b>15,786</b>	<b>17,643</b>	<b>22,466</b>

(1) Excludes Park Betterments and Adequate Protection Payments